

(332) \* \* \*

(i) \* \* \*

(A) \* \* \*

(4) Rule 414, Storage of Reactive Organic Compound Liquids, adopted on December 11, 1979, and revised on May 18, 2004.

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(c) \* \* \*

(337) \* \* \*

(i) \* \* \*

(B) \* \* \*

(3) Rule 74.20, Adhesives and Sealants, adopted on June 8, 1993, and revised on January 11, 2005.

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(c) \* \* \*

(350) \* \* \*

(i) \* \* \*

(D) South Coast Air Quality Management District.

(1) Rule 1107, Coating of Metal Parts and Products, adopted on June 1, 1979, and amended on January 6, 2006.

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(c) \* \* \*

(354) \* \* \*

(i) \* \* \*

(B) Mojave Desert Air Quality Management District.

(1) Rule 1162, Polyester Resin Operations, adopted on August 27, 2007.

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[FR Doc. E8-27735 Filed 11-21-08; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 433

[CMS-2290-IFC]

RIN 0938-AP38

#### Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2008 and Federal Fiscal Year 2009

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

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule with comment period makes technical changes to the existing methodology and process used to compute and issue each State's preliminary and final allotments available to pay the Medicare Part B premiums for qualifying individuals (QIs). The technical

revisions conform the existing regulations to reflect continued funding of this program. Additionally, this rule contains charts providing the States' final QI allotments for the Federal fiscal year (FY) 2008 and preliminary QI allotments for FY 2009, determined in accordance with the methodology set forth in the October 2006 final rule, and reflecting funding for the QI program made available under recent legislation.

**DATES: Effective dates:** These regulations are effective on November 24, 2008. The final allotments for payment of Medicare Part B premiums for FY 2008 are effective October 1, 2007. The preliminary allotments for FY 2009 are effective October 1, 2008.

**Comment date:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 23, 2009.

**ADDRESSES:** In commenting, please refer to file code CMS-2290-IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2290-IFC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2290-IFC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to

persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786-2019.

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in the comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### **I. Background**

*A. Allotments Prior to Fiscal Year (FY) 2005*

Section 1902 of the Social Security Act (the Act) sets forth the requirements for State plans for medical assistance. Before August 5, 1997, section 1902(a)(10)(E) of the Act specified that State Medicaid plans must provide for some or all types of Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included qualified Medicare beneficiaries (QMBs), specified low-income Medicare

beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below 100 percent of the Federal poverty level (FPL) and resources at the Supplemental Security Income (SSI) limit, which is below \$4,000 for an individual and \$6,000 for a couple. A SLMB is an individual who meets the QMB criteria, except that his or her income is above 100 percent of the FPL and does not exceed 120 percent of the FPL. A QDWI is a disabled individual who is entitled to enroll in Medicare Part A under section 1818A of the Act, whose income does not exceed 200 percent of the FPL, for a family of the size involved, whose resources do not exceed twice the amount allowed under SSI program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

Section 4732 of the Balanced Budget Act of 1997 (BBA), (Pub. L. 105–33), enacted on August 5, 1997, amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of the Medicare Part B premiums for two additional eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs).

Specifically, under BBA, a new section 1902(a)(10)(E)(iv)(I) of the Act was added, under which States must pay the full amount of the Medicare Part B premium for QIs who are eligible QMBs but their income level is at least 120 percent of the FPL but less than 135 percent of the FPL for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan. The BBA also added the second group of QIs added under section 1902(a)(10)(E)(iv)(II) of the Act, which includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan. These QIs were eligible for only a portion of Medicare cost-sharing consisting of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Coverage of the second eligibility group of QIs ended on December 31, 2002, and section 401 of the Welfare Reform Bill (Pub. L. 108–89), enacted on October 1, 2003, eliminated reference to

the second QI benefit (for the Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan). In 2002 and 2003, continuing resolutions extended the coverage of the first group of QIs (whose income is at least 120 percent but less than 135 percent of the FPL) through the following fiscal year, but maintained the annual funding at the FY 2002 level. Section 1933(g) of the Act was amended by the Extension of Medicare Cost-Sharing for Medicare Part B Premium for Qualifying Individuals Act, (Pub. L. 108–448), enacted December 8, 2004, which continued coverage of this group of QIs (whose income is at least 120 percent but less than 135 percent of the FPL) through September 30, 2005, again, with no change in funding.

The BBA also added a new section 1933 to the Act to provide for Medicaid payment of Medicare Part B premiums for QIs. (The previous section 1933 of the Act was re-designated as section 1934.) Section 1933(a) of the Act specifies that a State plan must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance. Section 1933(b) of the Act sets forth the rules that States must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State must permit all qualifying individuals to apply for assistance and must select individuals on a first-come, first-served basis (that is, the State must select QIs in the order in which they apply). Further, under section 1933(b)(2)(B) of the Act, in selecting persons who will receive assistance in years after 1998, States must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be (or become) QIs.

Under section 1933(b)(4) of the Act, persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's QI allotment is limited by law, section 1933(b)(3) of the Act provides that the State must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums for QIs each fiscal year and specifies the formula that is to be used to determine an allotment for each State from this total amount. For States that executed a State plan amendment in accordance with section 1933(a) of the Act, a total of \$1.5 billion was allocated over 5 years as follows: \$200 million in FY 1998; \$250 million in FY 1999; \$300 million in FY 2000; \$350 million in FY 2001; and \$400 million in FY 2002.

On March 29, 1999, we published a notice in the **Federal Register** (64 FR 14931) to advise States of the methodology used to calculate allotments and each State's specific allotment for that year. Following that notice, there was no change in methodology and States have been notified annually of their allotments. We did not include the methodology for computing the allocation in our regulations. Although the BBA originally provided coverage of QIs through FY 2002, based on several legislative actions, coverage has been continued through December 31, 2009.

The Federal medical assistance percentage, for Medicaid payment of Medicare Part B premiums for QIs, is 100 percent for expenditures up to the amount of the State's allotment. No Federal funds are available for expenditures in excess of the State allotment amount. The Federal matching rate for administrative expenses associated with the payment of Medicare Part B premiums for QIs remains at the 50 percent matching level. Federal financial participation in the administrative expenses is not counted against the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State that is based on each State's share of the Secretary's estimate of the ratio of: (a) An amount equal to the total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid, to (b) the sum of all individuals for all eligible States.

