

# **Supporting Statement For Paperwork Reduction Act Submissions:** **Cost-sharing Reduction Reconciliation Data Template**

(CMS-10526/OMB Control Number: 0938-1266)

## **A. Background**

### 1. Operational Background

The initial approved information collection request proposed to collect the necessary data elements for the calculation of reconciled cost-sharing reduction (CSR) amounts using both the standard and simplified CSR reconciliation methodologies. This initial information collection allowed the Department of Health and Human Services (HHS) to collect data necessary to reconcile payments advanced to qualified health plan (QHP) issuers with dollar amounts paid by the issuer on behalf of an enrollee, and recoup or remit the balance. For efficiency in transmitting the necessary volume of data for this collection, and to more closely resemble other data collections that issuers currently participate in with the Exchange, CMS changed the method of collection from a template to a standard electronic file format following the comment period for that request. A revision to the initial data collection (approved on December 30, 2014, under Office of Management and Budget (OMB) control number 0938-1266) consolidated and eliminated some data elements and added one data element to allow issuers to cross-reference their HIOS IDs with those of an acquired issuer(s) or merger partner(s), and was approved by OMB on March 11, 2016. OMB approved a second revision, which added three data elements and made the reporting of several other data elements optional, on March 28, 2017. OMB approved a reinstatement without change on July 29, 2021.

### 2. Legal Background

The Patient Protection and Affordable Care Act, Public Law 111-148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111-152, enacted on March 30, 2010 (collectively, the “Affordable Care Act” or “ACA”), provides for reduced cost sharing for eligible individuals who purchase health insurance from a QHP through an Exchange.<sup>1</sup>

Under this law, CSRs are provided to eligible enrollees to lower the out-of-pocket costs at the time of service. The goal of the CSRs is to make health care more accessible by reducing its cost. Issuers were reimbursed dollar amounts for cost-sharing reductions provided to eligible enrollees.<sup>2</sup> In 45 CFR 156.430(c), QHP issuers must report to HHS, in the manner and timeframe established by HHS, the total allowed costs for essential health benefits (EHB) charged for the policy during the benefit year. 45 CFR 156.430(d) provides that HHS will periodically provide a

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<sup>1</sup> QHP issuers must reduce cost sharing for individuals with household incomes between 100 percent and 250 percent of the federal poverty level (FPL) who are enrolled in a silver level QHP in the individual market on an Exchange. In addition, issuers must eliminate cost sharing for American Indian and Alaska Native enrollees with household incomes under 300 percent of FPL who are enrolled in a QHP in the individual market on an Exchange. Finally, issuers must eliminate cost sharing for American Indian and Alaska Native enrollees enrolled in a QHP in the individual market on the Exchange, regardless of income, when services are provided by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or through referral under contract health services.

<sup>2</sup> On October 11, 2017, the Attorney General issued a legal opinion that HHS did not have a valid Congressional appropriation with which to make CSR payments to issuers. As a result, CSR payments from HHS ceased as of October 12, 2017. <https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf>.

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submission window for issuers to submit CSR data. HHS will notify QHP issuers that the CSR data submission window is mandatory for a given benefit year if HHS has made CSR payments to issuers for that benefit year. HHS will use the data to reconcile the amount of any advance payments for CSRs to reflect the amount of CSRs issuers paid to health care providers on behalf of eligible enrollees. When there is no appropriation to make CSR payments to issuers, HHS will notify issuers that the submitting CSR data is optional.

In 45 CFR 156.430(c)(1), we established the standard methodology for QHP issuers to submit data to HHS showing the amount of cost sharing paid by enrollees in each plan variation, as well as the amount of cost sharing the enrollees would have paid under the standard plan. The value of the cost sharing provided is the difference between those two amounts. To calculate what the enrollees would have paid under the standard plan, QHP issuers using the standard methodology detailed in 45 CFR 156.430(c)(2) are required to apply the actual cost sharing amount for the standard plan to the total allowed costs for EHB for each plan variation policy. Essentially, the issuer first processes a claim using standard cost sharing, and then re-processes the claim, applying the reduced cost sharing to establish the CSR provided amount. All issuers were required to use the standard methodology for calculating the amounts of provided CSRs starting in benefit year 2017.

