

### III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its psychiatric hospital accreditation program. This application was determined to be complete on July 30, 2022. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of The Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of The Joint Commission's standards for psychiatric hospitals as compared with CMS' psychiatric hospital CoPs.

- The Joint Commission's survey process to determine the following:

- ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

- ++ The comparability of the Joint Commission's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

- ++ The Joint Commission's processes and procedures for monitoring a psychiatric hospital found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission's identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

- ++ The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- ++ The Joint Commission's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ The adequacy of the Joint Commission's staff and other resources, and its financial viability.

- ++ The Joint Commission's capacity to adequately fund required surveys.

- ++ The Joint Commission's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

- ++ The Joint Commission's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving

individuals who conduct surveys or participate in accreditation decisions.

- ++ The Joint Commission's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

### IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

### V. Response to Public 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.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document on September 8, 2022, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 27, 2022.

**Lynette Wilson,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS-4200-N]**

### Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2023

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2023. The calendar year 2023 AIC threshold amounts are \$180 for ALJ hearings and \$1,850 for judicial review.

**DATES:** This annual adjustment takes effect on January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Liz Hosna, (410) 786-4993.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act) established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review at \$100 and \$1,000, respectively, for Medicare Part A and Part B appeals. Additionally, section 1869(b)(1)(E) of the Act provides that beginning in January 2005, the AIC threshold amounts are to be adjusted annually by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved and rounded to the nearest multiple of \$10. Sections 1852(g)(5) and 1876(c)(5)(B) of the Act apply the AIC adjustment requirement to Medicare Part C/Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement, pursuant to 42 CFR 417.840. Section 1860D-4(h)(1) of the Act, provides that a Medicare Part D plan sponsor shall meet the requirements of paragraphs (4) and (5) of section 1852(g) of the Act with respect to benefits, including appeals and the application of the AIC adjustment requirement to Medicare Part D appeals.

#### A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations at § 405.1006(b)(2) require the Secretary of Health and

Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register**. In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

#### B. Medicare Part C/MA Appeals

Section 1852(g)(5) of the Act applies the AIC adjustment requirement to Medicare Part C appeals. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, sections 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration (except the MA organization) who is dissatisfied with the reconsideration determination a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

#### C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical

plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals in accordance with 42 CFR 417.600(b). The Medicare Part C appeals rules also apply to health care prepayment plan appeals in accordance with 42 CFR 417.840.

#### D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 1860D-4(h)(1) of the Act regarding Part D appeals requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M and U. More specifically, § 423.2006 of the Part D appeals rules discusses the AIC threshold amounts for ALJ hearings and judicial review. Sections 423.2002 and 423.2006 grant a Part D enrollee who is dissatisfied with the independent review entity (IRE) reconsideration determination a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary, and other requirements set forth in § 423.2002. Sections 423.2006 and 423.2136 allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council decision if the AIC meets the threshold amount established annually by the Secretary, and other requirements are met as set forth in these provisions.

## II. Provisions of the Notice—Annual AIC Adjustments

### A. AIC Adjustment Formula and AIC Adjustments

Section 1869(b)(1)(E)(iii) of the Act requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of \$10.

### B. Calendar Year 2023

The AIC threshold amount for ALJ hearings will remain at \$180 and the AIC threshold amount for judicial review will rise to \$1,850 for CY 2023. These amounts are based on the 84.665 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 549.562 in July 2022. The AIC threshold amount for ALJ hearings changes to \$184.66 based on the 84.665 percent increase over the initial threshold amount of \$100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of \$10. Therefore, the CY 2023 AIC threshold amount for ALJ hearings is \$180.00. The AIC threshold amount for judicial review changes to \$1,846.65 based on the 84.665 percent increase over the initial threshold amount of \$1,000. This amount was rounded to the nearest multiple of \$10, resulting in the CY 2023 AIC threshold amount of \$1,850.00 for judicial review.

### C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2019 through 2023 threshold amounts.

	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
ALJ Hearing .....	\$160	\$170	\$180	\$180	\$180
Judicial Review .....	1,630	1,670	1,760	1,760	1,850

## III. Collection of Information Requirements

This document does not impose any “collection of information” requirements as defined under 5 CFR 1320.3(c). Consequently, the notice is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the

Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 27, 2022.

**Vanessa Garcia,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[CFDA Number: 93.568]

### Proposed Reallocation of Fiscal Year 2021 Funds for the Low Income Home Energy Assistance Program

**AGENCY:** Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).