#### *B. Allotments for FY 2005*

In FY 2005, some States exhausted their FY 2005 allotments before the end of the fiscal year, which caused States to deny benefits to eligible persons under section 1933(b)(3) of the Act, while other States projected a surplus in

their allotments. We asked those States that exhausted or expected to exhaust their FY 2005 allotments before the end of the fiscal year to project the amount of funds that would be required to grant eligibility to all eligible persons in their State, that is, their need. We also asked those States that did not expect to use their full allotments in FY 2005 to project the difference between the amount they expected to spend and their allotment, that is, their surplus. After all States reported these figures, it was evident that the total surplus exceeded the total need. In spite of there being adequate overall funding for the QI benefit, some eligible individuals would have been denied benefits due to the allocation methodology initially used to determine the FY 2005 allotments.

We believe that it was the clear intent of the statute to provide benefits to eligible persons up to the full amount of funds made available for the program. We attributed the difference between the surplus in available QI allotments for some States and the need in other States in FY 2005 as due to the imprecision in the data that we used to provide States with their initial allocations under section 1933 of the Act. Therefore, on August 26, 2005, we published an interim final rule in the *Federal Register* (70 FR 50214) under which we compensated for this imprecision in order to enable States to enroll those QIs whom they would have been able to enroll had the data been more precise.

The August 26, 2005 interim final rule amended 42 CFR 433.10(c) to specify the formula and the data to be used to determine States' allotments and to revise, under certain circumstances, individual State allotments for a Federal fiscal year for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under section 1902(a)(10)(E)(iv) of the Act. Section 433.10(c)(5)(iv) states that CMS will notify States of any changes in allotments resulting from any reallocations.

The FY 2005 allotments were determined by applying the U.S. Census Bureau data to the formula set forth in section 1933(c)(2) of the Act. However, the statute requires that the allocation of the fiscal year allotment be based upon a ratio of the amount of "total number of individuals described in section 1902(a)(10)(E)(iv) in the State" to the sum of these amounts for all States. Because this formula requires an estimate of an unknown number, that is, the number of individuals who could be QIs (rather than the number of individuals who were QIs in a previous

period), our use of the Census Bureau data in the formula represented a rough proxy to attain the statutory number. Actual expenditure data, however, revealed that the Census Bureau data yielded an inappropriate distribution of the total appropriated funds as evidenced by the fact that several States projected significant shortfalls in their allotments, while many other States projected a significant surplus by the end of the FY 2005. Census Bureau data were not accurate for the purpose of projecting States' needs because the data could not take into consideration all variables that contribute to QI eligibility and enrollment, such as resource levels and the application process itself. While section 1933 of the Act requires the Secretary to estimate the allocation of the allotments among the States, it did not preclude a subsequent readjustment of that allocation, when it became clear that the data used for that estimate did not effectuate the statutory objective. The interim final rule published in the *Federal Register* on August 26, 2005 permitted in this specific circumstance a redistribution of surplus funds, as it was demonstrated that the States' projections and estimates resulted in an inequitable initial allocation for FY 2005, such that some States were granted an allocation in excess of their total projected need, while the allocation granted to other States proved insufficient to meet their projected QI expenditures.

In the August 26, 2005 interim final rule, we codified the methodology we have been using to approximate the statutory formula for determining State allotments. However, since certain States projected a deficit in their allotment before the end of FY 2005, the rule permitted FY 2005 funds to be reallocated from the surplus States to the need States. The regulation specified the methodology for computing the annual allotments, and for reallocating funds in this circumstance. The formula used to reallocate funds was intended to minimize the impact on States with fiscal year QI allotments that might be greater than their QI expenditures for the fiscal year, to equitably distribute the total needed amount among those surplus States, and to meet the immediate needs for those States projecting deficits. At the time of the publication of the interim final rule on August 26, 2005, the authorization for the QI benefit was scheduled to expire at the end of calendar year (CY) 2005, and no additional funds were appropriated for the QI benefit beyond September 30, 2005; therefore, the

regulation specified a sunset at the end of CY 2005.

#### *C. Allotments for FY 2006 and FY 2007*

On October 20, 2005, the QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005 (Pub. L. 109-91) was enacted. Section 101 of Public Law 109-91 extended the QI program through September 30, 2007 with no change in the level of funding; that is, under this legislation \$400 million per fiscal year was appropriated for each of FY 2006 and FY 2007. The provisions of section 101 of Public Law 109-91 were effective as of September 30, 2005.

On October 16, 2006, we published a final rule in the *Federal Register* (71 FR 60663), which implemented the provisions of section 101 of Public Law 109-91 relating to the QI allotments for final FY 2006 allotments and preliminary FY 2007 allotments. As we stated in that final rule, we believe that the clear intent of the statute is to provide benefits to eligible persons up to the full amount of funds made available for the program in each fiscal year. We recognized that because of the imprecise data for computing the States' QI allotments for a fiscal year, some States would experience either surpluses or shortages in their FY 2006 and FY 2007 allotments. In accordance with 42 CFR 433.10(c), the FY 2006 and FY 2007 QI allotments were designed to compensate for the imprecise data to permit shortage States to enroll more QIs than otherwise would have been possible.

#### *D. Allotments for FY 2008 and Thereafter*

Section 3 of the TMA, Abstinence Education, and QI Program Extension Act of 2007, Public Law 110-90 (enacted on September 29, 2007) provided \$100 million and extended the QI program through December 31, 2007. Section 203 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110-173, enacted on December 29, 2007) provided an additional \$200 million and extended the QI program through June 30, 2008. Most recently, section 111 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110-275) enacted on July 15, 2008, and section 2 of the QI Program Supplemental Funding Act of 2008 (the SFA) enacted on October 8, 2008, (Pub. L. 110-379), extended and provided additional funds for the QI program. Under the current Medicaid statute, as amended by MIPPA and the SFA, a total of \$415 million is available for the QI program for FY 2008, and \$480 million

is available for the QI program for FY 2009. Additionally, \$150 million is available for the QI program for the first quarter of FY 2010 (that is, October 1, 2009 through December 31, 2009). However, the existing regulation at § 433.10(c)(5)(v) authorizes the methodology for determining each State's QI allotment under the QI program only through CY 2007.