The Attorney General of the United States sent a legal opinion to the Acting Secretary of HHS on October 11, 2017, effectively stopping CSR payments from HHS to issuers.<sup>3</sup> Issuers responded to the cessation of CSR payments in a variety of ways, with some issuers pursuing litigation against HHS to receive reimbursement for CSRs provided. In response to this litigation, even though HHS no longer makes CSR payments to issuers, HHS has provided issuers with the option to submit CSR data. The optional data elements are almost identical to the data elements that issuers were required to submit to CMS since the 2017 benefit year CSR reconciliation process.

The HHS Notice of Benefit and Payment Parameters for 2023<sup>4</sup> (“2023 Payment Notice”) finalized changes to 45 CFR 156.430. These changes clarified that the CSR data submission process is mandatory only to those issuers that receive CSR payments from HHS for any part of the benefit year as a result of HHS processing an appropriation to make CSR payments and that CSR data submission process is voluntary for other issuers. As of May 10, 2024, there is still no appropriation for HHS to make CSR payments to issuers.

## **B. Justification**

### **1. Circumstances Making the Collection of Information Necessary**

The ACA requires issuers to provide CSRs for certain eligible individuals to help them afford out-of-pocket expenses associated with health care purchased through QHPs offered on Exchanges. Specifically, the ACA provides for reductions in cost sharing on EHB for low- and moderate-income enrollees in silver level health plans sold on individual market Exchanges, as well as American Indian/Alaska Native enrollees in all metal level plans sold on individual market Exchanges. The law directs QHP issuers to notify the Secretary of HHS of CSRs paid under the statute for qualified individuals and provided for periodic and timely payments to QHP

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<sup>3</sup> Payments to Issuers for Cost-Sharing Reductions (CSRs): <https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf>.

<sup>4</sup> 87 FR 27208 at 27340 to 27341.

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issuers equal to the value of those CSRs. Further, the law permitted advance payment of CSR amounts to QHP issuers. Previously, to ensure the appropriate use of federal funds, HHS needed to compare and reconcile the estimated monthly payments advanced to a QHP issuer with CSRs made by the issuer for medical services for each eligible enrollee in a benefit year.

Currently, payments are not being advanced to QHP issuers, as the Attorney General of the United States has determined that there is no specific appropriation for CSRs.<sup>5</sup> However, HHS periodically allows issuers to submit data that compares the CSR-eligible enrollment for each issuer with their actual CSRs provided by the issuer for medical services for each eligible enrollee in a benefit year.<sup>6</sup> Further, to resolve litigation brought by issuers against HHS regarding the cessation of advance CSR payments, existing settlement agreements and court orders require HHS to gather CSR data to determine appropriate settlement terms and judgement amounts.

## 2. Purpose and Use of Information

If HHS were to make advance CSR payments (if an appropriation were to exist), the data collection and reporting requirements described below would enable HHS to review actual medical costs incurred by eligible enrollees for EHB and CSRs provided by issuers on behalf of these enrollees for these services, and to compare this information to the dollar amount of payments that would have been advanced to issuers based on their CSR eligible enrollment. Using this data, HHS would calculate the difference between the estimated CSR payments and the amount actually provided during the benefit year, and whether the issuer will be invoiced for amounts not spent on behalf of the enrollee (if overpayments were determined). Currently, the data collection and reporting requirements described below are used in the consideration of settlement and judgment amounts in litigation brought by issuers against HHS related to the lack of advance CSR payments. This data is submitted periodically and optionally, subject to the determination of HHS.

## 3. Use of Information Technology

Information gathered through this collection will be submitted electronically. HHS staff will communicate with issuers using standardized reporting, e-mail or telephone.

