

Submitter : Ms. Edo Banach
Organization : Medicare Rights Center
Category : Consumer Group

Date: 10/21/2005

Issue Areas/Comments

Background

Background
See attached.

GENERAL

GENERAL
See attached.

Provisions

Provisions
See attached.

**Waiver of advanced public
comments**

Waiver of advanced public comments
See attached.

CMS-2210-IFC-5-Attach-1.DOC

CMS-2210-IFC-5-Attach-2.DOC



Medicare Rights Center

A H A C H # 1

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Mark B. McClellan, M.D., Ph.D.
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Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8014
Baltimore, MD 21244-8014

Re: CMS-2210-IFC; Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2005

Dear Dr. McClellan,

The Medicare Rights Center (MRC) is pleased to submit these comments on the proposed rule, which was issued in the Federal Register on August 26, 2005. As you know, MRC is the largest independent source of health care information and assistance in the United States for people with Medicare. Founded in 1989, MRC helps older adults and people with disabilities get good, affordable health care.

MRC's comments aim to clarify the methodology used to compute State allotments for payment of Medicare Part B premiums for Qualifying Individuals (QI). Further these comments address the changes to State QI Allotments. As you requested, our comments are organized and identified by the corresponding sections in the proposed rule.

BACKGROUND

The interim rule appropriately amends 42 C.F.R. § 433.10(c) in specifying the data to be used in determining States' allotments and revising, under certain circumstances, individual State allotments for a Federal Fiscal year for the Medicaid payment of Medicare Part B premiums for Qualifying Individuals identified under section 1902 (a)(10)(E)(iv) of the Social Security Act. However, the interim rule fails to specify the formula that CMS will utilize to make QI allotments.¹

Pursuant to P.L. 108-89, §401(b)(2), struck out "the sum of—

- (i) twice the total number of individuals described in section 1902(a)(10)(E)(iv)(I) in the State, and
- (ii) the total number of individuals described in section 1902(a)(10)(E)(iv)(II) in the State; to" and substituted "the total number of individuals described in section 1902(a)(10)(E)(iv) in the State; to", effective October 1, 2003.

The initial QI allotment formula was set forth in 4732 of the Balanced Budget Act of 1997 (P.L. 105-33), which amended the Social Security Act by providing for two additional eligibility groups of low-income Medicare beneficiaries for whom Medicaid payment can be made for Medicare Part B premiums during the period beginning January 1998 and ending December



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2002. For each fiscal year 1998 through 2002, the amount specified in section 1933(c)(1) of the Act was to be allocated among States that have executed a State plan amendment, according to the formula indicated in section 1933(c)(2). The allocation was based on the Secretary's estimate of the ratio of the sum of twice the number of QI-1s and the total number of QI-2s in the State to the sum of those amounts for all States. The formula was for the allotment reserved for each State and was determined by the following formula:

$$A[i] = \left[\frac{2 \cdot MI[i] + M2[i]}{\sum_j (2 \cdot MI[j] + M2[j])} \right] \cdot A[T]$$

Wherein:

A[T] was the total amount to be allocated

MI[i] was 3-year average of the number of Medicare beneficiaries in state i who are not enrolled in Medicaid and whose incomes are at least 120 percent but less than 135 percent of Federal poverty line

M2[i] was 3-year average of the number of Medicare beneficiaries in State i who are not enrolled in Medicaid and whose incomes are at least 135 percent but less than 175 percent of Federal poverty line.

The amended provision section 1933 (c) (2) states that the Secretary shall provide for the allocation of the total amount described in paragraph (1) for a fiscal year, among the States that executed a plan amendment in accordance with subsection (a), based upon the Secretary's estimate of the ratio of—

- (A) an amount equal to the total number of individuals described in section 1902(a)(10)(E)(iv) in the State; to
- (B) the sum of the amounts computed under subparagraph (A) for all eligible States.

Since the formula no longer requires the multiplication factor 2, pursuant to P.L. 108-89, it is necessary to determine whether the amended formula simply accounts for the elimination of QI-2, as was intended, or has been altered in some other way. An explanation of any formula change is a necessary precursor to the provision of additional substantive comments under this rule. Without it, it is impossible to determine the overall impact of the rule change.

PROVISIONS

The initial CMS allocation formula relied on inadequate data. Section 4732(c) (2) of the BBA allowed HCFA to take an estimate of the ratio of the relevant numbers. The 1998 notice (63 FR 3752) clarified that



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We [CMS] have not been able to locate any available current data that would permit us to directly produce the estimates specified in the statute. As an alternative to direct measurement, we believe that estimates might be derived from models of income, assets, and State Medicaid eligibility. Estimates could be constructed using available data sources; however such an approach would be very time-consuming and resource-intensive and may still not produce credible State-level estimates. Consequently, we are approximating the required estimates by using data from the U.S. Census Bureau on the number of individuals who, according to its March Current Population Survey (CPS), are Medicare beneficiaries, have incomes in the appropriate ranges, and are not enrolled in Medicaid.

The present interim rule appears to constitute recognition of the insufficiency of the Census data. However, the new data to be used is not clearly specified. Without this information, it is difficult to provide further substantive comments. Accordingly, the data to be used by CMS in determining the number of QIs should be disclosed.

To provide legitimacy to the reallocation of QI funds among states, the interim rule clarifies that while section 1933 of the Act requires the Secretary to estimate the allocation of the of the allotments among the states but it does not preclude a subsequent readjustment of the allocation, when the data used to estimate does not fulfill the statutory objective. In this specific circumstance, the interim rule permits for a redistribution of surplus funds.

The interim rule appropriately indicates that the Census Bureau Data may not have been accurate for the purpose of projecting States' needs because the data could not take into consideration all variables that contribute to QI eligibility and enrollment, such as resource level and the application process itself. For example, the insufficiency of the data was highlighted by that fact that states that have liberalized asset tests—such as Arizona and Alabama—have hit their QI funding caps. Further variables such as outreach efforts in each state should also be taken into account. A number of states have been extremely committed to outreach and educational efforts aimed at increasing QI enrollment. They have been so successful that they have also hit their QI cap. If QI formula does not adequately account for either liberalized eligibility criteria or effective outreach, this will reduce the incentive for states to undertake significant outreach and enrollment efforts.

Further, QI enrollment will increase due to the Medicare Prescription Drug, Modernization, and Improvement Act of 2003 (MMA), Pub. L. No. 108-173 (2003), which provides for auto-enrollment of deemed QIs. Since some individuals with high assets will only have access to the Low-Income Subsidies (“Extra Help”) via the QI program, many more eligible QIs will enroll. The MMA and associated outreach and enrollment efforts will lead to significantly higher QI enrollment, as this program closely matches one of the Low-Income Subsidy programs.

Additionally, the interim rules should clarify that additional funding received is to be used for the remainder of the calendar year, as persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify (P.L. 105-33, §4732(c), added §1933, effective August 5, 1997).



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The interim rule correctly updates the data used for making QI disbursements to States to account for certain variables in the State QI populations. Further, it legitimizes and emphasizes the role of the Secretary in reallocation to effectuate the statutory objective. On the other hand, though the interim rule indicates that it codifies a methodology and formula for QI funds allocation, it fails to mention the new formula and hence the methodology cannot be determined.

MRC applauds CMS for removing the earlier inaccurate data for the calculation of QI and for the redistribution of surplus funds amongst States. We appreciate being given the opportunity to comment on the proposed regulation.

If you have any questions, or require clarification of our comments, please feel free to contact me at (212) 204-6238.

Sincerely,

Edo Banach
General Counsel



Medicare Rights Center

Attach # 2

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