

**§ 409.31 Level of care requirement.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Which arose while the beneficiary was receiving care in a SNF or swing-bed hospital or inpatient CAH services; or

(iii) For which, for an M+C enrollee described in § 409.20(c)(4), a physician has determined that a direct admission to a SNF without an inpatient hospital or inpatient CAH stay would be medically appropriate.

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# **PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS**

■ 5. The authority citation for part 417 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

## **Subpart L—Medicare Contract Requirements**

### **§ 417.479 [Amended]**

■ 6. In § 417.479, the following amendments are made as follows:

■ a. In paragraph (g)(2)(ii), the reference in the second sentence to “(h)(1)(v)” is removed and “(h)(2)” is inserted in its place.

■ b. The heading for paragraph (h) is revised.

■ c. Paragraph (h)(1) is revised.

■ d. Paragraph (h)(2) is revised.

■ e. The introductory text to paragraph (h)(3) is revised.

### **§ 417.479 Requirements for physician incentive plans.**

\* \* \* \* \*

(h) *Disclosure and other requirements for organizations with physician incentive plans.* (1) Disclosure to CMS. Each health maintenance organization or competitive medical plan must provide to CMS information concerning its physician incentive plans as requested.

(2) *Pooling of patients.* Pooling of patients is permitted only if—(i) It is otherwise consistent with the relevant contracts governing the compensation arrangements for the physician or physician group;

(ii) The physician or physician group is at risk for referral services with respect to each of the categories of patients being pooled;

(iii) The terms of the compensation arrangements permit the physician or

physician group to spread the risk across the categories of patients being pooled;

(iv) The distribution of payments to physicians from the risk pool is not calculated separately by patient category; and

(v) The terms of the risk borne by the physicians or physician group are comparable for all categories of patients being pooled.

(3) *Disclosure to Medicare beneficiaries.* Each health maintenance organization or competitive medical plan must provide the following information to any Medicare beneficiary who requests it:

\* \* \* \* \*

## **PART 422—MEDICARE+CHOICE PROGRAM**

■ 7. The authority citation for part 422 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

### **Subpart A—General Provisions**

■ 8. In § 422.2, the introductory text is republished, and the definition of *Additional benefits* is revised to read as follows:

#### **§ 422.2 Definitions.**

As used in this part—

\* \* \* \* \*

*Additional benefits* are health care services not covered by Medicare, reductions in premiums or cost-sharing for Medicare covered services, and reductions in the Medicare beneficiary's standard Part B premium, funded from adjusted excess amounts as calculated in the ACR.

\* \* \* \* \*

### **Subpart B—Eligibility, Election, and Enrollment**

■ 9. In § 422.50, paragraph (a)(2) is revised to read as follows:

#### **§ 422.50 Eligibility to elect an M+C plan.**

(a) \* \* \*

(2) Has not been medically determined to have end-stage renal disease, except that—

(i) An individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by the M+C organization is eligible to elect an M+C plan offered by that organization; and

(ii) An individual with end-stage renal disease whose enrollment in an M+C plan was terminated or discontinued after December 31, 1998, because CMS or the M+C organization

terminated the M+C organization's contract for the plan or discontinued the plan in the area in which the individual resides, is eligible to elect another M+C plan. If the plan so elected is later terminated or discontinued in the area in which the individual resides, he or she may elect another M+C plan.

\* \* \* \* \*

■ 10. In § 422.74, the following amendments are made as set forth below:

■ a. Paragraph (d)(1)(ii) is revised.

■ b. Paragraph (d)(4) is revised.

#### **§ 422.74 Disenrollment by the M+C organization.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) The M+C organization has not received payment within 90 days after the date the premium was due.

\* \* \* \* \*

(d) \* \* \*

(4) *Individual no longer resides in the M+C plan's service area.* (i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS, that the individual has permanently moved—

(A) Out of the M+C plan's service area; or

(B) From the residence in which the individual resided at the time of enrollment in the M+C plan to an area outside the M+C plan's service area, for those individuals who enrolled in the M+C plan under the eligibility requirements at § 422.50(a)(3)(ii) or (a)(4).

(ii) *Special rule.* If the individual has not moved from the M+C plan's service area (or residence, as described in paragraph (d)(4)(i)(B) of this section), but has left the service area (or residence) for more than 6 months, the M+C organization must disenroll the individual from the plan, unless the exception in paragraph (d)(4)(iii) of this section applies.

(iii) *Exception.* If the M+C plan covers services other than emergent, urgent, maintenance and poststabilization, and renal dialysis services (as described in § 422.100(b)(1)(iv) and § 422.113) when the individual is out of the service area for a period of consecutive days longer than 6 months but less than 12 months, but within the United States (as defined in § 400.200 of this chapter), the M+C organization may elect to offer to the individual the option of remaining enrolled in the M+C plan if—

(A) The individual is disenrolled on the first day of the 13th month after the