

via CMS's Standard Data Processing System covering the period November 1999–March 2001. During this time, there were approximately 11 million Medicare beneficiaries discharged from hospitals, only about 15,000 of whom (slightly more than one tenth of 1 percent) chose to appeal the hospital discharge decision. Tellingly, the proportion of M+C enrollees that exercised their right to appeal was no different than that for other beneficiaries, despite the ongoing requirement that all M+C enrollees receive notice of their discharge and Medicare appeal rights the day before discharge—a requirement that does not exist for other Medicare beneficiaries. Thus, we believe this evidence indicates the efficacy of the current practice under which hospitals issue detailed notices of noncoverage to beneficiaries under original Medicare only when they express dissatisfaction with the termination of hospital services.

Therefore, hospitals will continue to be responsible for issuing both the Important Message from Medicare to all Medicare inpatients, as well as for issuing HINNs to inpatients covered under the original Medicare program when they indicate that they disagree with a hospital's discharge decision. For enrollees in the M+C program, we are revising 422.620 to specify that M+C organizations are responsible for providing a written notice of noncoverage when an enrollee disagrees with a discharge decision. The notice must be issued no later than the day before hospital coverage ends and must explain the reason why care is no longer needed, the enrollee's appeal rights, and the effective date of time of the enrollee's liability for continued inpatient care. We believe that it is appropriate to place this responsibility on M+C organizations, given their financial liability for continued care in such situations.

We intend to submit updated versions of both the Important Message from Medicare and the detailed notices of noncoverage to OMB for public comment through the PRA process. (We anticipate that there will continue to be two notices of noncoverage—one for patients under original Medicare and one for patients enrolled in the M+C program.) Until that process is completed, hospitals and M+C organizations should continue to use the existing Important Message, HINN, and NODMAR for accomplishing the notification requirements of this final rule. We intend to continue our efforts to simplify the messages delivered by these notices, including limiting each notice to a one-page format.

*Comment:* One commenter stated that although the proposed rule made it clear that CMS intends to have hospitals administer the IM to all Medicare beneficiaries, it was unclear as to when and how often the notice is to be administered during an inpatient stay. The commenter acknowledges the value to beneficiaries of administering appeal notices for inpatient stays, but believes that hospitals should continue to distribute the IM only at admission, as they have done for years.

*Response:* We recognize the need for clarity in this regard. The intent of the proposed rule, in conjunction with the procedures set forth through the PRA process, was that hospitals generally would issue the notice twice during an inpatient stay, that is, once at or near the time of admission and again before discharge. However, that proposal has been superseded by the requirements of this final rule. As explained above, hospitals thus should continue their current practice of issuing the IM at or near admission to all Medicare inpatients, and issuing a notice of noncoverage before discharge only in situations where a beneficiary other than an M+C enrollee has indicated dissatisfaction with his or her scheduled discharge date. M+C organizations will be responsible for administering notices of noncoverage to inpatient M+C enrollees when they disagree with an M+C organization's discharge decision.

*Comment:* One commenter suggests that CMS increase its educational and outreach efforts to ensure beneficiaries' understanding of the notices they receive. The commenter stated that hospitals should not be relied upon to provide all of the education necessary for a beneficiary to understand their Medicare rights.

*Response:* We are committed to ensuring that notices provided to beneficiaries are clear and understandable, and that beneficiaries with questions can get prompt, reliable answers. To this end, we now routinely consumer test major beneficiary notices such as these hospital notices, as well as subject them to public comment through OMB's Paperwork Reduction Act process. Beneficiaries with questions can contact Medicare's toll free number (1-800-MEDICARE) or work with beneficiary outreach groups sponsored by CMS, such as the State Health Insurance Assistance Programs (SHIPs).

*Comment:* Two commenters were strongly opposed to CMS's practice of submitting standard termination and similar notices, such as the hospital Important Message, for review by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act (PRA). For notices like these, these commenters believe that this practice makes no sense, and introduces lengthy and they believe unnecessary delays in the implementation of legally required notices. The commenters, citing 44 U.S.C. 3501 *et seq.*, contend that these notices do not fall within the requirements of the PRA for agency actions involving collection of information. They allege that the delay in implementing standardized notices caused by CMS's practice delays compliance with legal requirements, as noted above. Another commenter contends that, while Congress created the PRA to reduce the amount of paperwork providers utilize, over the past five years, providers have seen nothing but increases in the amount of paperwork they must complete. The commenter further argues that the notices required under the proposed rule add to the paperwork burden that providers have to comply with instead of decreasing the burden, as outlined under the PRA.

*Response:* We do not agree with the commenter's interpretation of the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA). The PRA applies both to information collection and paperwork burden, and thus we believe it is required and appropriate to obtain public comment on notices that are required under Federal regulations. We intend to work closely with OMB to minimize any delays in the development and clearance of the revised standardized notices. We note that in this final rule, we have reduced the paperwork burden that would have been imposed under the proposed rule, including the elimination of certain notice requirements absent an objection to, or decision to appeal, a discharge.

*Comment:* Several commenters raised concerns about the discharge decision-making process for hospital inpatients who are enrollees of M+C plans. They contend that there will inevitably be disagreements between plans and providers about the timing of patient discharges and that the proposed rule would exacerbate these disputes by requiring hospitals to distribute detailed discharge notices to all M+C enrollees. This in effect requires a hospital to explain an M+C organization's decision. Another commenter stated that over the past few years, its member hospitals have encountered numerous instances in which M+C plans have reduced or denied payment to hospitals for days during which the plan and the beneficiary's physician have disagreed