Supporting Statement – Part A
Physician Certification/Recertifications in Skilled Nursing Facilities (SNFs)
Manual Instructions and Supporting Regulation in 42 CFR 424.20
(CMS-R-5, OMB-0938-0454)

A. Background

The Medicare program requires, as a condition for Medicare Part A payment for posthospital skilled nursing facility (SNF) services, that a physician or other authorized practitioner must certify and periodically recertify that a beneficiary requires an SNF level of care. The physician certification and recertification is intended to ensure that the beneficiary's need for services has been established and then reviewed and updated at appropriate intervals. The documentation is a condition for Medicare Part A payment for post-hospital SNF care.

There are no changes to the requirement of this package. This package provides updates to the burden estimates and changes to burdens.

B. Justification

1. Need and Legal Basis

Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA1989, Public Law 101-239), section 1814(a)(2) of the Act required that, in the case of posthospital extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF on an inpatient basis.

The physician certification requirements were included in the law to ensure that patients require a level of care that is covered by the Medicare program and because the physician is a key figure in determining the utilization of health services.

A final rule with comment period was published in the Federal Register on July 26, 1995 (60 FR 38266) in order to implement section 6028 of OBRA 1989, which authorized nurse practitioners and clinical nurse specialists, working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed. In addition, it set forth qualification requirements that a nurse practitioner or clinical nurse specialist must meet in order to sign certification or recertification statements (these requirements were later revised in the Balanced Budget Act of 1997). Effective with items and services furnished on or after January 1, 2011, section 3108 of the Affordable Care Act added physician assistants to the existing authority for nurse practitioners and clinical nurse specialists. Regulations implementing this provision were promulgated in the calendar year (CY) 2011 Medicare Physician Fee Schedule (MPFS) final rule with comment period (75 FR 73387, 73602, 73626-27, November 29, 2010).

The requirements at 42 CFR 424.20(a) and (b) concern the initial certification of a beneficiary's need for a SNF level of care, which must be made upon admission or as soon thereafter as is reasonable and practicable. The requirements at 42 CFR 424.20(c) and (d) concern recertification of a beneficiary's need for continued SNF level of care, and also require an estimate of the time the individual will need to remain in the SNF, plans for home treatment, and, if appropriate, whether continued services are needed for a condition that occurred after admission to the SNF and while still receiving treatment for the condition for which he or she had received inpatient hospital services. These sections require recertification at specific intervals (the initial recertification must occur no later than the 14th day of SNF care, with subsequent recertification at least every 30 days thereafter) that posthospital SNF care is or was required because the individual needs or needed skilled care on a daily basis.

The following CMS Internet-Only Manuals at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs provide more detailed instructions regarding the required certification and recertification of covered posthospital extended care services for a Medicare beneficiary: chapter 4, sections 40ff and 80 in the Medicare General Information, Eligibility, and Entitlement Manual (CMS Pub. 100-01), chapter 8, sections 40ff. in the Medicare Benefit Policy Manual (CMS Pub. 100-02), and chapter 6, section 6.3 in the Medicare Program Integrity Manual (CMS Pub. 100-08). Chapter 4, section 40.6 in CMS Pub. 100-01, as well as, the requirements at 42 CFR 424.11(a) (effective in 1967 for SNFs) contain longstanding instructions regarding the disposition of certification and recertification statements, indicating that the SNF must certify, on the appropriate billing form, that the required physician certification and recertification statements have been obtained and are on file. Additionally, the SNF must keep the statements on file for verification by the intermediary, if necessary.

2. Information Users

The certification and recertification documentation is used by physicians and other authorized practitioners attending to Medicare patients in an SNF only on an "as needed" basis. Medical or other personnel employed by the SNF can review the said documentation only on an "as needed" basis.

3. Use of Information Technology

The information being certified and recertified varies with each individual and requires signature. Therefore, it does not lend itself to automation.

4. Duplication of Efforts

There is no duplication of information or similar information being collected.

5. Small Businesses

There is no requirement for a specific procedure or form as long as the approach permits verification that the certification and recertification requirement is met.

6. Less Frequent Collection

CMS does not collect the signed certification or recertification documentation. Although the documentation is a required condition for Medicare Part A payment for post-hospital SNF care it is only stored either in the patient's record/progress notes or by filling in the spaces of the check blocks on the facility's preprinted form. If the facility's failure to obtain a certification or recertification is due to the physician's or physician extender's refusal to certify based on objection in principle to the concept of certification and recertification, the facility may not bill the program or the beneficiary for covered items or services. As discussed in chapter 4, section 40 in the Medicare General Information, Eligibility, and Entitlement Manual (CMS Pub. 100-01), the provider agreement, which the facility files with the Secretary, precludes it from charging the patient for covered items and services if the facility collection of the certification or recertification is.

