

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 417, and 422

[CMS-4041-F]

RIN 0938-AK71

Medicare Program; Modifications to Managed Care Rules

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments that we received on a proposed rule that was published in the **Federal Register** on October 25, 2002. It implements certain provisions relating to the Medicare+Choice (M+C) program that were enacted in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection (BIPA) Act of 2000. It also addresses comments on, and makes revisions to, regulations that were discussed in the October 2002 proposed rule that were based on M+C program experience and feedback from M+C organizations.

EFFECTIVE DATES: This final rule is effective on September 22, 2003.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105-33), added sections 1851 through 1859 to the Social Security Act (the Act) establishing a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the original Medicare fee-for-service program or a M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not

previously authorized. Three types of M+C plans were authorized under the new Part C, as follows:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

B. Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106-113) amended the M+C provisions of the Act. In a final rule that we published in the **Federal Register** on June 29, 2000 (65 FR 40170), we invited comments on many of the BBRA amendments. We noted in the October 25, 2002, proposed rule that we would respond to the comments relating to these BBRA provisions in this final rule.

We received comments from five organizations. Most of the comments were supportive of the changes brought about by the BBRA amendments and do not require our response. Most of the other comments addressed provisions other than the BBRA amendments. Rather they focused on the provisions of the final rules dealing with the BBA published on June 29, 2000. The following discussion responds to the comments made on BBRA.

Comment: Two major organizations commented on risk adjustment. One organization expressed concern that the collection of encounter data from physicians would be burdensome to physicians. A second organization indicated that they did not want to see a delay in implementation of the risk adjustment schedule as contained in BBRA.

Response: Legislation has determined the specifics of the schedules that CMS has implemented as to risk adjustment and the collection of encounter data. Section 511(a) of the BBRA amended section 1853(a) of the Act by providing for a risk adjustment transition schedule for calendar years (CY) 2000 and 2001 that differed from the one that we had provided as part of our risk adjustment methodology. The schedule was again modified in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Other BBRA provisions were also changed by the BIPA.

The final rule published on March 22, 2002 revised the regulations to reflect the changes to the BBRA provided in sections 502, 511, and 512 of the BIPA.

C. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA) (Pub. L. 106-554), enacted December 21, 2000, further amended the M+C provisions of the Act. The final rule published on March 22, 2002 amended the regulations to reflect changes made by certain provisions of the BIPA, including those discussed in section I.B of this preamble, that amended provisions enacted in the BBRA. We published a proposed rule in the **Federal Register** on October 25, 2002 (67 FR 65672) that would revise M+C regulations to implement sections 605, 606, 611, 612, 615, 617, 620, 621, and 623 of the BIPA. In the October 2002 proposed rule, we also proposed modifying certain M+C regulatory provisions in response to program experience and feedback from M+C organizations.

D. Organization of the Preamble

The discussion of various policy issues in this final rule corresponds with the discussion of regulatory revisions that were presented in the October 2002 proposed rule. For the convenience of the reader, the analysis of comments and our responses are integrated with the discussion of each issue.

To accommodate the preamble's organization, we modified the numbering scheme accordingly. For example, roman numeral II is now Analysis of and Responses to Public Comments (instead of Provisions of this Proposed Rule), roman numeral III is Provisions of this Final Rule, and so forth.

We have also included a new section (II-A-10) discussing the fact that this final rule makes revisions to the regulations text to reflect changes to the statute made by section 616, which focuses on eliminating health disparities in the M+C program. We have provided a good cause statement for the inclusion of these revisions in this final rule to waive the requirement for notice and comment. As in the case of the revisions to the regulations made in the final rule published on March 22, 2002, notice and comment are not necessary since these revisions have no legal effect. Rather, they simply amend the text of the regulations to reflect statutory provisions whose applicability is