## 4. Duplication of Efforts

This information collection does not duplicate any other Federal effort.

## 5. Small Businesses

This information collection will not have a significant impact on small businesses.

## 6. Less Frequent Collection

Reconciliation of CSRs was an annual process that began in April 2016 and ended in the

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<sup>5</sup> 87 FR 27208 at 27340 to 27341.

<sup>6</sup> 45 C.F.R 156.430(d)

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Summer of 2018. Currently, HHS offers an optional data submission on a periodic process at the determination of HHS. While HHS has changed its approach to collection to be a less frequent collection because HHS stopped making CSR payments, HHS maintains the need for a less frequent collection than the annual collection approach to ensure the appropriate payment of CSRs based on litigation.

## 7. Special Circumstances

In the absence of advanced CSR payments, CSR data collections conducted by HHS are conducted in response to any pending litigation, at the determination of HHS, and participation for issuers is optional.

## 8. Federal Register/Outside Consultation

A 60-day notice published in the Federal Register on February 29, 2024 (89 FR 14846). No comments were received. A 30-day Notice will publish on **XX XX, 2024.**

No outside consultation was sought.

## 9. Payments/Gifts to Respondents

No payments or gifts will be provided to respondents.

## 10. Confidentiality

We will maintain respondent privacy with respect to the information collected to the extent required by applicable law and HHS policies.

## 11. Sensitive Questions

There are no sensitive questions included in this information collection effort.

## 12. Burden Estimates (Hours & Wages)

Our estimate of paperwork burden for issuers is based on responses from 150 issuers for calculating amounts of CSRs provided. We considered lowering the number of responses based on previous years' optional CSR data submission responses, which showed 104 issuers voluntarily submitted CSR data for the 2021 benefit year<sup>7</sup> but because of ongoing litigation being likely to incentivize issuers to submit CSR data in the future, we believe the response rate may be higher than the response rate that we last saw for the 2021 benefit year.

A number of assumptions are made regarding the wages of personnel needed to accomplish the proposed collection of information. Wage rates are based on the May 2023 National Occupational Employment and Wage Estimates data from the U.S. Bureau of Labor Statistics

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<sup>7</sup> The 2021 CSR Data Submission and 2020 Restatement window in 2022 was the most recent optional data submission period. HHS has not collected CSR data for 2022 as a data submission period was not opened in 2023.

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and represent a national average.

Some States or employers may face higher or lower wage burdens. Wage rates estimates include a 100 percent increase to account for employee fringe benefits.

## **I. Issuer Summary Report**

Within 45 CFR Part 156, subpart E, we described health insurance issuer responsibilities with respect to advance payments of CSRs.

Under 45 CFR 156.430(c)(1), for a year in which HHS makes advance CSR payments to issuers, each QHP issuer must submit to HHS, in the manner and timeframe established by HHS, for every plan variation it offers on the Exchange, the total allowed costs for EHB provided for the policy for the benefit year, broken down by the amount the issuer paid, the amount the enrollee(s) paid, and the amount the enrollee would have paid under the standard plan without CSRs.

Under this collection, each issuer has the option to submit the data elements contained in the Issuer Summary Report, which includes the total number of policies paying CSRs and the total amount of CSRs provided under those policies.

This report also requires issuers to attest that the CSR amounts paid were paid only for EHB, not including certain benefits for which Federal funds may not be used, as described in section 1301 of the ACA.

We estimate that approximately 150 QHP issuers on Exchanges are likely to participate in this optional data collection. We previously estimated the cost of establishing information technology to use this methodology in the Information Collection associated with the 2014 Payment Notice and the Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards final rule (78 FR 65045, October 30, 2013). We assume these reports will be automatically generated on a regular basis as a normal part of business, and below we estimate capital costs for all data extraction for this file transfer. Therefore, our estimate here is limited to performing the extraction and reviewing data in this file.