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 Consultations

The 60-day Federal Register Notice published on TBD (FR).

9. Payments/Gifts to Respondents

No payments or gifts are made to respondents.

10. Confidentiality

CMS does not collect the recertification and does not provide assurance of confidentiality.

11. Sensitive Questions

There are no sensitive questions associated with this collection. Specifically, the collection does not solicit questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private

12. Burden Estimates (Hours & Wages)

The requirements at 42 CFR 424.20(a) and (c) address the content of the initial certification and subsequent recertification statements for posthospital SNF care. A physician or other authorized practitioner must initially certify the need for services, and subsequently recertify the continued need for services, explain why the services are still needed, give an estimate of how long the person will need to remain in the facility, and include plans for home care, if appropriate.

We estimate the physician/practitioner spends 5 minutes for the initial certification and 10 minutes for each recertification in completing this information, either in the patient's record/progress notes or by filling in the spaces of the check blocks on the facility's preprinted form. The first recertification is required no later than the 14th day of posthospital SNF care. Subsequent recertifications are required at least once every 30 days thereafter.

Claims data for calendar year 2020 (the most recent available) were utilized to show SNF stays as follows: there were 818,258 persons whose total length of stay per covered admission was less than 14 days; 1,130,948 had stays of 14 - 43 covered days; 253,543 had stays of 44 - 73 covered days; and 112,510 had stays of 74 – 100 covered days. The first group would require only an initial certification; the second, a certification and one recertification; the third, a certification and two recertifications; and the fourth, a certification and three recertifications. There is a total of 2,307,092 certifications and recertifications.

We estimate the number of hours for each is 68,188 (1/12 of an hour, or 818,258 divided by 12); 282,737 (1/4 of an hour, or 1,130,948 divided by 4); 105,643 (5/12 of an hour, or 253,543 multiplied by 5/12); and 65,631 (7/12 of an hour, or 112,510 multiplied by 7/12), for a total of 522,199 hours. The total number of respondents is 2,315,259.

As referenced earlier, we believe physicians or other authorized practitioners will be responding to the information collection requirements. Based on the most recent U. S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates (https://www.bls.gov/oes/current/oes_stru.htmfor category 29-1229 (Physicians, All Other), the mean hourly wage for a physician is $111.30. We have added 100% of the mean hourly wage to account for fringe and overhead benefits, which calculates to $222.60 ($111.30 + $111.30). The mean hourly wage for a physician assistant (BLS occupation code: 29-1071) is $57.43. However, to account for overhead and fringe benefits, we have doubled the mean hourly wage, making it $114.86 for a physician assistant. The mean hourly wage for a nurse practitioner (BLS occupation code: 29-1171) is $56.75. To account for overhead and fringe benefits, we have doubled the mean hourly wage, making it $113.50 for a nurse practitioner. We

have calculated the average of these adjusted mean hourly wages to be $150.32 [($222.60+$114.86+$113.50)/3]. Given these wages and time estimates, the total annual cost is $77,780,829 (517,435 hours x $150.32).

13. Capital Costs

There is no expense for any capital and start-up costs since these documentations are entered by hand in the patient's medical records. There are no additional costs involved in maintaining or disclosing this information.

14. Cost to Federal Government

We estimate no Federal costs associated with this information collection requirement.

15. Changes to Burden

- The total number of responses have decreased from 2,746,550 to 2,315,259 and the total number of annual hour burden decreased from 615,149 to 522,199 from the previously approved submission in 2019 to 2022. This decrease in the annual hour burden is due to a 17% average decrease in responses for SNF stays up to 100 days.

- We have added 100% of the mean hourly wage to account for fringe and overhead benefits, which calculates to $222.60 ($111.30 + $111.30) for Physicians, $114.86 ($57.43 + $57.43) for physician assistant, and $113.50 ($56.75 + $56.75 for nurse practitioner. We have calculated the average of these adjusted mean hourly wages to be $150.32 [($222.60 + $11486 + $113.50)/3]. We estimate the current total annual cost to be $78,496,954 (522,199 hours x $150.32/hour). Previously the average of the adjusted mean hourly wages was $135.37 [($196.04+$104.26+$105.80)/3]. Total annual cost was $83,270,670(615,149 hours x $135.37/hour). This shows a decrease of $4,773,716.

16. Publication and Tabulation Data

There will be no publication and tabulation data.

17. Expiration Date

Upon receiving OMB approval, ……

18. Certification Statement

There are no certification exceptions.

C. Collection of Information Employing Statistical Methods

The use of statistical methods does not apply.