## II. Provisions of the Interim Final Rule With Comment Period

Because § 433.10(c)(5) explicitly references funding for the QI program only through calendar year 2007, we are making minor, non-substantive technical changes to the regulation to address the funding availability for FY 2008 and thereafter. In § 433.10, we are revising paragraph (c)(5)(ii) by changing the statutory reference "section 1933(c)(1)" to "section 1933(g)". We are also revising paragraphs (c)(5)(iii) introductory text, (c)(5)(iii)(D), and (c)(5)(v) to more generally refer to the period for which QI program funding is available under the statute, rather than referring to particular years. These revisions implement the funding authority available under section 1933 of the Act. Henceforth, legislative extensions of QI program funding will not require revisions to our regulations. We would, however, continue to issue a notice in the **Federal Register** to announce the amount of the States' QI allotments to be provided in accordance with the extending legislation, and determined in accordance with the methodology referenced in the regulation.

The regulation at § 433.10(c)(5) currently specifies the methodology, formula, data, and process to be used for determining and issuing States' QI allotments. This methodology and process provides for an adjustment in the amounts of the QI allotments preliminarily determined for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under section 1902(a)(10)(E)(iv) of the Act.

As discussed in section I.B of this preamble, the methodology and process described in the existing regulation for determining States' QI allotments is currently based on the availability of funds with respect to a full fiscal year. It does not address a situation, such as existed for FY 2008 prior to the enactment of MIPPA and SFA, where funding under the applicable statute was available only for part of the fiscal year (that is, through June 30, 2008).

The statute and existing regulation both provide that the "initial" fiscal year QI allotments be determined by

applying U.S. Census Bureau data to the formula set forth in section 1933(c)(2) of the Act. The current regulation sets forth a two step/two phase methodology and process for determining States' QI allotments for a fiscal year. Under the first step of phase one, an "initial" allocation is determined for each State under the formula specified in section 1933 of the Act and based only on the data obtained from the Census Bureau (the 3-year average of the number of Medicare beneficiaries in the State who are not enrolled in the Medicaid program but whose incomes are at least 120 percent of the FPL and less than 135 percent of the FPL). We further obtain States' projected QI expenditures for the fiscal year.

Under the second step of the process referenced in the existing regulation, we adjust the States' initial allocations by considering the States' updated projections of QI expenditures for the fiscal year. This would be done by proportionately reducing the QI allotments of States with surpluses for the fiscal year by the amount of the total need for States that do not have sufficient QI allotments for the fiscal year.

In this interim final rule, we are continuing to apply this methodology and process in two phases in each fiscal year. At the beginning of each fiscal year, we would determine the initial allocations based on the Census Bureau data, obtain States' projections of QI expenditures for the fiscal year, and make any adjustments based on the projected surpluses/needs for the fiscal year. The amounts of the States' QI allotments determined under this first phase at the beginning of the fiscal year are considered the States' "preliminary" QI allotments for the fiscal year. Then, under phase two of the process during the fourth quarter of the fiscal year, we obtain States' updated projected QI expenditures for the fiscal year. We then establish the "final" QI allotments for the fiscal year based on these updated projections.

The formula used to reallocate the available funds to need States is intended to minimize the impact on surplus States, to equitably distribute the total needed amount among those surplus States, and to meet the needs for those States projecting deficits.

Under the existing regulation, the methodology and process for determining the QI allotments is determined with respect to a full fiscal year. The existing regulation does not address situations in which the QI allotments may need to be determined for periods that are less than a full fiscal year. Furthermore, the current

regulation only addresses situations in which the total projected surplus for States is greater than the amount of the total projected deficit; this has been the case with respect to the determination of fiscal year QI allotments for fiscal years before FY 2008. The existing regulation does not address situations in which the total projected deficits may be greater than the total projected surpluses.

Under the Medicaid statute, as existed just prior to the enactment of the MIPPA, the QI program was funded in FY 2008 only for the period October 1, 2008 through June 30, 2008 at a level of \$300 million; in particular, this provided funding only with respect to 9 months or 75 percent of FY 2008. Additionally, under States' initial QI expenditure projections the total projected deficit for the 9-month period was greater than the total projected surplus. Although, with the enactment of the MIPPA, the QI program was funded for the entirety of FY 2008 at a level of \$400 million, the States' current QI expenditure projections for the full FY 2008 is greater than the total projected allocation for the fiscal year. However, with the enactment of the SFA, funding for the QI program for FY 2008 is at a level of \$415 million; this amount is sufficient to fully fund the program for FY 2008 based on the States' QI expenditure projections for FY 2008.

In order to ensure that our regulations address the different possible funding situations, for example, such as was the case prior to enactment of the SFA, we are making revisions to § 433.10(c)(5)(iii) to cover the full range of possibilities. We want to emphasize that the changes we are making do not change the fundamental process by which we determine State allocations. We are clarifying the language describing the QI allotment methodology included in the current regulations to address situations where the total amount of the funding available for the period is projected to be insufficient for the projected national needs for that period, such that the States' total projected deficits exceed total projected surpluses; situations that have occurred for past fiscal years (that is, when there were full levels of funding for a full fiscal year and the total projected surpluses exceeded total projected deficits); and situations that existed for FY 2008 prior to the enactment of the MIPPA (that is, where funding for the fiscal year was for a period that was less than the full fiscal year).

The methodology used to reallocate the available funds to need States is

intended to minimize the impact on surplus States and to equitably redistribute such surpluses from such States. In order to meet the needs for those States projecting deficits, we are adding a new paragraph (E), in § 433.10(c)(5)(iii). The final fiscal year QI allotments for a State with a surplus could only be reduced by no more than the State's projected surplus; and, in cases where the total projected deficits exceed the total projected surpluses, the States with such deficits would only receive a prorated proportion of the total surpluses.

Based on the timing of the recent enactment of the MIPPA and the SFA, we are not publishing *preliminary* FY 2008 allotments; rather, in this rule with respect to FY 2008, we are only publishing the *final* FY 2008 QI allotments. That is, as discussed above, just prior to the enactment of the MIPPA on July 15, 2008, funding for the QI program in FY 2008 would only have been with respect to the period ending June 30, 2008. As a result of the enactment of MIPPA and the SFA, funding for the QI program for FY 2008 has been extended for the entire fiscal year. Therefore, after obtaining States' updated QI expenditure estimates for FY 2008, we are now able to determine the *final* FY 2008 QI allotments. Thus, the publication of the preliminary FY 2008 QI allotments is unnecessary. The resulting final allotments for the entire FY 2008 are shown by State in the Chart 1 of this rule. Chart 2 presents the preliminary FY 2009 QI allotments:

Chart 1—Final Qualifying Individuals Allotments for October 1, 2007 through September 30, 2008

Chart 2—Preliminary Qualifying Individuals Allotments for October 1, 2008 through September 30, 2009

The following describes the information contained in the columns of Chart 1 and Chart 2:

**Column A—State.** Column A shows the name of each State.

Columns B through D show the determination of the States' Initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI Allotments, based on Census Bureau data.

