Supporting Statement for Essential Health Benefits Benchmark Plans
(CMS-10448/OMB control number: 0938-1174)

A. Background

On March 23, 2010, the Affordable Care Act (ACA; P.L. 111-148) was signed into law, and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) was signed into law. The two laws implement various health insurance policies, including the Essential Health Benefits (EHB).

Section 1302 of the ACA provides for the establishment of an EHB package that includes coverage of the EHB (as defined by the Secretary of HHS), cost-sharing limits, and actuarial value requirements. Among other requirements, the law directs that the EHB be equal in scope to the benefits provided under a typical employer plan, and that they cover at least the following 10 general categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the requirement to cover the EHB package to non-grandfathered individual and small group health insurance coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost-sharing under the plan does not exceed the limitations described in section 1302(c)(1) of the ACA.

We defined the EHB with a State benchmark-based approach in the Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation; Final Rule (EHB Final Rule) published in the February 25, 2013, **Federal Register** (78 FR 12834). In order to establish an EHB-benchmark plan in each State, in 2012, HHS asked States to voluntarily identify an EHB-benchmark plan from 10 options that were provided in the EHB Bulletin. The EHB Final Rule applied those EHB-benchmark plans starting in the 2014 plan year as a transitional policy. Then, in 2015, HHS asked States to voluntarily identify an EHB-benchmark plan from those 10 options for a second time based on 2014 plans that would apply beginning in the 2017 plan year.

In the final rule entitled the HHS Notice of Benefit and Payment Parameters for 2019 (2019 Payment Notice) published in the April 17, 2017, **Federal Register** (83 FR 16930), we added 45 CFR 156.111 in changing the State's EHB-benchmark plan selection process beginning for the 2020 plan year. In the HHS Notice of Benefit and Payment Parameters for 2025 proposed rule (proposed 2025 Payment Notice), published on November 24, 2023, **Federal Register** (88 FR 82510), we proposed three changes to § 156.111. First, we proposed to streamline the options for States to change EHB-benchmark plans at § 156.111(a) to reduce the burden on States to select between three functionally identical choices. Second, we proposed to amend the scope of benefit requirements at § 156.111(b)(2) by requiring a State's new EHB-benchmark plan to provide a scope of benefits that is equal to the scope benefits of a typical employer plan in the State, and that a typical employer plan in the State is any plan that is as or more generous than the least

generous plan, and as or less generous than the most generous plan in the State, among the plans currently defined at § 156.111(b)(2)(i)(A) and (B). We also proposed to remove the generosity standard at § 156.111(b)(2)(ii). Third, we proposed to revise § 156.111(e)(3) to require States to submit a formulary drug list as part of their application to change EHB-benchmark plans only if the State is seeking to change their prescription drug EHB.

The current EHB-benchmark plan PRA package (expires February 28, 2024) was submitted as an extension request on September 27, 2023 (88 FR 66452) and February 7, 2024 (89 FR 8434). However, we are proposing changes to the EHB-benchmark plan application requirements in the proposed 2025 Payment Notice. If finalized as proposed, that rule would substantively change the burden associated with this collection, so we propose this new PRA package in conjunction with that rule. This new PRA package will come into effect with EHB-benchmark plan submissions beginning in calendar year 2025. The current PRA package (that was submitted as an extension request) will remain in effect through calendar year 2024.

B. Justification

1. Need and Legal Basis

Section 1321(a) of the ACA requires HHS to issue regulations setting standards for meeting the requirements under title I of the ACA. HHS published the Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans in the June 5, 2012, **Federal Register** (77 FR 33133), initially authorizing HHS to collect data from potential default EHB-benchmark plan issuers in each State. The information collection requirement (ICR) associated with that proposed rule addressed States' selection of their own EHB-benchmark plan. The proposed rule was finalized and published in the July 20, 2012, **Federal Register** (77 FR 42658). A revised ICR was published with the HHS Notice of Benefit and Payment Parameters for 2016 (2016 Payment Notice) in the April 28, 2015, **Federal Register** (80 FR 10749) and the ICR was finalized on August 28, 2015. We finalized new regulations at § 156.111 for a State's EHB-benchmark plan as part of the HHS Notice of Benefit and Payment Parameters for 2019 (2019 Payment Notice) published in the April 17, 2018, **Federal Register** (83 FR 16930), and simultaneously published a revised ICR to reflect these changes on April 16, 2018. We renewed that ICR on March 11, 2021, and published the 60-day notice on September 27, 2023, and the 30-day notice on February 7, 2024, for the extension request for that ICR for use beginning in April 2024.

