

- In § 422.561, the definition of grievance is revised to mean any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations, activities, or behavior, regardless of whether remedial action is requested.

- In § 422.564, paragraph (c) clarifies that an enrollee may file a quality of care complaint either with the QIO, the M+C organization, or both entities. New paragraphs (d) and (e) establish specific procedures for handling expedited grievances and for record-keeping with respect to grievances, respectively.

- Section 422.620 provides that an M+C organization (or a hospital that has accepted delegation of the authority to make the discharge decision) must issue a written notice of noncoverage to any M+C enrollee who disagrees with the M+C organization's decision to discharge the enrollee. As discussed above, this represents a change from the proposed provision that hospitals issue such notices for all discharges of M+C enrollees.

- Section 422.624 sets forth the requirements for notifying enrollees when their SNF, HHA, or CORF services are being terminated. These procedures require that the provider deliver, generally no later than two days before the termination of services, a standardized advanced termination notice that informs the enrollee of the date of discharge and how to file an appeal. As discussed above, the provisions set forth in this final rule represent a change from the proposed provisions, which would have required that more detailed notices be delivered four days in advance of service termination.

- Section 422.626 establishes an enrollee's right to a fast-track appeal of an M+C organization's decision to terminate these provider services, and the requirements and procedures associated with these fast-track appeals. This section explains the liability rules and evidence standards during these appeals, and establishes the procedures to be followed, including the responsibilities of M+C organizations and the IRE that makes the decisions on the appeals. As discussed above, this final rule with comment period provides that M+C organizations must furnish detailed termination notices only to enrollees who timely request a fast-track appeal but must furnish these notices to the enrollee and the IRE on the day of the request. This change from the proposed rule may result in a maximum of one day of potential

financial liability for services for an enrollee whose appeal is unsuccessful. (Note that under existing M+C appeal procedures, an enrollee's potential liability in an unsuccessful appeal would be at least 4 days.)

- Section 489.27 specifies that, as an element of the provider's agreement to participate in the Medicare program, hospitals and other providers must furnish beneficiaries with applicable OMB-approved notices concerning their discharge rights, including the hospital discharge notice required under section 1866(a)(1)(M) of the Act and the advance termination notice for M+C enrollees whose SNF, HHA, or CORF services are being terminated. This final rule with comment period does not specify that a hospital discharge notice must be provided the day before a discharge.

B. Decision To Issue a Final Rule With Comment Period

As discussed above, section 1869(b)(1)(F) of the Act, as revised by section 521 of BIPA, requires that the Secretary establish a process by which a beneficiary may obtain an independent, expedited determination if he or she receives a notice from a provider of services that the provider plans to terminate the services or discharge the individual from the provider. Currently, this right to an expedited review exists only with respect to hospital discharges (under sections 1154 and 1155 of the Act). On November 15, 2002, we published a proposed rule setting forth the procedures needed to implement this statutory directive.

Clearly, the new appeal rights proposed in accordance with section 1869 of the Act in many ways resemble those envisioned by the *Grijalva* settlement agreement and now set forth in this final rule. However, for the most part, the January 24, 2001, proposed rule that preceded this final rule was developed without the benefit of that statutory direction. We believe it is prudent and appropriate to consider further public comments on the requirements set forth here, now that the public has had an opportunity to review our proposal to implement the BIPA provisions. For example, we welcome comments on whether, and the extent to which, the procedures set forth here for M+C enrollees and those proposed to implement the BIPA expedited determination rights for original Medicare beneficiaries can or should be integrated or combined, or at least made uniform. If these additional comments result in changes to these requirements, we will publish a

subsequent final rule to set forth these changes. (Note that publication of such a final rule would not delay the implementation of the procedures established under this final rule, which will begin on January 1, 2004, consistent with our commitment not to implement significant changes to the M+C program on a mid-year basis.)

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to the document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

Whether the information collection is necessary and useful to carry out the proper functions of the agency;

The accuracy of the agency's estimate of the information collection burden;

The quality, utility, and clarity of the information to be collected; and

Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Several commenters addressed the burden associated with the proposed termination notice provisions, and these comments are discussed in detail above in section III.B.3 of this final rule. As discussed there, this final rule contains changes to these provisions based on public comments. Our estimates of the revised information collection requirements are set forth below, and we welcome further comments on these issues.

Section 422.564—Grievance Procedures

As discussed in detail in section II.D of this preamble, this final rule does not include the proposed detailed requirements with respect to the general grievance procedures to be followed by