

(2) Determine ACR using data in the general commercial marketplace; or

(3) Determine either or both rates using the best available information, which may include enrollment experience of other M+C organizations and section 1876 risk contractors.

(f) *HCFA review.* (1) The M+C organization's methodology and computation of its ACR are subject to review and approval by HCFA. When the M+C organization submits the ACR computation, it must include adequate supporting data. Except as provided in § 422.306(e)(2), HCFA authorizes the M+C organization to collect premiums and other cost sharing amounts described in § 422.306 that are equal to the amounts calculated in the ACR.

(2) If the M+C organization is dissatisfied with an HCFA determination that the M+C organization's computation is not acceptable, the M+C organization may within 2 weeks after the date of receipt of notification of this determination, file a request for a hearing with HCFA. The request must state why the M+C organization believes the determination is incorrect and must be accompanied by any supporting evidence the M+C organization wishes to submit. The hearing is conducted by a hearing officer designated by HCFA under the hearing procedures described in subpart N.

[63 FR 35093, June 26, 1998; 63 FR 52614, Oct. 1, 1998]

§ 422.312 Requirement for additional benefits.

(a) *Definitions.* As used in this section—

(1) *Excess amount* is the amount by which the APR exceeds the actuarial value of the Medicare covered services required under § 422.101(a), as determined on the basis of the ACR determined under § 422.310, as reduced for the actuarial value of the cost-sharing under Medicare Parts A and B. A separate excess amount must be determined for Part B-only enrollees.

(2) *Adjusted excess amount* is the excess amount minus any amount withheld and reserved for the organization in a stabilization fund, as provided in paragraph (c) of this section.

(b) *Requirement for additional benefits.* If there is an adjusted excess amount

for the plan it offers, the M+C organization must—

(1) Provide additional benefits with an actuarial value (less the actuarial value of any copayment or coinsurance associated with the benefit) which HCFA determines is at least equal to the adjusted excess amount; and

(2) Provide those benefits uniformly for all Medicare enrollees electing the plan.

(c) *Stabilization fund.* (1) An M+C organization may request for part of an excess amount to be withheld and reserved, for a specified number of contract periods, in the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Insurance Trust Fund in the proportions that HCFA determines to be appropriate.

(2) The reserved funds are to be used to stabilize and prevent undue fluctuations in the additional benefits that are required under this section and are provided during subsequent contract periods.

(3) Any amounts not provided as additional benefits during the period specified by the M+C organization for which the stabilization fund is established, reverts for the use of the trust funds.

(4) *Establishment of a stabilization fund.* An M+C organization's request to have monies withheld in a stabilization fund for a specific M+C plan must be made when the M+C organization notifies HCFA under § 422.306 of its proposed premiums, other cost-sharing amounts, and related information in preparation for its next contract period.

(i) *Limit per contract period.* Except as provided in paragraph (c)(4)(iii) of this section, HCFA does not withhold in a stabilization fund more than 15 percent of the excess amount for a given contract period.

(ii) *Cumulative limit.* If HCFA has established a stabilization fund for an M+C plan, it does not approve a request for withholding made by that M+C organization for a subsequent contract period that would cause the total value of the stabilization fund to exceed 25 percent of the excess amount applicable to the M+C plan for that subsequent contract period.

(iii) *Exception.* HCFA may grant an exception to the limit described in paragraph (c)(3)(i) of this section if the M+C organization can demonstrate to HCFA's satisfaction that the value of the additional benefits it provides to its Medicare enrollees electing this M+C plan fluctuates substantially in excess of 15 percent from one contract period to another.

(iv) *Interest.* The amounts withheld in a stabilization fund are accounted for by HCFA in accounts for which interest does not accrue to the M+C organization.

(5) *Withdrawal from a stabilization fund.* An M+C organization's request to make a withdrawal from the stabilization fund established for an M+C plan to be used during a contract period must be made when the M+C organization notifies HCFA under § 422.306 of its proposed premiums, cost-sharing amounts, and related information in preparation for its next contract period.

(i) *Notification requirements.* An M+C organization must—

(A) Indicate how it intends to use the withdrawn amounts;

(B) Justify the need for the withdrawal in terms of stabilizing the additional benefits it provides to Medicare enrollees;

(C) Document the M+C plan's experience with fluctuations of revenue requirements relative to the additional benefits it provides to Medicare enrollees; and

(D) Document its experience during the contract period previous to the one for which it requests withdrawal to ensure that the M+C organization will not be using the withdrawn amounts to refinance losses suffered during that previous contract period.

(ii) *Criteria for HCFA approval.* HCFA approves a request for a withdrawal from a benefit stabilization fund for use during the next contract period only if—

(A) The average of the APR for the M+C plan's next contract period of the M+C plan is less than that of the previous contract period;

(B) The M+C plan's ACR for the next contract period is significantly higher than that of the previous contract period;

(C) The M+C plan's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period; or

(D) The ACR for the next contract period results in additional benefits that are significantly less in total value than that of the previous contract period.

(iii) *Basis for denial.* HCFA does not approve a request for a withdrawal from a stabilization fund if the withdrawal would allow the M+C organization to refinance prior contract period losses or to avoid losses in the upcoming contract period.

(iv) *Form of payment.* Payment of monies withdrawn from a stabilization fund is made, in equal parts, as an additional amount to the monthly advance payment made to the M+C organization for Medicare beneficiaries electing the M+C plan during the period of the contract.

(d) *Construction.* Nothing in this section may be construed as preventing an M+C organization from providing supplemental benefits in addition to those required under this section and from imposing a premium for those supplemental benefits.

Subpart H—Provider-Sponsored Organizations

EDITORIAL NOTE: Nomenclature changes to subpart H appear at 63 FR 35098, 35099, June 26, 1998.

§ 422.350 Basis, scope, and definitions.

(a) *Basis and scope.* This subpart is based on sections 1851 and 1855 of the Act which, in part,—

(1) Authorize provider sponsored organizations, (PSOs), to contract as a M+C plan;

(2) Require that a PSO meet certain qualifying requirements; and

(3) Provide for waiver of State licensure for PSOs under specified conditions.

(b) *Definitions.* As used in this subpart (unless otherwise specified)—

Capitation payment means a fixed per enrollee per month amount paid for contracted services without regard to