

State licensure requirement of section 1855(a)(1) of the Act if—

(a) The organization requests a waiver no later than November 1, 2002; and

(b) HCFA determines there is a basis for a waiver under § 422.372.

[63 FR 25376, May 7, 1998, as amended at 63 FR 35098, June 26, 1998]

§ 422.372 Basis for waiver of State licensure.

(a) *General rule.* Subject to this section and to paragraphs (a) and (e) of § 422.374, HCFA may waive the State licensure requirement if the organization has applied (except as provided in paragraph (b)(4) of this section) for the most closely appropriate State license or authority to conduct business as an M+C plan.

(b) *Basis for waiver of State licensure.* Any of the following may constitute a basis for HCFA's waiver of State licensure.

(1) *Failure to act timely on application.* The State failed to complete action on the licensing application within 90 days of the date the State received a substantially complete application.

(2) *Denial of application based on discriminatory treatment.* The State has—

(i) Denied the license application on the basis of material requirements, procedures, or standards (other than solvency requirements) not generally applied by the State to other entities engaged in a substantially similar business; or

(ii) Required, as a condition of licensure that the organization offer any product or plan other than an M+C plan.

(3) *Denial of application based on different solvency requirements.* (i) The State has denied the application, in whole or in part, on the basis of the organization's failure to meet solvency requirements that are different from those set forth in §§ 422.380 through 422.390; or

(ii) HCFA determines that the State has imposed, as a condition of licensure, any documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, or standards set forth by HCFA to implement, mon-

itor, and enforce §§ 422.380 through 422.390.

(4) *State declines to accept licensure application.* The appropriate State licensing authority has given the organization written notice that it will not accept its licensure application.

[63 FR 35098, June 26, 1998]

§ 422.374 Waiver request and approval process.

(a) *Substantially complete waiver request.* The organization must submit a substantially complete waiver request that clearly demonstrates and documents its eligibility for a waiver under § 422.372.

(b) HCFA gives the organization written notice of granting or denial of waiver within 60 days of receipt of a substantially complete waiver request.

(c) *Subsequent waiver requests.* An organization that has had a waiver request denied, may submit subsequent waiver requests until November 1, 2002.

(d) *Effective date.* A waiver granted under § 422.370 will be effective on the effective date of the organization's M+C contract.

(e) *Consistency in application.* HCFA reserves the right to revoke waiver eligibility if it subsequently determines that the organization's M+C application is significantly different from the application submitted by the organization to the State licensing authority.

[63 FR 25377, May 7, 1998, as amended at 63 FR 35098, June 26, 1998]

§ 422.376 Conditions of the waiver.

A waiver granted under this section is subject to the following conditions:

(a) *Limitation to State.* The waiver is effective only for the particular State for which it is granted and does not apply to any other State. For each State in which the organization wishes to operate without a State license, it must submit a waiver request and receive a waiver.

(b) *Limitation to 36-month period.* The waiver is effective for 36 months or through the end of the calendar year in which the 36 month period ends unless it is revoked based on paragraph (c) of this section.

(c) *Mid-period revocation.* During the waiver period (set forth in paragraph

§ 422.378

(b) of this section), the waiver is automatically revoked upon—

- (1) Termination of the M+C contract;
- (2) The organization's compliance with the State licensure requirement of section 1855(a)(1) of the Act; or
- (3) The organization's failure to comply with § 422.378.

[63 FR 25377, May 7, 1998]

§ 422.378 Relationship to State law.

(a) *Preemption of State law.* Any provisions of State law that relate to the licensing of the organization and that prohibit the organization from providing coverage under a contract as specified in this subpart, are superseded.

(b) *Consumer protection and quality standards.* (1) A waiver of State licensure granted under this subpart is conditioned upon the organization's compliance with all State consumer protection and quality standards that—

- (i) Would apply to the organization if it were licensed under State law;
- (ii) Generally apply to other M+C organizations and plans in the State; and
- (iii) Are consistent with the standards established under this part.

(2) The standards specified in paragraph (b)(1) of this section do not include any standard preempted under section 1856(b)(3)(B) of the Act.

(c) *Incorporation into contract.* In contracting with an organization that has a waiver of State licensure, HCFA incorporates into the contract the requirements specified in paragraph (b) of this section.

(d) *Enforcement.* HCFA may enter into an agreement with a State for the State to monitor and enforce compliance with the requirements specified in paragraph (b) of this section by an organization that has obtained a waiver under this subpart.

[63 FR 25377, May 7, 1998]

§ 422.380 Solvency standards.

General rule. A PSO or the legal entity of which the PSO is a component that has been granted a waiver under § 422.370 must have a fiscally sound operation that meets the requirements of §§ 422.382 through 422.390.

[63 FR 25377, May 7, 1998]

42 CFR Ch. IV (10–1–00 Edition)

§ 422.382 Minimum net worth amount.

(a) At the time an organization applies to contract with HCFA as a PSO under this part, the organization must have a minimum net worth amount, as determined under paragraph (c) of this section, of:

(1) At least \$1,500,000, except as provided in paragraph (a)(2) of this section.

(2) No less than \$1,000,000 based on evidence from the organization's financial plan (under § 422.384) demonstrating to HCFA's satisfaction that the organization has available to it an administrative infrastructure that HCFA considers appropriate to reduce, control or eliminate start-up administrative costs.

(b) After the effective date of a PSO's M+C contract, a PSO must maintain a minimum net worth amount equal to the greater of—

- (1) One million dollars;
- (2) Two percent of annual premium revenues as reported on the most recent annual financial statement filed with HCFA for up to and including the first \$150,000,000 of annual premiums and 1 percent of annual premium revenues on premiums in excess of \$150,000,000;

(3) An amount equal to the sum of three months of uncovered health care expenditures as reported on the most recent financial statement filed with HCFA; or

(4) Using the most recent financial statement filed with HCFA, an amount equal to the sum of—

(i) Eight percent of annual health care expenditures paid on a non-capitated basis to non-affiliated providers; and

(ii) Four percent of annual health care expenditures paid on a capitated basis to non-affiliated providers plus annual health care expenditures paid on a non-capitated basis to affiliated providers.

(iii) Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement (regardless of downstream arrangements from the affiliated provider) under paragraphs (a) and (b)(4) of this section.