We issue these ICRs in conjunction with the proposed 2025 Payment Notice. If the changes to § 156.111 are finalized as proposed, we anticipate an overall reduced burden on States to change their EHB-benchmark plans in accordance with the revisions to § 156.111, so we issue this new ICR to reflect that reduced burden. Meanwhile, the existing ICR, for which we are seeking a renewal for use beginning in April 2024, would remain in effect until the proposed changes to § 156.111 would come into effect. As a result, we are seeking authorization for two similar collections under § 156.111 concurrently: an extension of the existing ICR for use beginning in April 2024, and the authorization of this new ICR for use when the proposed changes to §156.111 would come into effect.

Currently, in accordance with § 156.111(e), for plan years beginning on or after January 1, 2020, a State changing its EHB-benchmark plan using one of the options at § 156.111(a) must submit documents specified by HHS in a format and manner by a date determined by HHS. These required documents include:

(1) A document confirming that the State's EHB-benchmark plan definition complies with the requirements under paragraphs (a), (b) and (c), including information on which selection option under proposed § 156.111(a) the State is using, and whether the State is using another State's EHB-benchmark plan;
(2) An actuarial certification and an associated actuarial report from an actuary, who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies that affirms compliance with the scope of benefits requirements at § 156.111(b)(2);
(3) The State's EHB-benchmark plan document that reflects the benefits and limitations, including medical management requirements, a schedule of benefits and, if the State is selecting its EHB-benchmark plan using the option in § 156.111(a)(3), a formulary drug list in a format and manner specified by HHS; and
(4) Other documentation specified by HHS, which is necessary to operationalize the State's EHB-benchmark plan.

The revisions proposed in the 2025 Payment Notice proposed rule would not change the number of documents States must submit to change its EHB-benchmark plan under § 156.111(e), unless the State is not seeking to make changes to its prescription drug EHB, in which case, the State would not submit a formulary drug list as specified in § 156.111(e)(3). The proposed revisions would affect the content of the required documentation at § 156.111(e)(1) and (2) in a manner that we anticipate would reduce overall burden.

Under current § 156.111 and its proposed revisions, if finalized as proposed, a response is not required from all States. Only States choosing to modify the State's EHB-benchmark plan would need to respond to this ICR. This information collection uses collection instruments in Appendices A, B, C, and D.[1] We provide collection instruments for certain documents in this ICR and for other documents in this ICR, we do not have collection instruments, and the State will submit documents electronically. We also propose updates to these collection instruments for clarity and to improve usability.

2. Information Uses

The EHB-benchmark plan information in this ICR is used by issuers and HHS to establish the benefits covered by EHB-benchmark plans in each State as EHB. This allows issuers seeking to offer coverage in the individual and small group markets to design benefits that meet EHB requirements and each State's EHB-benchmark plan determines EHB for the purposes of the

[1] We are removing existing Appendix E: "Overview of State Documentation Requirements for EHB-benchmark Plans" from this information collection as the proposed changes to 45 CFR 156.111 in the proposed 2025 Payment Notice would consolidate the options for State EHB-benchmark plan selection and simplify the documentation requirements.

availability of premium tax credits and cost-sharing reductions for enrollees in the State.[2]

3. Use of Information Technology

States must submit EHB-benchmark plan selection documents electronically. We may use a web-based tool with email as a back-up option to collect the documents under this ICR. As described in the 2019 Payment Notice, the information in this information collection will be posted on Center for Consumer Information and Insurance Oversight (CCIIO) webpage on EHB.[3]

4. Duplication of Efforts

There is no duplication of efforts.

5. Small Businesses

This information collection will not impact on small businesses.

