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[FR Doc. 05–16929 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–4064–IFC3]

RIN–0938–AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to a Correcting Amendment

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

ACTION: Correcting amendment.

SUMMARY: This correcting amendment corrects a technical error in the correcting amendment that appeared in the **Federal Register**, entitled ''Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule.''

DATES: *Effective Date:* This correcting amendment is effective September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Arrah Tabe-Bedward, (410) 786–7129.

SUPPLEMENTARY INFORMATION:

I. Background

We have identified a technical error that appeared in a correcting amendment entitled ''Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule.'' (70 FR 37700, June 30, 2005) In this correcting amendment, we are correcting that technical error.

II. Correction of Error

A. Technical Correction to the Regulations Text

In § 405.1020 of the regulation text, we incorrectly stated the section's title as ''Time frames for deciding an appeal for a hearing before an ALJ.'' It should have read, ''Time and place for a hearing before an ALJ.'' We correct this technical error in section B of this correcting amendment.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. However, we can waive this procedure if we find good cause for doing so, and incorporate a statement of this finding and the reasons for it into the rule. A finding that a notice and comment period is impracticable, unnecessary, or contrary to the public interest constitutes good cause for waiving this procedure.

We believe that it is unnecessary to seek public comment on the correction of this editorial error. Further, it is in the public's interest to correct this editorial error because it makes the section more understandable to parties pursuing Medicare appeals under these procedures. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Correction of Regulation Text Error

■ Accordingly, 42 CFR chapter IV is corrected by making the following correction to part 405:

PART 405—[CORRECTED]

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)) and Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

§ 405.1020 [Corrected]

■ 2. Section 405.1020 is amended by revising the section title to read as follows:

§ 405.1020 Time and place for a hearing before an ALJ.

* * * * *

Dated: August 16, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–16711 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–2210–IFC]

RIN 0938–AO04

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2005

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period sets forth the methodology used to compute State allotments that are available to pay Medicare Part B premiums for qualifying individuals, allows changes to the State allotments and describes the methodology used to determine the changes to each State's allotment.

DATES: *Effective date:* These regulations are effective August 26, 2005 for allotments for payment of Medicare Part B premiums from the allocation for fiscal year 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–2210–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

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–2210–IFC, P.O. Box 8011, Baltimore, MD 21244–8011.

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–2210–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 one of the following addresses. 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. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(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.)

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

FOR FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786–0693.

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2210–IFC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

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 a comment. We post all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will 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.

SUPPLEMENTARY INFORMATION:

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

Section 1902 of the Social Security Act (the Act) sets forth the requirements for State plans for medical assistance. Prior to August 5, 1997, section 1902(a)(10)(E) of the Act specified that the State Medicaid plan 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 the Federal poverty line (FPL) and resources 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 the Supplementary Security Income (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), 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, 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 qualifying individuals who would be QMBs but for the fact that 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 second group of QIs added under section 1902(a)(10)(E)(iv)(II) of the Act 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 only 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 group of QIs ended on December 31, 2002 and the 2003 Welfare Reform Bill (Pub. L. 108–89) eliminated reference to the QI–2 benefit. In each of the years 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 Federal poverty line) through the next fiscal year, but maintained the annual funding at the FY 2002 level. In 2004, ''A Bill to Amend Title XIX of the Social Security Act to Extend Medicare Cost-Sharing for the Medicare Part B Premium for Qualifying Individuals'' (Pub. L. 108–448) continued coverage of this group 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 was re-designated as section 1934.) Section 1933(a) 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). 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

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. In 1999, the Department published a notice (64 FR 14931, March 29, 1999) 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 only through FY 2002, through several continuing resolutions, coverage has been continued through the current fiscal year, but without any increase in total allocation over the FY 2002 level.

The Federal medical assistance percentage for Medicaid payment of Medicare Part B premiums for qualifying individuals 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 to be 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 line, and who are not otherwise eligible for Medicaid, to (b) the sum of all those individuals for all eligible States.