To derive wage estimates, we generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and overhead) for estimating the burden. We estimate that on average, for each issuer, it will take an operations analyst 30 minutes (at a wage rate of \$76.52 an hour/13-1199 Business Operations Specialist) and a senior manager (at \$150.10 an hour/11-3031 Financial Manager/Insurance Carrier) 15 minutes to oversee and review the Issuer Summary Report section of this file, for a total estimated burden of 112.5 hours per year. The total average labor cost estimate per response for each issuer is \$75.79 and the estimated aggregated cost burden is \$11,368.50.

## **II. Standard Methodology Plan and Policy Report**

As required under 45 CFR 156.430(c)(2), QHP issuers in this section must calculate the value of the amount the enrollee would have paid under the standard plan without CSRs by applying actual cost-sharing requirements for the standard plan to the allowed costs for EHB under the enrollee's policy for the benefit year. The Plan and Policy Report includes identifying numbers for each subscriber, total allowed costs for EHB, amounts the issuer and enrollee paid, and the amounts the enrollee(s) would have paid under the standard plan. It also includes total monthly premium for the policy, the Policy Identification number, and the Policy Start and End

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dates (optional).

As noted above, we separately estimate capital costs related to data extraction required to complete all sections of the file submission, and we assume an automated information system. Therefore, our estimate here is limited to performing the extraction and reviewing the data in the file.

In the aggregate, we estimate that 150 issuers will report data for approximately 5.79 million policies in various sections of this template. All issuers participating in CSR data submission, as of benefit year 2017 and beyond, are required to use the standard methodology.

Since we estimate that there are about 5,790,000 policies overall, we estimate that each issuer completing this section of the report would submit data for approximately 38,600 policies. We estimate that submission and review of this data collection will take each issuer on average 10 hours for an operations analyst (at an average wage rate of \$76.52 an hour) and five hours for a senior manager (at \$150.10 an hour) to meet these requirements. Therefore, we previously estimated that each issuer, on average, would need 15 hours to complete this section, for an estimated aggregate burden of 2,250 hours for all issuers. We estimated the average cost to each issuer would be \$1,515.70, for an aggregated estimated cost burden of \$227,355 for all issuers subject to this submission requirement. During the CSR data submission, issuers will likely need to submit their data files an average of 2-3 times before reaching a data file status that was acceptable for processing and that included each policy. Accordingly, the existing burden estimate reflects an average of 2.5 submissions.

CMS identifies which policies are eligible for reimbursement by verifying that the Exchange-assigned subscriber ID submitted with the policy can be matched to a valid subscriber record on the Federally-facilitated Exchanges (FFE).

We intend to revise this ICR, as necessary, to reflect any changes to the overall burden of the submission requirements.

### **III. Aggregate burden**

The aggregate burden for issuers completing this file is as follows:

#### **12A. Estimated Annualized Burden Hours and Cost for All Respondents**

| <b>Information Collection Requirement</b>   | <b>Type of Respondent</b> | <b>Frequency and Duration</b> | <b>Number of Respondents</b> | <b>Number of Responses per Respondent</b> | <b>Average Burden Hours per Response</b> | <b>Total Burden Hours</b> | <b>Total Cost</b> |
|---|---------------------------|-------------------------------|------------------------------|---|--|---------------------------|-------------------|
| Issuer Summary Report                       | Issuer                    | Annually, Permanent           | 150                          | 1   | 0.75                                     | 112.5                     | \$11,368          |
| Standard Methodology Plan and Policy Report | Issuer                    | Annually, Permanent           | 150                          | 1   | 15                                       | 2,250                     | \$227,355         |
| Total                                       |                           |                               | 150                          |   |  | 2,362.5                   | \$238,723         |