6. Less Frequent Collection

We anticipate that the EHB-benchmark plan data collection will occur annually. The respondents will likely be different respondents each year. If the collection was less frequently, it would decrease the flexibility for States on when they could choose to make changes to their EHB-benchmark plans.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

This ICR was published as part of the Payment Notice Proposed Rule in the Federal Register on 11/24/2023 (v. 88, No. 225) for the public to submit written comment as part of a first-round public comment period. No public comments were received.

This ICR will be published as part of the Payment Notice Final Rule in the Federal Register on XX/XX/2024 as part of a second-round public comment period for the public to submit written comment.

No additional outside consultation was sought.

[2] The definition of EHB also has an impact on the annual limitation on cost sharing at section 1302(c) of the ACA (which is incorporated into section 2707(b) of the PHS Act) and the prohibition of annual and lifetime dollar limits at section 2711 of the PHS Act, as added by the ACA.

[3] The current CCIIO webpage for EHB-benchmark plans is available at: https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html.

9. Payments/Gifts to Respondents

No payments and/or gifts were made to any respondents.

10. Confidentiality

All information collected will be kept private in accordance with regulations at 45 CFR 155.260, Privacy and Security of Personally Identifiable Information. Pursuant to this regulation, Marketplaces may only use or disclose personally identifiable information to the extent that such information is necessary to carry out their statutory and regulatory mandated functions.

11. Sensitive Questions

No sensitive questions are asked in this information collection effort.

12. Burden Estimates (Hours & Wages)

The following section of this document contains estimates of burden imposed by the associated information collection requirements. Average labor costs (including 100 percent fringe benefits) used to estimate the costs are calculated using data available from the May 2022 National Industry-Specific Occupational Employment and Wage Estimates from the Bureau of Labor Statistics (BLS) website: https://www.bls.gov/oes/current/naics4_999200.htm#11-0000.

Table 1: Adjusted Hourly Wages Used in Burden Estimates

Occupation Title	Occupational Code	Median Hourly Wage ($/hour)	Fringe Benefits & Overhead (100%) ($/hour)	Adjusted Hourly Wage ($/hour)
Financial Examiners (State Government, excluding schools and hospitals)	13-2061	$39.52	$39.52	$79.04
Actuary (Member of American Academy of Actuaries)	15-2011	$54.80	$54.80	$109.60

This burden estimate does not include estimates for a State to conduct reasonable public notice and an opportunity for public comment at § 156.111(c).

45 CFR 156.111 allows States to change EHB-benchmark plans annually but would not require them to respond to this ICR for any year for which they did not change their EHB-benchmark plans. Since finalizing § 156.111 in the 2019 Payment Notice, between 1 and 3 States changed their EHB-benchmark plan each year between 2019 and 2023. We initially estimated that 10 States would choose to make a change to their EHB-benchmark plans in any given year (for a total of 30 States over 3 years within the authorization of this ICR) in the original ICR. We revise that estimate in this ICR. While we anticipate that the proposed revisions to § 156.111 will reduce overall burden on States and incentivize more frequent changes to EHB-benchmark

plans, we anticipate that at most 5 States would choose to make a change to their EHB-benchmark plans in any given year (15 States over 3 years within the authorization of this ICR). As a result, we anticipate a lower overall burden due to the proposed changes to § 156.111 and based on our experience interacting with States seeking to make changes to their EHB-benchmark plans annually. The following details the burden attached to part of this information collection.

First, to change an EHB-benchmark plan, we require at § 156.111(e)(1) that the State provide confirmation that the State's EHB-benchmark plan selection complies with certain requirements, including those under § 156.111(a), (b), and (c). To collect this information, the State submits the associated document in **Appendix A. Confirmations on the State EHB-benchmark Plan**. To complete this requirement, we estimate that a financial examiner would require 4 hours (at a rate of $79.04 per hour) to fill out, review, and transmit a complete and accurate document. We estimate that it would cost each State approximately $316.16 to meet this reporting requirement, with a total annual burden for all 5 States of 20 hours and an associated total cost of $1,580.80.

