

**Supporting Statement  
Financial Statement of Debtor  
CMS-379, OMB 0938-0270)**

**A. BACKGROUND**

The CMS-379 was first disseminated to CMS Regional Offices (RO) in April 1983. Prior to that, the MACs used their own locally developed forms to assess the Sole Proprietor physician's/supplier financial position.

Normally, when a Medicare Administrative Contractor (MAC) overpays a physician or supplier, the overpayment is associated with a single claim, and the amount of the overpayment is moderate. In these cases, the physician/supplier usually refunds the overpaid amount in a lump sum. Alternatively, the MAC may recoup the overpaid amount against future payments. A recoupment is the recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. The recoupment can be made only if the physician/supplier accepts assignment since the MAC makes payment to the physician/supplier only on assigned claims.

Sometimes, however, an overpayment to a physician/supplier is exceptionally large, and it cannot be recovered in the normal fashion. The large overpayment usually results from aberrant billing practices, such as billing for more expensive services than were rendered. This could be discovered during routine review of a statistically valid sample of claims.

The physician/supplier may be unable to refund a large overpaid amount in a single payment. The MAC cannot recover the overpayment by recoupment if the Physician / supplier does not accept assignment of future claims, or is not expected to file future claims. In these unusual circumstances, the MAC has authority to approve or deny extended repayment schedules up to 12 months, or may recommend to the Centers for Medicare and Medicaid Services (CMS) to approve up to 60 months. Before the MAC takes these actions, the MAC will require full documentation of the Sole Proprietor physician's/supplier financial situation. Thus, the Sole Proprietor physician/supplier must complete the CMS-379, Financial Statement of Debtor.

We are requesting a 3-year extension of Office Management and Budget (OMB) approval of the CMS-379 with no change in substance or burden hours. This form is currently approved under control number 0938-0270.

**B. JUSTIFICATION**

1. Need and Legal Basis

The Centers for Medicare & Medicaid Services (CMS) is authorized to collect the information requested on this form by sections 1124(a)(1), 1124A(a)(3), 1128, 1814, 1815, 1833(e), and 1842(r) of the Social Security Act [42 U.S.C. §§ 1320a-3(a)(1), 1320a-7, 1395f, 1395g, 1395(l)(e), and 1395u(r)] and section 31001(1) of the Debt Collection Improvement Act [31 U.S.C. § 7701(c)]. Section 1893(f) (1) of the Social Security Act and 42 CFR 401.607 provides the authority for collection of this information. Section 42 CFR 405.607 requires that, CMS recover amounts of claims due from debtors including interest where appropriate by direct collections in lump sums or in installments....”

In addition, the DOJ Final Rule, the Federal Claims Collection Standards, which was published as 32 CFR Parts 900-904, on November 22, 2000, in the Federal Register, Section 32 CFR 900.1 stipulates that, “... standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity...” Section 32 CFR 901.8(a) states that, “Agencies should obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum...”

## 2. Information User

In some instances a Sole Proprietor physician/supplier who is notified of a debt may allege inability to immediately repay the debt in full and may request an extended repayment schedule. Before establishing an Extended Repayment Schedule (ERS), the RO and the MAC must evaluate the provider’s capacity to pay the debt. Accordingly, the provider is requested to complete a “Financial Statement of Debtor” form, CMS-379. A copy of the form is included in Attachment 3.

Whenever a physician/supplier wants an installment agreement of more than 12 months, the MAC must send the entire package including the documentation prepared by the MAC to the servicing RO for approval. Before an offer to repay an overpayment by installment over a period of more than 12 months may be accepted by the RO, the physician/supplier must sign an agreement providing for regular installment payments. The agreement must specify that all installment payments will be sent directly to the MAC. CMS has authority to approve installments for a period of up to 5 years. The RO will advise the MAC to establish adequate controls to assure that all payments are made regularly. If the provider defaults on a payment, the MAC has the immediate right (but not obligation) to accelerate and recoup the outstanding balance.

Complete instructions on applying for an ERS are provided in the demand letter that the MAC sends to physician/supplier as well as on the MAC website. The instructions are also available in the CMS Medicare Financial Management Manual in Publication 100-6, Chapter 4, Section 50.

Listed below is an item-by-item justification for the question asked on the form.

Questions 1 through 6 ask for basic identification, such as name, address, date of birth, and phone number of debtor. The spouse's name and date of birth are also requested. This information is used in determining whether a claim can be repaid.

Questions 7 through 16 ask about the debtors and spouse's employment background and income. This information is necessary for the MAC to determine if the physician/supplier will be able to make installment payments on a claim.