**Column B—Number of Individuals.** Column B contains the estimated average number of Medicare beneficiaries for the years 2005 through 2007 (Chart 1, with respect to the Final FY 2008 QI allotment determination) or the years 2006 through 2007 (Chart 2, with respect to the Preliminary FY 2009 QI allotment) that are not covered by Medicaid whose family income is between 120 and 135 percent of the poverty level for each State, in

thousands, as obtained from the Census Bureau's Annual Social and Economic Supplement to the Current Population Survey through December of 2007 (Chart 1) or through December 2008 (Chart 2).

**Column C—Percentage of Total.** Column C provides the percentage of the total number of individuals for each State, that is, the number of individuals for the State in Column B divided by the sum total of the number of individuals for all States in Column B.

**Column D—Initial QI Allotment.** Column D contains each State's initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotment, calculated as the State's percentage of total in Column C multiplied by \$415,000,000 (Chart 1, for the Final FY 2008 QI Allotment) or \$480,000,000 (Chart 2, for the Preliminary FY 2009 QI allotment), the total amount available for FY 2008 (Chart 1) or FY 2009 (Chart 2) for all States.

Columns E through L show the determination of the States' Final QI allotments for FY 2008 (Chart 1) or Preliminary QI allotments for FY 2009 (Chart 2).

**Column E—FY 2008 Estimated QI Expenditures.** Column E contains the States' estimates of their total QI expenditures for FY 2008 (Chart 1) or FY 2009 (Chart 2) as obtained from States in the summer of 2008.

**Column F—Need (Difference).** Column F contains the additional amount of QI allotment needed for those States whose estimated expenditures in Column E exceeded their Initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotments in Column D; for such States, Column F shows the amount in Column E minus the amount in Column D. For other "Non-Need" States, Column F shows "NA".

**Column G—Percent of Total Need States.** For States whose projected QI expenditures in Column E is greater than their Initial QI allotment in Column D for FY 2008 (Chart 1) or FY 2009 (Chart 2), Column G shows the percentage of total need, determined as the amount for each Need State in Column F divided by the sum of the amounts for all States in Column F. For Non-Need States, the entry in Column G is "NA".

**Column H—Reduction Pool for Non-Need States.** Column H shows the amount of the pool of surplus FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotments for those States that project QI expenditures for the fiscal year that are less than the initial QI allotment for the fiscal year (referred to as non-need States). For States whose estimates of QI expenditures for FY 2008 or FY 2009 in

Column E are equal to or less than their Initial FY 2008 or FY 2009 QI allotments in Column D for FY 2008 or FY 2009, Column H shows the amount in Column D minus the amount in Column E. For the States with a need, Column H shows "Need." The reduction pool of excess QI allotments is equal to the sum of the amounts in Column H.

**Column I—Percent of Total Non-Need States.** For States whose projected QI expenditures in Column E is less than their Initial QI allotment in Column D for FY 2008 (Chart 1) or FY 2009 (Chart 2), Column I shows the percentage of the total reduction pool in Column H, determined as the amount for each Non-Need State in Column H divided by the sum of the amounts for all States in Column H. For Need States, the entry in Column I is "Need".

**Column J—Reduction Adjustment for Non-Need States.** Column J shows the amount of adjustment to reduce the Initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotments in Column D for Non-Need States in order to address the total need shown in Column F. The amount in Column J is determined as the percentage in Column I for Non-Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Need States, the entry in Column J is "Need".

**Column K—Increase Adjustment for Need States.** Column K shows the amount of adjustment to increase the Initial QI Allotment for FY 2008 (Chart 1) or FY 2009 (Chart 2) in Column D for Need States in order to address the total need shown in Column F. The amount in Column K is determined as the percentage in Column G for Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Non-Need States, the entry in Column K is "NA".

**Column L—Final FY 2008 QI Allotment (Chart 1) of Preliminary FY 2009 QI Allotment (Chart 2).** Column L contains the Final QI allotment for each State for FY 2008 (Chart 1) or the Preliminary QI Allotment for FY 2009 (Chart 2). For States that need additional amounts based on their FY 2008 or FY 2009 Estimated QI Expenditures in Column E (States with a projected need amount in Column F), Column L is equal to the Initial FY 2008 or FY 2009 QI Allotment in Column D plus the amount determined in Column K for Need States. For Non-Need States

(States with a projected surplus in Column H), Column L is equal to the QI Allotment in Column D reduced by the Reduction Adjustment amount in Column J.