In FY 2005, some States have exhausted their current allotments before the end of the fiscal year, which has caused them to deny benefits to eligible persons under section 1933(b)(3) of the Act, while other States project a surplus in their allotments. We asked those States which have exhausted or expect 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 which do not expect to use their full allotments in FY 2005 to project the difference between the amount they expect to spend and their allotment, that is, their surplus. All States reported these figures, and it was evident that the total surplus exceeds the total need. In spite of there being adequate overall funding for the QI benefit, some eligible individuals are being denied benefits due to the allocation methodology used to determine the FY 2005 allotments. We believe that it is 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 attribute this to imprecision in the data which we used to provide States with their initial allocations under section 1933 of the Act. This interim final rule would attempt to compensate for this imprecision and enable States to enroll those QIs whom they would have been able to enroll had the data been more precise.

II. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS'' at the beginning of your comments.]

This interim final rule amends 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.

The FY 2005 allotments were derived by applying 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 was a rough proxy to attain the statutory number. Actual expenditure data recently received, however, reveal that the Census Bureau data yielded an inappropriate distribution of the total appropriated fund as evidenced by the fact that several States have projected significant shortfalls in their allotments, while many other States project a significant surplus by the end of the fiscal year 2005. Census Bureau data may not have been 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 does not preclude a subsequent readjustment of that allocation, when it becomes clear that the data used for that estimate did not effectuate the statutory objective.

This interim final rule permits, in this specific circumstance, a redistribution of surplus funds, as it has been demonstrated that the projections and estimates resulted in an inequitable initial allocation, 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 this interim final rule, we are codifying the methodology we have been using to approximate the statutory formula for determining State allotments. However, since certain States project a deficit in their allotment before the end of fiscal year 2005, this rule permits fiscal year 2005 funds to be reallocated from the surplus States to the need States. The regulation specifies the methodology for computing the annual allotments, and for reallocating funds in this circumstance. The formula used to reallocate funds is intended to minimize impact on surplus States, to equitably distribute the total needed amount among those surplus States, and to meet the immediate needs for those States projecting deficits. Since the authorization for the QI benefit expires at the end of calendar year 2005 and currently no funds have been appropriated for the QI benefit beyond September 30, 2005, this regulation will sunset at the end of calendar year 2005. Should the Congress authorize an extension of the QI benefit and appropriate additional funds for allocation among the States, we will

amend the sunset date in this regulation to take into account any extension.

The resulting allotments are shown by State in the table below. In this table each column contains data defined as follows:

Chart—Revised FY 2005 Qualified Individuals Allotments

Column A—State. Column A shows the name of each State. Columns B through D shows the calculation of the prior FY 2005 QI Allotments.

Column B—Number of Individuals. Column B contains the estimated number of eligibles for each State, in thousands, as obtained from the Census Bureau.

Column C—State Share of Column B. Column C provides the percentage of total eligibles for each State, determined as the number of individuals for the State in Column B divided by the Total Number of Individuals for all States in Column B.

Column D—Prior FY 2005 QI Allotments. Column D contains each State's prior FY 2005 QI allotments, calculated as the State's percentage of total eligibles in Column C multiplied by the total amount available for FY 2005 for all States ($400,000,000).

Columns E through J shows the determination of the States' revised FY 2005 QI allotments.

Column E—FY 2005 Estimated QI Expenditures. Column E contains the States' most recent estimates of their total QI expenditures for FY 2005.

Column F—Need (Difference). Column F contains the additional amount of QI allotment needed for those States whose estimated expenditures in Column E exceed their original FY 2005 QI allotment in Column D; for such States Column E shows the difference of Column E minus Column D. For other States, Column F shows ''NA''.

Column G—Reduction Pool for Non-Need States. Column G contains the amount of the pool of surplus FY 2005 QI allotments for those States that project they will not need all of their FY 2005 QI allotment. For States whose estimates of QI expenditures for FY 2005 in Column E are equal to or less than their original FY 2005 QI allotment in Column D (referred to as non-need States), Column G shows the difference of Column D minus Column E.

Column H—Percent of Total Non-Need States. Column H shows the percentage of the total excess FY 2005 allotments for each Non-Need State, determined as the amount for each Non-Need State in Column G divided by the sum of the amounts for all states in Column G.