Second, § 156.111(e)(2) currently requires States to submit an actuarial certification and associated actuarial report of the methods and assumptions when selecting options under § 156.111(a). This actuarial certification and associated actuarial report must demonstrate compliance with section 156.111(b)(2)(i), which requires a State's EHB-benchmark plan to provide a scope of benefits that is equal in scope of benefits to the scope of benefits under one of the typical employer plans at § 156.111(b)(2)(i)(A) and (B). While the proposed revisions to § 156.111(b)(2)(i) would still require a State's EHB-benchmark plan to provide benefits that are equal in scope of benefits to the scope of benefits under a typical employer plan, they would also allow a State to select any scope of benefits that is as or more generous than the scope of benefits in the least generous plan, and as or less generous than the scope of benefits in the most generous plan in the State, among the plans currently defined at § 156.111(b)(2)(i)(A) and (B). We anticipate that these proposed revisions would substantially reduce the burden on States to perform actuarial analyses. Under this revision, we anticipate that a State would typically only need to perform three actuarial analyses to determine the scope of benefits in the least and most generous plans among the plans currently defined at § 156.111(b)(2)(i)(A) and (B), and the scope of benefits in the State's new EHB-benchmark plan. Under current regulation, a State may need to perform an indeterminate number of actuarial analyses of the plans defined at § 156.111(b)(2)(i)(A) and (B) until the State identifies a plan with an equal scope of benefits with the State's EHB-benchmark plan. This proposed revision would significantly reduce the likelihood that a State need perform as many analyses. Accordingly, we are reducing the estimated burden on States to perform the analysis to confirm compliance with § 156.111(b)(2)(i).

This actuarial certification and associated actuarial report must also demonstrate compliance with § 156.111(b)(2)(ii), which currently requires a State's EHB-benchmark plan to not exceed the generosity of the most generous among a set of comparison plans. We proposed to remove this requirement in the proposed 2025 Payment Notice and revise this estimate to reflect a reduce burden on States that no longer need perform the actuarial analyses required with § 156.111(b)(2)(ii).

The actuarial certification that is being collected under this ICR is required to include an actuarial report that complies with generally accepted actuarial principles and methodologies. This estimate includes complying with all applicable ASOPs (including ASOP 41 on actuarial communications). For example, ASOP 41 on actuarial communications includes disclosure requirements, including those that apply to the disclosure of information on the methods and assumptions being used for the actuarial certification and report. The actuarial certification for this requirement is provided in a template in **Appendix B. Essential Health Benefits (EHB)-Benchmark Plan Actuarial Certificate Template** and includes an attestation that the standard actuarial practices have been followed or that exceptions have been noted. The signing actuary is required to be a Member of the American Academy of Actuaries.

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We estimate that an actuary, who is a member of the American Academy of Actuaries, requires 12 hours (at a rate of $109.60 per hour) on average for § 156.111(e)(2). This includes the certification and associated actuarial report from an actuary to affirm, in accordance with generally accepted actuarial principles and methodologies that the State's EHB-benchmark plan must provide a scope of benefits that is equal to the scope of benefits provided under a typical employer plan. For these calculations, the actuary needs to conduct the appropriate calculations to create and review an actuarial certification and associated actuarial report, including minimal time required for recordkeeping. The precise level of effort for the actuarial certification and associated actuarial report under § 156.111(e)(2) will likely vary depending on the State's approach to its EHB-benchmark plan and this certification requirement. The estimated burden is12 hours for the actuary to complete the actuarial certification and associated report in recognition that the definition of typical employer plan may require the actuary to determine whether the typical employer plan meets minimum value requirements. We estimate that it would cost each State approximately $1,315.20 to meet this reporting requirement, with a total annual burden for all 5 States of 60 hours and an associated total cost of $6,576.

For the actuarial certification, we provide the collection instrument in **Appendix B. Essential Health Benefits (EHB)-Benchmark Plan Actuarial Certificate Template**. We estimate that a financial examiner will require 1 hour (at a rate of $79.04 per hour) to review, combine, and electronically transmit these documents to HHS, as part of a State's EHB-benchmark plan submission. We estimate that each State will incur a burden of 1 hour with an associated cost of $79.04 with a total annual burden for 5 States of 5 hours at associated total cost of $395.20.