**CHART 1 - FINAL QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008**

STATE	Initial QI Allotments for FY 2008			FY 2008 Estimated QI Expenditures /I	Need (Difference) If E>D, E-D	Pct of Tot. Need States F/(Tot. of F)	Reduction Pool for Non-Need States If D >= E, D - E	Pct of Tot. Non-Need States H/(Tot. of H)	Reduction Adj. For Non-Need States Col. I x	Increase Adj. For Need States Col. G x	Final FY 2008 QI Allotment /J
	Number of Individuals /3 (000s)	Percentage of Total Col B/Tot. Col B	Initial QI Allotment								
			Col C x \$415,000,000								
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	26	1.80%	\$7,459,150	\$18,841,519	\$11,382,369	13.6829%	Need	Need	Need	\$11,382,369	\$18,841,519
Alaska	2	0.12%	\$484,360	\$110,454	NA	NA	NA	0.4300%	\$373,906	NA	\$126,629
Arizona	19	1.35%	\$5,618,581	\$12,159,928	\$6,541,347	7.8634%	Need	Need	Need	\$6,541,347	\$12,159,928
Arkansas	18	1.26%	\$5,231,092	\$7,048,155	\$1,817,063	2.1843%	Need	Need	Need	\$1,817,063	\$7,048,155
California	107	7.69%	\$31,095,938	\$17,857,329	NA	NA	NA	15.2259%	\$13,238,609	NA	\$18,430,012
Colorado	14	0.98%	\$4,068,227	\$2,745,233	NA	NA	NA	1.5221%	\$1,323,395	NA	\$2,302,400
Connecticut	15	1.03%	\$4,262,372	\$9,234,761	\$4,972,389	5.9774%	Need	Need	Need	\$4,972,389	\$9,234,761
Delaware	3	0.23%	\$968,721	\$249,465	NA	NA	NA	0.8272%	\$719,256	NA	\$280,579
District of Columbia	3	0.19%	\$774,977	\$0	NA	NA	NA	0.8913%	\$774,977	NA	\$33,524
Florida	102	7.12%	\$29,545,985	\$32,801,932	\$3,255,947	3.9140%	Need	Need	Need	\$3,255,947	\$32,801,932
Georgia	28	1.94%	\$8,040,383	\$20,541,502	\$12,501,119	15.0278%	Need	Need	Need	\$12,501,119	\$20,541,502
Hawaii	4	0.28%	\$1,162,465	\$441,203	NA	NA	NA	0.5995%	\$521,262	NA	\$663,752
Maine	6	0.37%	\$1,549,953	\$1,543,865	NA	NA	NA	0.0070%	\$5,088	NA	\$1,544,128
Illinois	69	4.83%	\$20,852,521	\$16,705,339	NA	NA	NA	3.8496%	\$3,347,182	NA	\$16,850,133
Indiana	45	3.17%	\$13,174,603	\$6,713,813	NA	NA	NA	7.4306%	\$6,460,790	NA	\$6,993,297
Iowa	10	0.70%	\$2,906,162	\$2,718,688	NA	NA	NA	0.2156%	\$187,474	NA	\$2,726,798
Kansas	9	0.61%	\$2,518,674	\$2,491,573	NA	NA	NA	0.0312%	\$27,101	NA	\$2,492,745
Kentucky	21	1.47%	\$6,102,941	\$10,319,172	\$4,216,231	5.0684%	Need	Need	Need	\$4,216,231	\$10,319,172
Louisiana	23	1.59%	\$6,597,302	\$13,515,793	\$6,928,491	8.288%	Need	Need	Need	\$6,928,491	\$13,515,793
Maine	6	0.37%	\$1,549,953	\$1,543,865	\$6,083	0.1242%	Need	Need	Need	\$6,083	\$1,543,865
Maryland	18	1.24%	\$5,134,220	\$4,993,930	NA	NA	NA	1.1964%	\$1,040,290	NA	\$4,153,931
Massachusetts	36	2.52%	\$10,462,185	\$8,936,343	NA	NA	NA	1.7549%	\$1,525,842	NA	\$9,002,349
Michigan	53	3.69%	\$15,305,789	\$10,241,907	NA	NA	NA	5.8240%	\$4,844,826	NA	\$10,460,963
Minnesota	21	1.47%	\$6,102,941	\$3,768,524	NA	NA	NA	2.6849%	\$2,334,417	NA	\$3,869,508
Mississippi	15	1.05%	\$4,359,244	\$9,567,050	\$5,207,806	6.2604%	Need	Need	Need	\$5,207,806	\$9,567,050
Missouri	43	2.99%	\$12,399,627	\$4,137,754	NA	NA	NA	9.5021%	\$7,904,476	NA	\$4,495,151
Montana	8	0.54%	\$2,228,858	\$871,383	NA	NA	NA	1.5603%	\$1,297,988	NA	\$930,070
Nebraska	11	0.75%	\$3,099,907	\$2,335,536	NA	NA	NA	0.8791%	\$774,371	NA	\$2,369,602
Nevada	12	0.82%	\$3,390,523	\$2,599,056	NA	NA	NA	0.9103%	\$791,467	NA	\$2,633,294
New Hampshire	7	0.47%	\$1,937,442	\$1,032,905	NA	NA	NA	1.0403%	\$904,537	NA	\$1,072,034
New Jersey	37	2.61%	\$10,849,673	\$9,401,543	NA	NA	NA	1.6655%	\$1,448,131	NA	\$9,464,186
New Mexico	12	0.86%	\$3,584,267	\$2,806,231	NA	NA	NA	0.8948%	\$778,036	NA	\$2,839,888
New York	89	6.26%	\$25,961,718	\$42,559,452	\$16,597,734	19.9523%	Need	Need	Need	\$16,597,734	\$42,559,452
North Carolina	62	4.37%	\$18,115,079	\$19,117,867	\$1,002,788	1.2055%	Need	Need	Need	\$1,002,788	\$19,117,867
North Dakota	5	0.35%	\$1,453,081	\$554,747	NA	NA	NA	1.1482%	\$955,148	NA	\$497,233
Ohio	55	3.83%	\$15,887,021	\$16,134,493	\$247,472	0.2975%	Need	Need	Need	\$247,472	\$16,134,493
Oklahoma	21	1.49%	\$6,199,813	\$7,258,217	\$1,058,404	1.2723%	Need	Need	Need	\$1,058,404	\$7,258,217
Oregon	20	1.40%	\$5,812,325	\$8,379,918	\$2,567,593	3.0865%	Need	Need	Need	\$2,567,593	\$8,379,918
Pennsylvania	75	5.23%	\$21,699,346	\$20,705,321	NA	NA	NA	1.1432%	\$994,025	NA	\$20,748,321
Rhode Island	5	0.33%	\$1,356,209	\$1,988,852	\$632,643	0.7605%	Need	Need	Need	\$632,643	\$1,988,852
South Carolina	23	1.63%	\$6,781,646	\$8,703,145	\$1,921,499	2.3106%	Need	Need	Need	\$1,921,499	\$8,703,145
South Dakota	3	0.23%	\$968,721	\$973,703	\$4,982	0.0060%	Need	Need	Need	\$4,982	\$973,703
Tennessee	40	2.82%	\$11,721,522	\$415,011	NA	NA	NA	13.0037%	\$11,306,511	NA	\$904,114
Texas	110	7.70%	\$31,967,787	\$21,899,861	NA	NA	NA	11.5792%	\$9,632,402	NA	\$22,335,385
Utah	5	0.37%	\$1,549,953	\$1,310,827	NA	NA	NA	0.2750%	\$239,126	NA	\$1,311,171
Vermont	3	0.23%	\$968,721	\$3,195,842	\$2,227,121	2.6773%	Need	Need	Need	\$2,227,121	\$3,195,842
Virginia	32	2.24%	\$9,299,720	\$7,723,994	NA	NA	NA	1.8123%	\$1,597,562	NA	\$7,792,158
Washington	30	2.08%	\$8,621,615	\$5,547,889	NA	NA	NA	3.5351%	\$2,940,761	NA	\$5,680,854
West Virginia	17	1.19%	\$4,940,476	\$4,112,067	NA	NA	NA	0.9528%	\$772,578	NA	\$4,147,963
Wisconsin	27	1.89%	\$7,846,639	\$1,748,633	NA	NA	NA	7.0134%	\$6,098,006	NA	\$2,012,424
Wyoming	3	0.23%	\$968,721	\$451,943	NA	NA	NA	0.5944%	\$494,423	NA	\$474,298
Total	1,428	100.00%	\$415,000,000	\$411,238,750	\$3,761,250	100.0000%	\$86,948,131	100.0000%	\$83,186,881	\$83,186,881	\$415,000,000