Questions 17 and 18 ask about dependents and total income of dependents. Consideration is given to the number of dependents and their income when determining the amount that can be recovered.

Questions 19 through 34 ask the debtor to list all assets, liabilities and foreseeable income. This information is needed to determine if the debtor will be able to satisfy the installment payments. The signature of the debtor and the date signed are required to certify that the information provided is true that the debtor is aware of the penalties for false statements. This is important if the case goes to litigation.

### 3. Improved Information Technology

This is detailed information collected from an individual on an ad hoc basis. Consequently, it does not lend itself to automation.

### 4. Duplication/Similar Information

This form serves as the only source for collection of this information.

### 5. Small Business

This form is appropriate for use by small businesses and shouldn't have a significant economic impact on them.

### 6. Less Frequent Collection

The CMS-379 is completed whenever a physician/supplier is requesting an extended installment payment. The principal purpose for gathering this information is to evaluate the debtor's inability to repay the full overpayment immediately. If the requested information is not furnished, the Government will pursue immediate and full payment of its claim against the debtor.

## 7. Special Circumstances

There are no special circumstances that would require an information collection to be conducted in a manner that requires respondents to:

- Report information to the agency more often than quarterly;
- Prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Submit more than an original and two copies of any document;
- Retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Collect data in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,
- Use a statistical data classification that has not been reviewed and approved by OMB;
- Include a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
  - Submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

## 8. Federal Register Notice/Outside Consultation

The 60-day Federal Register notice published to the Federal Register on TBD (87 FR ).

## 9. Payments/Gifts To Respondents

There were no payments/gifts to respondents.

## 10. Confidentiality

### **Protection of Proprietary Information**

Privileged or confidential commercial or financial information collected in this form is protected from public disclosure by Federal law 5 U.S.C. § 552(b) (4) and Executive Order 12600.

### **Protection of Confidential Commercial and/or Sensitive Personal Information**

If any information within this application (or attachments thereto) constitutes a trade secret or privileged or confidential information (as such terms are interpreted under the Freedom of Information Act and applicable case law), or is of a highly sensitive personal nature such that disclosure would constitute a clearly unwarranted invasion of the personal privacy of one or more persons, then such information will be protected from release by CMS under 5 U.S.C. §§ 552(b)(4) and/or (b)(6), respectively.

#### 11. Sensitive Questions

This form contains questions of a sensitive nature due to personal, financial, employment, and real estate information requested. This information is needed to determine if the debtors claim can be paid, will the debtor be able to make installment payments, and consideration to debtor dependents and their income when determining the amount that can be recovered.

#### 12. Burden Estimate (Total Hours & Wages)

The CMS-379 is completed by approximately 500 respondents annually. We estimate that the average completion time is 2 hours.

500 Estimated numbers of respondents  $\times$  1  
Number of reports filed per respondents  
500 Number of reports filed annually  
2 Average number of hours per response  
**1,000 Total burden hours**

Added 100% of the mean hourly wage to account for fringe and overhead benefits:

May 2021 hourly rate from website:

$\$21.13 \text{ hourly wage} + 21.13 = \$42.06 \times 1,000 \text{ hours} = \$42,260$  for the total annual cost

43-4199 is for the occupation Information and Records Clerk. The clerk gathers and review financial information provided by the debtor to determine the debtor's inability to repay the overpayment immediately.

[http://www.bls.gov/oes/current/oes\\_md.htm](http://www.bls.gov/oes/current/oes_md.htm) website that verifies the hourly wage

#### 13. Capital Costs

There are no capital costs.

#### 14. Cost to Federal Government

This form is mailed out by the MAC. The number of request (forms) mailed annually is approximately 500.

For example, 2022 rates for postage costs \$.60 per mailing, the postage cost is \$300 (500 forms times \$ .60).

The RO or MAC reviewer spends about 1 hour analyzing the CMS-379. The reviewer is equivalent to a GS-13/Step 4.

OPM.gov website that verifies the hourly wage

For example, 2022 rates for RO and MAC review and analysis cost is computed as follows:

$$\$56.30 \text{ an hour} \times 500 \text{ hours} = \$28,150 + \$300 \text{ postage} = \$28,450.$$

15. Program Changes

Cost burden estimates have increased from the last 2020 approved iteration due to updated BLS.gov wages and accounting for fringe and overhead. Total hourly burden to complete the form has remained the same and there has been no change to the instrument.

16. Publication and Tabulation Dates

These data are not published or tabulated.

17. Expiration Date

CMS will display the expiration date within the disclosure statement on the Financial Statement of Debtor form.

18. Certification Statement

There are no exceptions to the certification statement.

C. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.