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### 12B. Cost Estimate for Issuers that Submit Policy-level Data

| Type of Respondent           | Hourly Labor Cost of Reporting (\$) | Total Burden Hours | Average Labor Cost per Response | Number of Respondents | Total Labor Costs (All Respondents) |
|------------------------------|-------------------------------------|--------------------|---------------------------------|-----------------------|-------------------------------------|
| <i>Issuer Summary Report</i> |                                     |                    |                                 |                       |                                     |
| Operations Analyst           | \$76.52                             | 0.50               | \$38.26                         | 150                   | \$5,739                             |
| Senior Manager               | \$150.10                            | 0.25               | \$37.53                         | 150                   | \$5,629.50                          |
| <b>Total</b>                 |                                     | <b>0.75</b>        | <b>\$75.79</b>                  |                       | <b>\$11,368.50</b>                  |

| Type of Respondent                                 | Hourly Labor Cost of Reporting (\$) | Total Burden Hours | Average Labor Cost per Response | Number of Respondents | Total Labor Costs (All Respondents) |
|--|-------------------------------------|--------------------|---------------------------------|-----------------------|-------------------------------------|
| <i>Standard Methodology Plan and Policy Report</i> |                                     |                    |                                 |                       |                                     |
| Operations Analyst                                 | \$76.52                             | 10                 | \$765.20                        | 150                   | \$114,780                           |
| Senior Manager                                     | \$150/10                            | 5                  | \$750.50                        | 150                   | \$112,575                           |
| <b>Total</b>                                       |                                     | <b>15</b>          | <b>\$1,515.70</b>               |                       | <b>\$227,355</b>                    |

### 13. Capital Costs

In the 2014 Payment Notice, we estimated that the information technology associated with implementing the standard methodology would be developed by three vendors at a cost of approximately \$6 million per vendor, for a total cost of approximately \$18 million. We also estimated each issuer would need to spend approximately \$100,000 to customize the vendor solution technology and modify their claims system to extract data. Our estimate for total administrative costs was \$138 million.

Here, we estimate the burden of extracting and reporting data from the information technology accounted for above, as well as maintenance. For an issuer using the standard methodology, we estimate on average it would take each QHP issuer using automated systems 10 hours per year to provide the information required in these reports. Therefore, for all issuers using this methodology, we estimate it would take 1,500 hours to produce summary data for 5.79 million policies. The cost of this capital burden is approximately \$1,500 per issuer, including maintenance and depreciation, for an annual total estimated burden of \$227,000. We estimate that this is an ongoing burden that issuers would incur in each year of operation and submission of data for a CSR plan.

### 14. Cost to Federal Government

The burden to the Federal Government to conduct a periodic CSR data submission window is \$21,852.12. The calculations for CCIIO employees' hourly salary was obtained from the OPM website for the Washington-Baltimore area at: [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB_h.pdf).

| Task   | Estimated Cost |
|--|----------------|
| Development of HHS CSR reconciliation template |                |

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|   |                    |
|---|--------------------|
| 3 GS-13, Step 5: 3 x \$64.06 x 30 hours   | \$5,765.40         |
| Collection of HHS CSR reconciliation data |                    |
| 5 GS-13, Step 5: 5 x \$64.06 x 40 hours   | \$12,812           |
| Technical Assistance to Issuers           |                    |
| 5 GS-13, Step 5: 5 x \$64.06 x 8 hours    | \$2,562.40         |
| Managerial Review and Oversight           |                    |
| 2 GS-15, Step 5: 2 x \$89.04 x 4 hours    | \$712.32           |
| <b>Total Costs to Government</b>          | <b>\$21,852.12</b> |

15. Explanation for Program Changes or Adjustments

We are updating wage rates based on the most up to date May 2023 National Occupational and Wage data estimates from the U.S Bureau of Labor and Statistics. There are no other programmatic updates.

16. Publication/Tabulation Dates

The result of this data collection will not be published. This is because the data collected from QHPs is proprietary and confidential data, including the QHPs' contracted rates and amounts paid for services. Additionally, the quantitative CSR data collected from QHPs may be used in the consideration of settlement and judgment amounts in litigation brought by issuers against HHS related to the lack of advance CSR payments and is therefore proprietary and confidential.

17. Expiration Date

The expiration date of this data collection will be displayed on each instrument.