

January 18, 2005

The CMS Paperwork Clearance Officer
CMS, Office of Strategic Operations and
Regulatory Affairs
Division of Regulations Development and Issuances
Attn: Melissa Musotto, Room C5-14-03
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Agency Information Collection Activities; Proposed Collection; Comment Request
(69 Fed. Reg. 67745, November 19, 2004)

Dear Ms. Musotto:

On November 19, 2004, the Centers for Medicare and Medicaid Services (CMS) published in the *Federal Register* a summary of proposed collections for public comment (summary) pursuant to section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995. In the summary, CMS seeks comment on the national implementation and utilization of the Hospital Consumer Assessment of Health Plans Survey (HCAHPS). Per CMS the goal of the HCAHPS is to “offer consumers choice and create incentives for hospitals to improve performance in areas that are important to patients.” Ultimately, CMS plans to publish the data obtained through HCAHPS to assist hospital consumers in selecting hospitals that deliver high-quality care.

Advocacy is concerned that the HCAHPS will place a significant economic and paperwork burden on hospitals, many of which are considered small businesses pursuant to the United States Small Business Administration’s size standards. Further, CMS states that hospitals in the United States have the option to participate in the HCAHPS program voluntarily. Industry sources affected by the CMS survey voiced concern to Advocacy that although the HCAHPS is currently a voluntary program, it could eventually become part of CMS’ National Voluntary Hospital Reporting Initiative (NVHRI). NVHRI is part of CMS’ overall Hospital Quality Initiative to collect and report hospital quality performance information. NVHRI was supported in the Medicare Drug Prescription and Modernization Act of 2003 (MMA). Section 501(b) of the MMA stipulates that eligible hospitals that do not submit data to CMS...will be subject to reduction in the FY2005 payment of 0.4%.¹ Advocacy believes that CMS should study the potential paperwork and economic impacts of the HCAHPS on small hospitals. Understanding the extent of any burden on small hospitals will become even more important if the HCAHPS program eventually becomes subsumed in the NVHRI.

¹ Information on the NVHRI can be found at: <http://www.CMS.hhs.gov>. Refer to the CMS Fact Sheet on NVHRI dated February 18, 2004.

Congress established the Office of Advocacy (Advocacy) under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or of the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.²

On August 13, 2002, President George W. Bush enhanced Advocacy's RFA mandate when he signed Executive Order 13272, which directs Federal agencies to implement policies protecting small entities when writing new rules and regulations.³ Executive Order 13272 instructs Advocacy to provide comment on draft rules to the agency that has proposed the rule, as well as to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.⁴ Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Based on the applicable provisions of the RFA and information obtained from the affected small business community, Advocacy has the following comments on the HCAHPS:

CMS should revisit its conclusion that the HCAHPS will not involve information collection from small businesses

The Federal Paperwork Reduction Act (Act) is intended to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, federal contractors, state, local, and tribal governments, and other persons, resulting from the collection of information by the federal government.⁶ In its summary, CMS is proposing that the nation's hospitals initiate information collection from their patients using 25 specified survey questions.

Advocacy is authorized by Congress to monitor and comment on Federal rulemakings and proposed information collections that may negatively impact small businesses. Advocacy is concerned that in its Justification of the National Implementation of the Hospital CAHPS Survey, CMS concludes in one sentence that the information collection request does not involve any small businesses.⁷ CMS' new paperwork proposal will apply to the approximately 6,000 hospitals in the United States. CMS' highly specific information collection proposal will impose significant expenses on smaller hospitals, especially those in rural areas.

² Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat.857 (1996). 5 U.S.C. §612(a).

³ Exec. Order No. 13272 § 1, 67 Fed. Reg. 53461 (Aug. 16, 2002).

⁴ E.O. 13272, at § 2(c).

⁵ *Id.* at § 3(c).

⁶ 44 U.S.C.A. § 3501(1).

⁷ Justification of the National Implementation of the Hospital CAHPS Survey, section A 5.0, Involvement of Small Entities, page 29. The document can be located at: <http://www.cms.hhs.gov/regulations/prs>.

The HCAHPS survey will likely have a significant economic impact on small hospitals and small survey companies

Based on the SBA's size designations, hospitals are considered small if they have under \$29 million in annual revenues.⁸ Based on Advocacy's data there are 4,596 hospitals in the United States, of which 2,201 (48%) are considered small based on their annual receipts.⁹ Advocacy's data is consistent with 2001 data supplied by HCIA, Incorporated, in its publication, *Profiles of U.S. Hospitals*. In the 2001 HCIA data file there exist 5,795 hospital records. The HCIA data file contains a variable called "OPEV" which is defined as the sum of net patient revenue and other operating revenue. A frequency distribution of OPREV shows that for the hospitals reporting this information, 48.3% (2,474 hospitals in the U.S.) have operating revenues \leq 29.0 million dollars. Of the 5,795 records in the HCIA data file, 5,121 (88%) contain information regarding the OPREV.¹⁰ Based on Advocacy data, and data from other sources cited herein, CMS' conclusion that the HCAHPS will not involve information collection from the 50% of U.S. hospitals that are considered small seems to be without merit. CMS should attempt to determine the number of small entities affected by the paperwork collection request as it will assist CMS in calculating the overall burden of administering the HCAHPS survey.