Column I—Reduction for Non-Need States. Column I shows the amount of reduction to Non-Need States' prior FY 2005 QI allotments in Column D in order provide for the total need shown in Column F (due to rounding adjustments, this total need is $8,914,634). The amount in Column I is determined as the percentage in Column H for Non-Need States multiplied by the total in Column F.

Column J—Revised FY 2005 QI Allotments. Column J contains the revised FY 2005 QI allotments for each State. For States that needed additional amounts based on their estimates, Column J is equal to the amount in Column D plus the additional need in Column F. For Non-Need States, Column J is equal to the amount in Column D minus the amount in Column I.

BILLING CODE 4120–01–P

REVISED FY 2005 QUALIFIED INDIVIDUALS ALLOTMENTS									
STATE	Calculation of Prior FY 2005 QI Allotments			FY 2005 Estimated QI Expenditures /1	Need (Difference) If E>D, E-D	Reduction Pool for Non-Need States D - E	Percent of Total Non-Need States G/(Total of G)	Reduction for Non-Need States /2 $8,914,634	REVISED FY 2005 QI Allotments /3
	Number of Individuals /4	State Share of Col B	PRIOR FY 2005 QI Allotments						
A	B	C	D	E	F	G	H	I	J
Alabama	32.3	2.1%	$8,541,000	$12,332,218	$3,791,218	Need	Need	Need	$12,332,218
Alaska	0.7	0.0%	$176,000	$175,000	NA	$1,000	0.0006%	$53	$175,947
Arizona	30.0	2.0%	$7,924,000	$8,747,816	$823,816	Need	Need	Need	$8,747,816
Arkansas	17.3	1.1%	$4,578,000	$3,272,530	NA	$1,305,470	0.7735%	$68,955	$4,509,045
California	132.7	8.8%	$35,043,000	$7,442,925	NA	$27,600,075	16.3532%	$1,457,829	$33,585,171
Colorado	13.0	0.9%	$3,434,000	$1,665,000	NA	$1,769,000	1.0481%	$93,438	$3,340,562
Connecticut	14.3	0.9%	$3,786,000	$6,128,654	$2,342,654	Need	Need	Need	$6,128,654
Delaware	4.3	0.3%	$1,145,000	$261,000	NA	$884,000	0.5238%	$46,693	$1,098,307
District of Columbia	2.7	0.2%	$704,000	$450,000	NA	$254,000	0.1505%	$13,416	$690,584
Florida	111.7	7.4%	$29,496,000	$20,634,438	NA	$8,861,562	5.2505%	$468,065	$29,027,935
Georgia	42.7	2.8%	$11,270,000	$11,270,000	NA	$0	0.0000%	$0	$11,270,000
Hawaii	3.7	0.2%	$969,000	$274,715	NA	$694,285	0.4114%	$36,672	$932,328
Idaho	4.7	0.3%	$1,233,000	$800,000	NA	$433,000	0.2566%	$22,871	$1,210,129
Illinois	55.0	3.6%	$14,528,000	$10,787,000	NA	$3,741,000	2.2166%	$197,599	$14,330,401
Indiana	49.0	3.2%	$12,943,000	$3,756,400	NA	$9,186,600	5.4431%	$485,234	$12,457,766
Iowa	21.3	1.4%	$5,635,000	$1,583,403	NA	$4,051,597	2.4006%	$214,004	$5,420,996
Kansas	16.0	1.1%	$4,226,000	$977,952	NA	$3,248,048	1.9245%	$171,561	$4,054,439
Kentucky	29.7	2.0%	$7,836,000	$3,729,908	NA	$4,106,092	2.4329%	$216,883	$7,619,117
Louisiana	26.7	1.8%	$7,044,000	$8,323,946	$1,279,946	Need	Need	Need	$8,323,946
Maine	13.7	0.9%	$3,610,000	$2,362,000	NA	$1,248,000	0.7394%	$65,919	$3,544,081
Maryland	21.7	1.4%	$5,723,000	$2,003,300	NA	$3,719,700	2.2039%	$196,474	$5,526,526
Massachusetts	40.7	2.7%	$10,742,000	$2,951,377	NA	$7,790,623	4.6160%	$411,499	$10,330,501
