Supporting Statement – Part A

Quality Bonus Payment Appeals

A. Background

We propose to add a new §422.260 to state that each Medicare Advantage (MA) organization is afforded the right to request an administrative review of CMS' determination concerning the organization's qualification for a quality bonus payment (QBP).

B. Justification

1 . Need and Legal Basis

Section 1853(o) of the Social Security Act (the Act) requires CMS to make QBPs to MA organizations that achieve performance rating scores of at least 4 stars under a five star rating system. While CMS has applied a star rating system to MA organizations for a number of years, these star ratings have thus far been used only to provide additional information for beneficiaries to consider in making their Part C and D plan elections. Beginning in 2012, the star ratings CMS assigns for purposes of QBPs will directly affect the monthly payment amount MA organizations receive from CMS under their contracts. Additionally, section 1854(b)(1)(C)(v) of the Act, as added by the Affordable Care Act, also requires CMS to change the share of savings that MA organizations must provide to enrollees as the beneficiary rebate specified at §422.266(a) based on the level of a sponsor's star rating for quality performance.

While the statute does not specify an administrative review process for appealing low QBP star ratings, CMS is proposing an appeal process pursuant to its authority to establish MA program standards by regulation at section 1856(b)(1) of the Act. Under this process, MA organizations may seek review of their QBP star rating determinations. This review process will also apply to the determinations made by CMS where the organization's plan rating sets its QBP status at ineligible for rebate retention.

For calendar years 2012 through 2014, QBP payments will be awarded under the terms of a demonstration project; thus, the regulations will not take effect until after the demonstration project has terminated. The administrative review process outlined in the regulation closely mirrors the review process currently being used for the QBP demonstration. The difference being that in response to concerns highlighted in comments to the NPRM, in the final regulation, we lengthen the timeframes for submitting appeals.

The administrative review process is a two-step process that includes a request for reconsideration and a request for an informal hearing on the record after CMS has sent the MA organization the reconsideration decision. Both steps are conducted at the contract level.

The first step allows the MA organization to request a reconsideration of how its star rating for the given measure in question was calculated and/or what data was included in the measure. If the MA organization is dissatisfied with the CMS' reconsideration decision, the contract may request an informal hearing to be conducted by a hearing officer designated by CMS. MA organizations will have 10 business days from the time we issue the notice of QBP status to submit a request for reconsideration. MA organizations will have 10 business days after the issuance of the reconsideration determination to request an informal hearing on the record. We are confident the added time allowed in the final regulation, as compared to the NPRM, is more than adequate especially since contracts already have access to the methodology to derive the star ratings. Details are available through the technical notes that are available at www.cms.gov/PrescriptionDrugCovGenIn/06_PerformanceData.asp. The technical notes describe in detail how the star ratings are derived for each of the individual measures, domains, summary ratings, and the overall rating. Also, contracts may request information about how their scores were calculated at any time by emailing CMS at PartCratings@cms.hhs.gov.

The administrative review process is described in detail in the December 16, 2010, CMS memo, *2012 Quality Bonus Payment Determinations and Administrative Review Process for Quality Bonus Payments and Rebate Retention Allowances.* The memo to Medicare Advantage Compliance Officers, Part C & D Sponsors outlined the process for appealing QBP star ratings during the payment demonstration, which as previously noted, closely mirrors the appeal process in the final rule.

2. Information Users

The information collected from MA organizations will be considered by the reconsideration official and potentially the hearing officer to review CMS' determination of the organization's eligibility for a quality bonus payment.

3. Use of Information Technology

The documentation (e.g., legal brief, memorandum) an organization submits in support of its argument in favor of a finding that it is qualified for a quality bonus payment may be submitted to CMS by electronic mail. This process is consistent with those associated with other administrative reviews of CMS determinations.

This collection does not involve the use of automated techniques. Also, the collection does not require a signature from the respondent.

4. Duplication of Efforts

This information collection does not duplicate any other effort and the information cannot be obtained from any other source.

5. Small Businesses

As no MA organizations meet the definition of a "small business," this collection does not impact small businesses.

6. Less Frequent Collection

If the collection is not conducted annually (i.e., MA organizations are not permitted to request and provide documentation in support of an appeal of their quality bonus payment status), then CMS is vulnerable to a challenge in Federal court brought by the organizations asserting that CMS' annual process for making quality bonus payment determinations is arbitrary and capricious.

7. Special Circumstances

There are no special circumstances associate with this collection.

8. Federal Register/Outside Consultation

In response to the NPRM, CMS did not receive any concerns regarding the burden associated with this collection. The final rule published on April 15, 2011 (76 FR 21432).

9. Payments/Gifts to Respondents

No payments or gifts will be provided to individuals requesting an appeal of their quality bonus payment status.

10. Confidentiality

Organizations making appeals of their quality bonus payment status are assured by CMS that we will not disclose to the public confidential or proprietary information, consistent with Exception 4 of the Freedom of Information Act (FOIA).

11. Sensitive Questions

Quality bonus payment appeals do not involve any sensitive questions.

12. Burden Estimates (Hours & Wages)

We estimate that the total hourly burden in a fiscal year for developing and presenting a case to us for review is equal to the number of organizations likely to request an appeal multiplied by the number of hours for the attorneys of each appealing MA organizations to research, draft, and submit their arguments to CMS. Based on the star rating distributions of previous contract years, out of the approximately 350 MA contracts that are subject to star rating analysis (that is, those not excluded from analysis because of low enrollment, contract type not required to report data, or new contract with no performance history), approximately 250 may receive less than a four-star rating. We estimate that 10% of those contracts (25) will request an appeal of their rating under the proposed rule. We further estimate that one attorney working for 8 hours could complete the documentation to be submitted to CMS for each contract, resulting in a total burden estimate of 200 hours (8 hours x 25 contracts = 200 hours). The estimated fiscal year cost to MA organizations associated with this provision (assuming an attorney billing rate of $250 per hour) is $50,000 (200 hours x $250).

13. Capital Costs

There are no capital costs associated with this information collection.

14. Cost to Federal Government

CMS will conduct the quality bonus appeals using existing CMS personnel supplemented by a technical support contractor for which the annual estimated cost is $1 million.

15. Changes to Burden

This statement concerns a new collection, rather than an existing collection whose burden is changing.

16. Publication/Tabulation Dates

The results of this collection will not be published.

17. Expiration Date

This collection does not lend itself to the displaying of an expiration date.

18. Certification Statement