The information request will likely have the greatest negative economic impact on small rural hospitals. Based on American Hospital Association (AHA) data, over one-third of rural hospitals had negative margins in 2000.¹¹ Further, the AHA estimates that it is particularly difficult for rural hospitals to retain administrative staff with job vacancy rates at 19%.¹² While Advocacy is aware that the aforementioned study contains 2000 data and the Medicare and Medicare Modernization Act served to increase payments to rural hospitals, Advocacy believes that CMS should consider alternatives that will reduce the administrative and paperwork burden on small hospitals.

Advocacy believes that CMS should revisit its conclusion that information request does not involve any small businesses. Advocacy offers to assist CMS in its effort to determine the number of small entities affected and the burden associated with the information request as it relates to small businesses in general and small hospitals in particular.

⁸ SBA \$29 million threshold can be found at: http://eweb1.sba.gov/naics/dsp_naicslist2.cfm.

⁹ Advocacy's data is based on the 1997 United States Census and can be found at: <http://www.sba.gov/advo/research/data.html>.

¹⁰ HCIA's data only contains information on hospitals contained in its database. Widely available data from other sources, including the American Hospital Association, suggest that there are in excess of 6,000 hospitals in the United States.

¹¹ The AHA report can be located at:

<http://www.ahapolicyforum.org/ahapolicyforum/trendwatch/content/twjune2002.pdf>

¹² Supra.

CMS may have underestimated the burden associated with the survey and should therefore entertain reasonable alternatives that would reduce the burden on small entities

In the Justification of the National Implementation of the Hospital CAHPS Survey, CMS discusses the anticipated burden associated with the implementation of the HCAHPS survey. The burden is predicated on certain assumptions and a model test of those assumptions based on anticipated number of attempts to contact patients about the survey and total hours needed to complete the survey.¹³ If the HCAHPS survey results in increasing the surveys that hospitals currently administer by as many as 25 questions, hospitals will have to absorb additional costs to change their survey.

The CMS Justification of the National Implementation of the Hospital CAHPS Survey includes relevant details about proposed response rates by patients/consumers. Although CMS encourages combining the specified 25 questions with existing surveys, in compiling its response data, CMS did not factor in the actual external dynamics or challenges of melding the new questions to existing surveys. Industry representatives voiced their belief to Advocacy that, “the longer the form, the lower the response rate, and the less reliable the submitted responses.” Few hospitals will do two surveys, one private and one public. Hospitals and vendors over the years have worked out the best survey questions given their patient and care profile, most likely to elicit response and useful information. According to industry sources, adding 25 questions to existing surveys is not practical, and it will significantly lessen the value of existing surveys. While CMS has previously reduced the number of survey question based on prior public comment to 25, the survey is still too long. Industry believes that CMS should revise the survey further to 10 or fewer questions. The questions can then be embedded into the patient satisfaction surveys already used by most hospitals.

Small business representatives told Advocacy that the proposed HCAHPS will be a financial and administrative burden on hospitals and that CMS’ distribution protocol fails to adequately account for the economic burden. For example, incorporating new survey questions in existing surveys is not without its direct costs to hospitals and survey firms. Such expenses will include reprogramming of IT and data recording programs, increased printing and mailing costs (most surveys are mailed to patients) and retraining of hospital administrative and survey vendors. As much as these costs may be spread over a large number of patients in a 300 bed facility, almost half of US hospitals are small, and do not have the patient base to absorb these government dictated expenses.

Additional small business concerns

Representatives from small survey companies have also discussed with Advocacy the impacts that the HCAHPS Survey will have on their industry. According to survey industry representatives, as many as 70% of all hospitals already invest in private patient surveys. Many of the surveys are performed by small survey companies. CMS should also determine what impact the HCAHPS survey will have on the small survey industry.

¹³ Justification of the National Implementation of the Hospital CAHPS Survey, section A 12.0, Estimates of Annualized Burden, page 31.

Conclusion

Advocacy believes that CMS could do a better job of determining the number of small entities affected by the HCAHPS survey and in determining the types and costs of the burden necessary to implement the survey. Advocacy urges CMS (and the National Quality Forum in a parallel review) to shorten the survey form and questions significantly. Such action would enhance the accuracy of data obtained, encourage hospitals with existing surveys to incorporate the CMS questions, encourage non-surveying hospitals to initiate patient satisfaction surveys, and not impose significant new costs on the industry.

Thank you for your attention to the above matters. If you have any questions about this correspondence, please do not hesitate to contact Linwood Rayford at (202) 401-6880.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Linwood L. Rayford, III
Acting Director of Interagency Affairs