Footnotes:  
 /1 FY 2008 Estimates from July 2008 CMS Survey of States  
 /2 For Need States, Final FY 2008 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K  
 For Non-Need States, Final FY 2008 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J  
 /3 Three-year average (2005-2007) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level  
 Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the Current Population Survey (CPS) for past 3 years through March of 2007

**CHART 2 - PRELIMINARY QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009**

STATE	Initial QI Allotments for FY 2009		FY 2009	Need	Pct of Tot.	Reduction Pool	Pct of Tot.	Reduction Adj. For	Increase Adj. For	Preliminary	
	Number of Individuals /3 (000s)	Percentage of Total Col B/Tot. Col B	Initial QI Allotment Col C \$480,000,000	Estimated QI Expenditures /1	(Difference) If E>D, E-D	Need States F(Tot. of F)	for Non-Need States If D >= E, D - E	Non-Need States H(Tot. of H)	Non-Need States Col. G \$103,798,653	Need States Col. G \$103,798,653	FY 2009 QI Allotment /2
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	25	1.67%	\$8,021,680	\$23,668,618	\$15,646,938	15.0743%	Need	Need	Need	\$15,646,938	\$23,668,618
Alaska	2	0.11%	\$542,805	\$134,006	NA	NA	NA	0.3824%	\$396,974	NA	\$145,031
Arizona	18	1.20%	\$5,745,257	\$13,940,113	\$8,194,856	7.8950%	Need	Need	Need	\$8,194,856	\$13,940,113
Arkansas	21	1.42%	\$6,829,268	\$8,211,563	\$1,382,295	1.3317%	Need	Need	Need	\$1,382,295	\$8,211,563
California	111	7.50%	\$35,989,160	\$21,425,488	NA	NA	NA	\$14,563,672	\$14,563,672	NA	\$21,425,488
Colorado	16	1.05%	\$5,054,851	\$3,080,322	NA	NA	NA	\$2,014,529	\$2,014,529	NA	\$3,080,322
Connecticut	18	1.24%	\$5,962,669	\$10,837,618	\$4,874,949	4.6971%	Need	Need	Need	\$4,874,949	\$10,837,618
Delaware	4	0.27%	\$1,390,813	\$230,069	NA	NA	NA	\$1,070,744	\$1,070,744	NA	\$230,069
District of Columbia	3	0.20%	\$975,610	\$0	NA	NA	NA	\$975,610	\$975,610	NA	\$0
Florida	113	7.68%	\$36,856,369	\$35,529,851	NA	NA	NA	\$1,326,518	\$1,326,518	NA	\$35,529,851
Georgia	37	2.48%	\$11,924,119	\$22,386,690	\$10,462,571	10.0797%	Need	Need	Need	\$10,462,571	\$22,386,690
Hawaii	3	0.23%	\$1,084,011	\$796,635	NA	NA	NA	\$287,376	\$287,376	NA	\$796,635
Idaho	6	0.41%	\$1,951,220	\$1,909,420	NA	NA	NA	\$41,800	\$41,800	NA	\$1,909,420
Illinois	60	4.03%	\$22,113,821	\$19,748,101	NA	NA	NA	\$2,365,720	\$2,365,720	NA	\$19,748,101
Indiana	37	2.51%	\$12,032,520	\$7,536,462	NA	NA	NA	\$4,496,058	\$4,496,058	NA	\$7,536,462
Iowa	15	1.02%	\$4,878,049	\$3,281,110	NA	NA	NA	\$1,596,939	\$1,596,939	NA	\$3,281,110
Kansas	13	0.90%	\$4,336,043	\$2,889,860	NA	NA	NA	\$1,446,183	\$1,446,183	NA	\$2,889,860
Kentucky	21	1.40%	\$6,720,867	\$11,985,088	\$5,264,221	5.0716%	Need	Need	Need	\$5,264,221	\$11,985,088
Louisiana	16	1.08%	\$5,203,252	\$15,214,069	\$10,010,817	9.6445%	Need	Need	Need	\$10,010,817	\$15,214,069
Maine	3	0.52%	\$2,493,225	\$4,593,699	\$2,100,474	2.0236%	Need	Need	Need	\$2,100,474	\$4,593,699
Maryland	17	1.13%	\$4,848,655	\$4,848,655	NA	NA	NA	\$1,010,566	\$1,010,566	NA	\$4,848,655
Massachusetts	39	2.62%	\$12,574,526	\$10,650,719	NA	NA	NA	\$1,923,807	\$1,923,807	NA	\$10,650,719
Michigan	49	3.32%	\$15,934,959	\$12,306,553	NA	NA	NA	\$3,628,406	\$3,628,406	NA	\$12,306,553
Minnesota	23	1.54%	\$7,371,274	\$4,379,432	NA	NA	NA	\$2,991,842	\$2,991,842	NA	\$4,379,432
Mississippi	14	0.97%	\$4,661,247	\$9,913,680	\$5,252,433	5.0602%	Need	Need	Need	\$5,252,433	\$9,913,680
Missouri	44	3.00%	\$14,417,344	\$4,818,543	NA	NA	NA	\$9,598,801	\$9,598,801	NA	\$4,818,543
Montana	7	0.47%	\$2,276,423	\$1,007,106	NA	NA	NA	\$1,269,317	\$1,269,317	NA	\$1,007,106
Nebraska	10	0.65%	\$3,143,821	\$2,344,016	NA	NA	NA	\$799,805	\$799,805	NA	\$2,344,016
Nevada	12	0.84%	\$4,010,840	\$2,964,786	NA	NA	NA	\$1,046,054	\$1,046,054	NA	\$2,964,786
New Hampshire	8	0.52%	\$2,493,225	\$1,258,913	NA	NA	NA	\$1,234,312	\$1,234,312	NA	\$1,258,913
New Jersey	31	2.08%	\$9,972,900	\$10,985,302	\$1,012,402	0.9754%	Need	Need	Need	\$1,012,402	\$10,985,302
New Mexico	11	0.77%	\$3,685,637	\$3,220,284	NA	NA	NA	\$465,353	\$465,353	NA	\$3,220,284
New York	92	6.23%	\$29,918,699	\$50,193,753	\$20,275,054	19.5331%	Need	Need	Need	\$20,275,054	\$50,193,753
North Carolina	53	3.59%	\$17,235,772	\$26,654,593	\$9,418,821	9.0741%	Need	Need	Need	\$9,418,821	\$26,654,593
North Dakota	5	0.33%	\$1,430,816	\$1,430,816	NA	NA	NA	\$1,139,125	\$1,139,125	NA	\$1,430,816
Ohio	60	4.09%	\$19,620,596	\$18,888,688	NA	NA	NA	\$731,908	\$731,908	NA	\$18,888,688
Oklahoma	22	1.51%	\$7,262,873	\$7,853,051	\$590,178	0.5606%	Need	Need	Need	\$590,178	\$7,853,051
Oregon	21	1.42%	\$6,829,268	\$11,398,815	\$4,569,547	4.4023%	Need	Need	Need	\$4,569,547	\$11,398,815
Pennsylvania	82	5.58%	\$26,775,068	\$21,737,977	NA	NA	NA	\$5,037,091	\$5,037,091	NA	\$21,737,977
Rhode Island	4	0.27%	\$1,390,813	\$2,183,734	\$892,921	0.8506%	Need	Need	Need	\$892,921	\$2,183,734
South Carolina	25	1.69%	\$8,130,801	\$9,471,275	\$1,340,474	1.2921%	Need	Need	Need	\$1,340,474	\$9,471,275
South Dakota	3	0.23%	\$1,084,011	\$1,084,011	NA	NA	NA	\$77,368	\$77,368	NA	\$1,084,011
Tennessee	41	2.80%	\$13,441,734	\$4,332,902	NA	NA	NA	\$13,008,832	\$13,008,832	NA	\$4,332,902
Texas	124	8.42%	\$40,433,604	\$23,414,499	NA	NA	NA	\$17,019,105	\$17,019,105	NA	\$23,414,499
Utah	10	0.68%	\$3,252,033	\$1,464,304	NA	NA	NA	\$1,787,729	\$1,787,729	NA	\$1,464,304
Vermont	3	0.20%	\$975,610	\$3,493,984	\$2,518,374	2.4262%	Need	Need	Need	\$2,518,374	\$3,493,984
Virginia	35	2.35%	\$11,273,713	\$9,357,285	NA	NA	NA	\$1,916,428	\$1,916,428	NA	\$9,357,285
Washington	27	1.81%	\$8,672,087	\$5,893,297	NA	NA	NA	\$2,778,790	\$2,778,790	NA	\$5,893,297
West Virginia	15	1.04%	\$4,086,450	\$4,506,770	NA	NA	NA	\$440,320	\$440,320	NA	\$4,506,770
Wisconsin	31	2.08%	\$9,972,900	\$2,333,340	NA	NA	NA	\$7,639,560	\$7,639,560	NA	\$2,333,340
Wyoming	3	0.23%	\$1,084,011	\$465,215	NA	NA	NA	\$618,796	\$618,796	NA	\$465,215
Total	1,476	100.00%	\$480,000,000	\$477,117,164	\$303,798,653	100.0000%		\$106,681,489	\$106,681,489		\$480,000,000

