

must submit supporting documentation to assure CMS that rates do not include past losses but only premiums for the price of additional benefits and services of the upcoming contract period.

(c) *Adjustment of initial rates*—(1) *Purpose of adjustment.* The purpose of adjustment is to reflect the utilization characteristics of Medicare enrollees.

(2) *Adjustment by the HMO or CMP.* The HMO or CMP may adjust the rate for a particular service using more than one of the following factors if they do not duplicate each other:

(i) *Unit of service.* If the HMO or CMP purchases or identifies services on a unit of service basis and the unit of service is defined the same for all enrollees, the HMO or CMP may make an adjustment in its initial rate to reflect the number of units of services furnished to its Medicare enrollees in comparison to those furnished to other enrollees.

(ii) *Complexity or intensity of services.* The HMO or CMP may make an adjustment to reflect the differences in the complexity or intensity of services furnished to its Medicare enrollees if the calculation of its initial rate includes the elements of this adjustment.

(3) *Support documentation.* All adjustments made by the HMO or CMP must be accompanied by adequate supporting data. If an HMO or CMP does not have sufficient enrollment experience to develop this data, it may, during its initial contract period, use documented statistics from a nationally recognized statistical source.

(4) *Adjustment by CMS.* If the HMO or CMP does not have adequate data to adjust the initial rate calculated under paragraph (b) of this section to reflect the utilization characteristics of its Medicare enrollees, CMS will, at the HMO's or CMP's request, adjust the initial rate. CMS adjusts the rate on the basis of differences in the utilization characteristics of—

(i) Medicare and non-Medicare enrollees in other HMOs or CMPs; or

(ii) Medicare beneficiaries (in the HMO's or CMP's area, or State, or the United States) who are eligible to enroll in an HMO or CMP and other individuals in that same area, or State, or the United States.

(d) *Reduction of adjusted rates.* The HMO or CMP or CMS further reduces the adjusted rates by the actuarial value of applicable Medicare deductibles and coinsurance.

(e) *CMS review*—(1) *Submission of data.* The HMO or CMP must submit its ACR and the methodology used to compute it for CMS review and approval, and must include adequate supporting data.

(2) *Appeals procedures.* (i) If CMS determines that an HMO's or CMP's ACR computation is not acceptable, the HMO or CMP may, within 30 days after receipt of notice of the determination, file with CMS a request for a hearing.

(ii) The request must state why the HMO or CMP believes the determination is incorrect, and include any supporting evidence the HMO or CMP considers pertinent.

(iii) A hearing officer designated by CMS conducts the hearing in accordance with the hearing procedures set forth in §§405.1819 through 405.1833 of this chapter.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38080, July 15, 1993; 60 FR 46232, Sept. 6, 1995]

#### **§417.596 Establishment of a benefit stabilization fund.**

(a) *General.* If an HMO or CMP is required to provide its Medicare enrollees with additional benefits as described in §417.592, the organization may request that CMS withhold a part of its monthly per capita payment in a benefit stabilization fund. The fund will be used to prevent excessive fluctuation in the provision of those additional benefits in subsequent contract periods.

(b) *Notification to CMS.* An HMO's or CMP's request to have monies withheld in a benefit stabilization fund must be made when the HMO or CMP notifies CMS under §417.592(d) of its ACR and its APCRP in preparation for its next contract period.

(c) *Limitations on the amounts withheld*—(1) *Limit per contract period.* Except as provided in paragraph (c)(3) of this section, CMS does not withhold in a benefit stabilization fund more than 15 percent of the difference between an HMO's or CMP's ACR and its APCRP for a given contract period.