

**Authority:** Section 1923(a)(2), (f), and (h) of the Social Security Act (42 U.S.C. 1396r-4(a)(2), (f), and (h), and Pub. L. 105-33) (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 23, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: November 8, 2007.

**Michael O. Leavitt,**

*Secretary.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1556-N]

#### Medicare Program; Notice of Supplemental Election Period for Participation in the Calendar Year (CY) 2008 Competitive Acquisition Program for Part B Drugs

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

**ACTION:** Notice.

**SUMMARY:** This notice announces an additional physician election period for physicians who are not currently participating in the competitive acquisition program (CAP) for Medicare Part B drugs for calendar year (CY) 2008. The additional physician election period begins on January 15, 2008 and ends on February 15, 2008. Physicians who elect to join the CAP during this additional election period will enter into a physician election agreement effective April 1, 2008 through December 31, 2008.

**DATES:** The additional CAP physician election period will begin on January 15, 2008 and end on February 15, 2008. Physicians electing to join the CAP during this period will participate in the CAP effective April 1, 2008 through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Edmund Kasaitis (410) 786-0477.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173) (MMA) requires the implementation of a competitive acquisition program (CAP) for certain Medicare Part B drugs not paid on a cost or prospective payment system basis. Physicians who elect to participate in

the CAP obtain certain Part B covered drugs from vendors selected through a competitive bidding process. Physicians who do not elect to participate in the CAP purchase these drugs themselves and are paid under the average sales price (ASP) system. (For more information on the CAP, see the March 4, 2005 proposed rule (70 FR 10746), interim final rule with comment period (70 FR 39022), November 21, 2005 final rule (70 FR 70116), and the November 27, 2007 final rule with comment period (72 FR 66222)). In accordance with section 1874B(a) of the Social Security Act (the Act), statute and our regulations, the annual CAP physician election period for CY 2009 will occur in the fall of 2008.

#### II. Provisions of the Notice

Under the authority described in section 1847B(a)(5)(A)(i) of the Act and § 414.908(a)(2) of our regulations, which allows for physician election at times other than the regular, annual election period in such exigent circumstances as defined by CMS, we are designating an additional election period for physicians who wish to join the CAP for 2008. We are providing for this additional election period in recognition of the statutory changes we recently made to § 414.908(a)(2)(v) of our regulations. These changes were described and published in the November 27, 2007 final rule with comment period (72 FR 66265) with comment period. The changes will become effective on January 1, 2008.

In the November 27, 2007 **Federal Register** (72 FR 66256), we published a final rule, that defined a new exigent circumstance that would allow a participating CAP physician to opt out of the CAP due to the burden that the CAP places on the physician's practice. We established a two-tiered process, under which a physician may opt out of the CAP up to and including the first 60 days after the effective date of his or her CAP election agreement if continuing participation will impose a burden on the physician's practice. A participating CAP physician may also opt out of CAP participation more than 60 days after the effective date of his or her CAP election agreement based on a change of circumstances which creates a new burden to the practice.

The two-tiered process was developed in response to public comments to the CY 2008 Physician Fee Schedule proposed rule. However, the CY 2008 Physician Fee Schedule final rule was not issued until the end of the CY 2008 CAP physician election period, and therefore, we were not able to disseminate sufficient information to

make the large number of Medicare physicians aware of this new and desirable program change before the election period closed. Thus, we believe this is an "exigent circumstance" for which we should allow physicians an additional opportunity to join the CAP for CY 2008. The additional election period—

- Takes place from January 15, 2008 until February 15, 2008.
- Is open to physicians as defined in section 1861(r) of the Act (The term "physician" includes persons who are authorized to provide services under the Act and who can, within their State's scope of practice, prescribe and order drugs covered under Medicare Part B.
- Does not affect the terms of CAP participation for physicians who have already elected to participate in the CAP for 2008.
- Uses the same procedures, forms, etc. as the regular, annual 2008 election period.

Physicians who elect to participate in the CAP during the additional CY 2008 election period will have their CAP election agreement effective from April 1, 2008 through December 31, 2008. We note that participation in the CAP for CY 2009 requires renewal of CAP election during the regular fall election period, which will run from October 1, 2008 to November 15, 2008.

Completed and signed forms must be returned by mail to the physician's local carrier (the carrier that processes the physician's Part B claims). Forms must be postmarked no later than February 15, 2008. Additional details about CAP physician election will be available on the CMS Web site at [http://www.cms.hhs.gov/CompetitiveAcquisforBios/02\\_infophys.asp#TopOfPage](http://www.cms.hhs.gov/CompetitiveAcquisforBios/02_infophys.asp#TopOfPage).

**Authority:** Section 1847B(a)(5)(A)(i) of the Social Security Act (42 U.S.C 1395w-3b(a)(5)(A)(i).)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 18, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

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