Footnotes:  
 /1 FY 2009 Estimates from July 2008 CMS Survey of States  
 /2 For Need States, Preliminary FY 2009 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K  
 /3 For Non-Need States, Preliminary FY 2009 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J  
 /4 Three-year average (2006-2008) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level  
 Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the Current Population Survey (CPS) for past 3 years through March of 2008

**III. Response to Comments**

Because of the large number of public comments we normally receive on Federal Register documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

**IV. Waiver of Notice With Comment and 30-Day Delay in Effective Date**

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date.

We are publishing this rule as an interim final rule with comment period because of the need to notify individual States of the limitations on Federal funds for their Medicaid expenditures for payment of Medicare Part B premiums for qualifying individuals. Some States have experienced deficits in their current allotments that have caused them to deny benefits to eligible applicants, while other States project a surplus in their allotments. This rule adjusts the allocation of Federal funds, which will reduce the impact of States denying coverage to eligible QIs when there is sufficient funding to cover all or some of these individuals. Because access to Medicare Part B coverage for QIs, who without this coverage would have difficulty paying for needed health care, is critically important we believe that it is in the public interest to waive the usual notice and comment procedure which we undertake before making a rule final.

In addition, we are not making any fundamental changes to the process we

use for redistributing surpluses to States whose estimated QI expenditures exceed their initial allotments. We are simply ensuring that the process currently included in the regulations accounts for partial funding in some fiscal years as well as situations where total deficits may exceed total surpluses. For these reasons, we also believe a notice and comment process would be unnecessary.

Also, for the reasons discussed above, we find that good cause exists to dispense with the normal requirement that a regulation cannot become effective any earlier than 30 days after its publication. States that will have access to additional funds for QIs need to know that these funds are available as soon as possible. While we believe the surplus States that will have diminished amounts available for this fiscal year will have sufficient funds for enrolling all potential QIs in their States, they also need to know as soon as possible that a certain amount of their unused allocation will no longer be available to them for this fiscal year.

With respect to the changes and additions to the regulatory text, we are waiving the delay in effective date because, as noted above, the rule does not make any fundamental changes in

the methodology for allocating funds between States, but accounts for those years in which Congressional allocations may not meet total QI expenditures. The provision sets a methodology which merely reduces allocations to States by a pro-rata amount. Consequently, because this rule is essentially one of agency procedure, we believe that delaying the effective date of the provision is unnecessary.