Michigan	50.7	3.3%	$13,383,000	$6,500,000	NA	$6,883,000	4.0782%	$363,558	$13,019,442
Minnesota	25.0	1.7%	$6,604,000	$2,200,000	NA	$4,404,000	2.6094%	$232,618	$6,371,382
Mississippi	13.0	0.9%	$3,434,000	$4,000,000	$566,000	Need	Need	Need	$4,000,000
Missouri	27.3	1.8%	$7,220,000	$1,602,131	NA	$5,617,869	3.3286%	$296,734	$6,923,266
Montana	6.3	0.4%	$1,673,000	$450,000	NA	$1,223,000	0.7246%	$64,599	$1,608,401
Nebraska	9.3	0.6%	$2,465,000	$2,465,000	NA	$0	0.0000%	$0	$2,465,000
Nevada	6.7	0.4%	$1,761,000	$1,100,000	NA	$661,000	0.3916%	$34,914	$1,726,086
New Hampshire	6.7	0.4%	$1,761,000	$100,000	NA	$1,661,000	0.9842%	$87,734	$1,673,266
New Jersey	43.3	2.9%	$11,446,000	$7,723,271	NA	$3,722,729	2.2057%	$196,634	$11,249,366
New Mexico	11.3	0.7%	$2,994,000	$1,328,078	NA	$1,665,922	0.9871%	$87,994	$2,906,006
New York	86.7	5.7%	$22,892,000	$21,056,300	NA	$1,835,700	1.0877%	$96,961	$22,795,039
North Carolina	61.7	4.1%	$16,289,000	$10,289,000	NA	$6,000,000	3.5550%	$316,918	$15,972,082
North Dakota	4.0	0.3%	$1,057,000	$340,000	NA	$717,000	0.4248%	$37,872	$1,019,128
Ohio	73.0	4.8%	$19,282,000	$11,031,806	NA	$8,250,194	4.8883%	$435,773	$18,846,227
Oklahoma	24.7	1.6%	$6,516,000	$3,976,182	NA	$2,539,818	1.5049%	$134,153	$6,381,847
Oregon	16.3	1.1%	$4,314,000	$4,424,000	$110,000	Need	Need	Need	$4,424,000
Pennsylvania	72.7	4.8%	$19,194,000	$12,592,215	NA	$6,601,785	3.9116%	$348,705	$18,845,295
Rhode Island	8.0	0.5%	$2,113,000	$973,193	NA	$1,139,807	0.6753%	$60,204	$2,052,796
South Carolina	30.7	2.0%	$8,100,000	$3,641,000	NA	$4,459,000	2.6420%	$235,523	$7,864,477
South Dakota	6.7	0.4%	$1,761,000	$550,160	NA	$1,210,840	0.7174%	$63,956	$1,697,044
Tennessee	39.3	2.6%	$10,390,000	$5,630,400	NA	$4,759,600	2.8201%	$251,401	$10,138,599
Texas	99.0	6.5%	$26,150,000	$15,823,646	NA	$10,326,354	6.1184%	$545,435	$25,604,565
Utah	5.3	0.4%	$1,409,000	$542,160	NA	$866,840	0.5136%	$45,786	$1,363,214
Vermont	5.0	0.3%	$1,321,000	$75,000	NA	$1,246,000	0.7383%	$65,813	$1,255,187
Virginia	37.7	2.5%	$9,949,000	$3,400,000	NA	$6,549,000	3.8803%	$345,916	$9,603,084
Washington	20.0	1.3%	$5,283,000	$5,283,000	NA	$0	0.0000%	$0	$5,283,000
West Virginia	17.7	1.2%	$4,667,000	$1,971,813	NA	$2,695,187	1.5969%	$142,359	$4,524,641
Wisconsin	20.3	1.3%	$5,371,000	$810,000	NA	$4,561,000	2.7024%	$240,911	$5,130,089
Wyoming	2.3	0.2%	$616,000	$332,000	NA	$284,000	0.1683%	$15,001	$600,999
Total	1514.3	100.0%	$400,000,000	$240,139,937	$8,913,634	$168,774,697	100.0000%	$8,914,634	$400,000,000

Footnotes:

/1 FY 2005 Estimates from July 2005 CMS Survey of States

/2 Total reduction adjusted due to rounding in Column D

/3 For Need States revised QI allotment is equal to original allotment in Column D increased by amount in Column F
For Non-Need States revised QI allotment is equal to original allotment in Column D reduced by amount in Column I

/4 Three-year average (2001-2003) 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 FPL.

