

Supporting Statement – Part A
Quality Bonus Payment Appeals
CMS-10346, OCN 0938-1129

Background

Each Medicare Advantage (MA) organization continues to be afforded the right to request an administrative review of CMS' determination concerning the organization's qualification for a quality bonus payment (QBP).

A. 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, prior to the QBP program these Star Ratings were 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 directly affected 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 has implemented an appeals 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 also applies to the determinations made by CMS where the organization's Star Rating sets its QBP status at ineligible for rebate retention.

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 were included in the measure. If the MA organization is dissatisfied with 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

<http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovGenIn/PerformanceData.html>. 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 or PartDmetrics@cms.hhs.gov.

The administrative review process is described in detail in the November 8, 2013, CMS memo, *2015 Quality Bonus Payment Determinations and Administrative Review Process for Quality Bonus Payments and Rebate Retention Allowances*. The memo to Medicare Advantage Compliance Officers outlined the process for appealing QBP Star Ratings.

2. Information Users

The information collected from MA organizations is considered by the reconsideration official and potentially the hearing officer to review CMS' determination of the organization's eligibility for a QBP.

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 QBP 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 QBP status), then CMS is vulnerable to a challenge in Federal court brought by the organizations asserting that CMS' annual process for making QBP determinations is arbitrary and capricious.

7. Special Circumstances

There are no special circumstances associated with this collection.

8. Federal Register/Outside Consultation

The 60-day Federal Register notice published on December 6, 2013 (78 FR 73545). No comments were received.

9. Payments/Gifts to Respondents

No payments or gifts are provided to individuals requesting an appeal of their QBP status.

10. Confidentiality

Organizations making appeals of their QBP 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

QBP 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 in a parent organization 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. 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 QBP appeals using existing CMS personnel supplemented by a technical support contractor for which the annual estimated cost is \$1 million.

15. Changes to Burden

The voluntary Request for Reconsideration form was inadvertently excluded from the previous PRA package. The form is now added and has no impact on our burden estimates since it includes the time for developing and presenting a case to us for review.

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

n/a

B. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.