Third, we require at § 156.111(e)(3) each State to submit its new EHB-benchmark plan documents. The level of effort associated with this requirement could depend on the State's selection of the EHB-benchmark plan options under the regulation at § 156.111(a). However, for the purposes of this estimate, we estimate that it would require a financial examiner (at a rate of $79.04 per hour) 12 hours on average to create, review, and electronically transmit the State's EHB-benchmark plan document that accurately reflects the benefits and limitations, resulting in a burden of 12 hours and an associated cost of $948.48, with a total annual burden for all 5 States of 60 hours and an associated cost of $4,742.40. This estimate of 12 hours also includes the burden necessary for a State to submit a formulary drug list for the State's EHB-benchmark plan in a format and manner specified by HHS, in accordance with § 156.111(e)(3). However, we are proposing to revise § 156.111(e)(3) in the 2025 Payment Notice proposed rule to require a State to submit this formulary drug list only if the State is changing the prescription drug EHB.

We do not anticipate that all States would change prescription drug EHB, so we anticipate this burden would be lower for some States. To collect the formulary drug list, the State is required to use the template provided by HHS and must submit the formulary drug list as a list of RxNorm Concept Unique Identifiers (RxCUIs). This template is incorporated in **Appendix D. EHB-benchmark Plan Formulary Drug List**.

Lastly, § 156.111(e)(4) requires the State to submit the documentation necessary to operationalize the State's EHB-benchmark plan definition. This reporting requirement includes the EHB summary file that is currently posted on CCIIO's website and is used as part of the QHP certification process and is integrated into HHS's IT Build systems that feeds into the data that is displayed on *HealthCare.gov*.[4] This document format is incorporated as a template in **Appendix C. The State's EHB-benchmark Plan's Benefits and Limits**. We estimate that it would require a financial examiner 12 hours, on average, (at a rate of $79.04 per hour) to create, review, and electronically submit a complete and accurate document to HHS resulting in a burden of 12 hours and an associated cost of $948.48, with a total annual burden for all 5 States of 60 hours and an associated cost of $4,742.40.

We estimate that the total number of respondent states would be 5 per year, for a total yearly burden of 205 hours and an associated cost of $18,036.80 to meet these reporting requirements. Below is the estimate of the burden imposed on a State subject to the reporting requirements of this final rule.

Table 2: Burden to Change EHB-Benchmark Plan

Labor Category	Number of Respondents	Hourly Labor Costs (Hourly rate + 100% Fringe Benefits)	Burden Hours	Total Burden Costs (Per Respondent)	Total Burden Costs (All Respondents)
Financial Examiners (State Government, excluding schools and hospitals)	5	$79.04	29	$2,292.16	$11,460.80
Actuary (Member of American Academy of Actuaries)	5	$109.60	12	$1,315.20	$6,576.00
Total - Annual			205		$18,036.80
Total – Three Years			615		$54,110.40

13. Capital Costs

There are no anticipated capital costs associated with this data collection.

[4] https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html.

14. Cost to Federal Government

The burden to the Federal government associated with this information collection is $15,700.20. The calculations for CCIIO employees' hourly salary were obtained from the OPM website: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/24Tables/html/GS_h.aspx

Table 8: Administrative Burden Costs for the Federal Government Associated with the EHB-Benchmark Plan Selection

Task	Estimated Cost
1 FTE GS-14: 1 x $100.24[1] x 50 hours	$5,012.00
1 FTE GS-13: 1 x $84.82[1] x 10 hours	$848.20
1 FTE GS-9: 1 x $49.20[1] x 200 hours	$9,840.00
Total Costs to Government	**$15,700.20**

[1] Hourly basic rate + 100% fringe benefit rate.

15. Changes to Burden

There is an overall decrease in the financial burden from the 2023 extension PRA package because of the reduction in the number of States from 10 to 5. The total burden hours decreased from 470 hours to 205 hours, which is a decrease of 265 hours. The estimated annual costs decreased from $44,441.40 to $18,036.80, which is a decrease of $26,404.60. There was an increase in the adjusted hourly wage rates as we previously used the mean wage rate but were advised by OMB to use the median wage rate for the labor categories.

16. Publication/Tabulation Dates

In accordance with the 2023 Payment Notice, EHB-benchmark Plan Selection documents covered under this information collection will be posted on the CCIIO website[5] at some point after the annual deadline for State submission for its EHB-benchmark plan.

17. Expiration Date

The expiration date and OMB control number will be displayed on the first page of each instrument (top, right-hand corner).

[5] https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html.