Note: Totals may not add due to rounding.

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III. 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).

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

[If you choose to comment on issues in this section, please include the caption ''WAIVER OF ADVANCE PUBLIC COMMENT'' at the beginning of your comments.]

We ordinarily publish an advance notice in the **Federal Register** for substantive rules to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. 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 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 permits redistribution of funds and will allow all eligible applicants to receive QI benefits during this calendar year. 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.

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 which will have access to additional funds to enroll QIs need to know that these funds are available as soon as possible, so they can begin enrolling QIs. While we believe those States which 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.

We are publishing this interim final rule, with a 60-day period for public comment. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in that rule.

V. 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.

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 $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

This interim final rule with comment period 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 interim final rule with comment period 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. In no States will the changes in allotments result in fewer individuals receiving the QI benefit. The FY 2005 cost for this provision has been included in the FY 2006 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 a Core-Based 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 interim final rule with comment period 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 $110 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 proposed rule (and subsequent final 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 interim final rule with comment period 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 adding new paragraph (c)(5) to read as follows:

§ 433.10 Rates of FFP for program services.

* * * * *

(c) * * *

(5) (i) Under section 1933(d) of the Act, the Federal share of State expenditures for Medicare Part B premiums described in section 1905(p)(3)(A)(ii) of the Act on behalf of Qualifying Individuals described in section 1902(a)(10)(E)(iv) of the Act, is 100 percent, to the extent that the assistance does not exceed the State's allocation under paragraph (c)(5)(ii) of this section. To the extent that the assistance exceeds that allocation, the Federal share is 0 percent.

(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(c)(1) 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, 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 2005 allocation, as follows:

(A) The Secretary will compare each State's new projected total expenditures for the expenses described in paragraph (c)(5)(i) of this section to the State's initial allocation, to determine the extent of each State's projected surplus or deficit.

(B) The surplus of each State with a projected surplus, as determined in accordance with paragraph (c)(5)(iii)(A) of this section will be added together to arrive at the Total Projected Surplus.

(C) The deficit of each State with a projected deficit, as determined in accordance with paragraph (c)(5)(iii)(A) of this section will be added together to arrive at the Total Projected Deficit.

(D) Each State with a projected deficit will receive an additional allocation equal to the amount of its projected deficit. The amount to be reallocated from each State with a projected surplus will be equal to A × 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.

(iv) CMS will notify States of any changes in allotments resulting from any reallocations without opportunity for prior comment. CMS will follow applicable rulemaking procedures in publishing revisions to the allotments resulting from changes other those that specified above.

(v) The provisions of this paragraph (c)(5) will be in effect though the end of calendar year 2005.

Authority: Sections 1902(a)(10), 1933 of the Social Security Act (42 U.S.C. 1396a), and Pub. L. 105–33.

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

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 15, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–16973 Filed 8–23–05; 9:19 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D. 081705H]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Area and the Eastern U.S./Canada Haddock Special Access Program Pilot Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock Special Access Program (SAP) Pilot Program, to limited access Northeast (NE) multispecies days-at-sea (DAS) vessels for the remainder of the 2005 fishing year (i.e., through April 30, 2006), unless otherwise notified by the Administrator, Northeast Region, NMFS (Regional Administrator). This closure is based on a determination by the Regional Administrator that 90 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area has already been harvested during the 2005 fishing year. This action is being taken to prevent the 2005 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2005 fishing year in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr local time, August 26, 2005, through 2400 hr local time, April 30, 2006. One exception to this prohibition is discussed in the **SUPPLEMENTARY INFORMATION** section of this temporary rule.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Areas are found at 50 CFR 648.85. In addition,