We are publishing this interim final rule with a 60-day period for public comment. We will respond to public comments and as a result make necessary changes in the final rule.

#### V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

#### VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132 on Federalism and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$7 million to \$34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity.

This interim final rule codifies our procedures for implementing provisions of the Balanced Budget Act of 1997 to allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for low-income Medicare beneficiaries. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments. Because the data specified in the law were not initially available, we used comparable data from the U.S. Census Bureau on the number of possible qualifying individuals in the States. This rule also permits, in a specific circumstance, reallocation of funds to enable enrollment of all eligible individuals to the extent of the available funding.

We believe that the statutory provisions implemented in this rule will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for qualifying individuals and, with the reallocation of the State allotments, a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid. The changes in allotments will not result in fewer individuals receiving the QI benefit in any State. The FY 2008 and FY 2009 costs for this provision have been included in the Mid-session Review of the FY 2009 President's Budget.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. The analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal

governments, in the aggregate, or by the private sector, of \$130 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

#### List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

#### PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 433.10 is amended by—

■ A. Revising paragraph (c)(5)(ii).

■ B. Revising paragraph (c)(5)(iii) introductory text.

■ C. Revising paragraph (c)(5)(iii)(D).

■ D. Adding a new paragraph (c)(5)(iii)(E).

■ E. Revising paragraph (c)(5)(v).

The revisions and additions read as follows:

#### § 433.10 Rates of FFP for program services.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) Under section 1933(c)(2) of the Act and subject to paragraph (c)(5)(iii) of this section, the allocation to each State is equal to the total allocation specified in section 1933(g) of the Act multiplied by the Secretary's estimate of the ratio of the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act in the State to the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act for all eligible States. In estimating that ratio, the Secretary will use data from the U.S. Census Bureau.

(iii) If, based on projected expenditures for a fiscal year, or for a

shorter period for which funding is available under section 1933 of the Act, the Secretary determines that the expenditures described in paragraph (c)(5)(i) of this section for one or more States are projected to exceed the allocation made to the State, the Secretary may adjust each State's fiscal year allocation, as follows:

\* \* \* \* \*

(D) Each State with a projected deficit will receive an additional allocation equal to the amount of its projected deficit, or a prorated amount of such deficit, if the Total Projected Deficit is greater than the Total Projected Surplus. Except as described in paragraph (c)(5)(iii)(E) of this section, the amount to be reallocated from each State with a projected surplus will be equal to  $A \times B$ , where A equals the Total Projected Deficit and B equals the amount of the State's projected surplus as a percentage of the Total Projected Surplus.

(E) If the Total Projected Deficit determined under paragraph (c)(5)(iii)(C) of this section is greater than the Total Projected Surplus determined under paragraph (c)(5)(iii)(B) of this section, each State with a projected deficit will receive an additional allocation amount equal to the amount of the Total Projected Surplus multiplied by the amount of the projected deficit for such State as a percentage of the Total Projected Deficit. The amount to be reallocated from each State with a projected surplus will be equal to the amount of the projected surplus.

\* \* \* \* \*

(v) The provisions in paragraph (c)(5) of this section will be in effect through the end of the period for which funding authority is available under section 1933 of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 19, 2008.

**Kerry Weems,**

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

Dated: September 19, 2008.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. E8-27810 Filed 11-21-08; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Parts 206 and 207

[Docket ID: FEMA-2006-0035]

RIN 1660-AA21

#### Management Costs

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of meeting and reopening of comment period.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is announcing the date, time, and location for a meeting regarding the Management Costs Interim Rule (1660-AA21). This meeting will be open to the public. FEMA also announces the reopening of the comment period for the Management Costs Interim Rule.

**DATES:** *Meeting Date:* Wednesday, December 10, 2008, from 1 to 4 p.m. e.s.t. *Comment Date:* The comment period for the interim final rule published at 72 FR 57869, October 11, 2008, is reopened. Written comments must be received by December 11, 2008.

**ADDRESSES:** The meeting will be held at 800 K Street, NW., 1st Floor, North Tower, Washington, DC 20001. Individuals will be required to present photo identification to enter the building in which the meeting will be held. All written submissions must include the Docket ID FEMA-2006-0035 and may be submitted by any one of the following methods:

*Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow instructions for submitting comments on the Web site.

*E-mail:* FEMA-RULES@dhs.gov. Include Docket ID FEMA-2006-0035 in the subject line of the message.

*Facsimile:* (703) 483-2999.

*Mail:* Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

*Hand Delivery/Courier:* Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Cramer, Federal Emergency Management Agency, 800 K Street, NW, Washington, DC 20472, telephone 202-786-9841.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5207, and its implementing regulations, the Federal Emergency Management Agency (FEMA) has the authority to assist State and local governments in carrying out their responsibilities pursuant to a Presidentially declared major disaster or emergency. Section 324 of the Stafford Act, 42 U.S.C. 5165b, required FEMA to establish management cost rates to be used in determining contributions for management costs. Management costs include any indirect cost, any administrative expense and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

On October 11, 2007, FEMA published an Interim Rule that proposed a methodology for calculating the management cost rates, as well as guidance for the implementation of section 324 of the Stafford Act (72 FR 57869). As established by the Interim Rule, management costs that are reasonably incurred by a grantee or subgrantee in administering and managing the Public Assistance (PA) program and the Hazard Mitigation Grant Program (HMGP) grant award will be reimbursed up to a fixed rate. The flat percentage rate for PA is 3.34 percent for major disaster declarations, and 3.90 percent for emergencies. The HMGP rate is 4.89 percent for major disaster declarations. FEMA determined the rate for management costs using a historical average of the Federal share of actual administrative and management costs paid to grantees and subgrantees. To calculate the figures in the Interim Rule, FEMA used data collected in the National Emergency Management Information System (NEMIS) for declarations from August 1998 to July 2004. FEMA did not establish a percentage of management costs that grantees must pass through to subgrantees.

FEMA initially held a 30-day comment period on the Interim Rule. FEMA received 34 public comments, (all of which are available in the docket for public inspection). On August 29, 2008 (73 FR 50881), seeking specific data on unreimbursed eligible management costs, FEMA reopened the Interim Rule for an additional 30-day comment period and received an additional 37 comments, (which are also available in the docket for public inspection). Some individuals who submitted comments during the second