



THE MEDICARE COST CONTRACTORS ALLIANCE

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June 17, 2010

To whom it may concern ---

I am writing on behalf of the Medicare Cost Contractors Alliance (the Alliance) to comment on the Paperwork Reduction Act submission titled: Medicare Part C and Part D Data Validation (42 CFR §422.516(g) and §423.514(g)). The Alliance is a coalition of sixteen Medicare cost plans that currently provide services to over 320,000 Medicare beneficiaries who are enrolled in their plans.

Upon reviewing the documents and supporting statement, it appeared that Medicare cost plans are only subject to the independent data validation requirement to the extent they offer Part D benefits. However, in a May 26th e-mail exchange with Terry Lied of CMS, we determined that it is CMS' intent to apply the data validation requirements to data related to Part A and B benefits offered by Medicare cost plans as well. The Alliance believes that neither the Paperwork Reduction Act Statement nor the underlying law support such an interpretation.

The authority for Medicare cost plans is set forth under section 1876 of the Social Security Act (part of Subpart E of Title XVIII of the Social Security Act). Medicare cost plans cover Part A and Part B benefits. In addition, some Medicare cost plans choose, but are not required, to offer Part D benefits. To the extent that they offer Part D benefits, those benefits are regulated under Part D of Title XVIII of the Social Security Act and under 42 CFR Part 423. (See 42 CFR 417.440(b)(2)(ii).) Medicare cost plans are not Medicare Advantage organizations or Part C organizations.

The Supporting Statement indicates on Page 14 that "All Part C organizations and Part D sponsors are required to undergo the data validation review process." Medicare cost plans can voluntarily choose to offer Part D benefits and thus become Part D sponsors. However, as previously noted, Medicare cost plans are never Part C organizations. The supporting statement further indicates that the data validation requirements apply to Part C and Part D data. Because Medicare cost plans are not Part C organizations, they do not provide Part C benefits or report Part C data.

The Supporting Statement for the Paperwork Reduction Act Submission cites §422.516(g) and §423.514(g) as authority for the data validation requirement. Section 423.514(g) only regulates Part D benefits offered by Medicare cost plans. Section 422.516(g) does not apply to Medicare cost plans. Thus there is no authority to apply the data validation requirements to the non-Part D benefits offered by Medicare cost plans.

Further, under the "Need and Legal Basis" section, CMS supports its authority to impose the data validation requirement as follows:

Under sections 1857(e) and 1860D-12 of the Social Security Act ("the Act"), CMS has the authority to establish information collection requirements with respect to MAOs and Part D sponsors. Under section 1857(e)(1) of the Act, MAOs are required to provide the Secretary with such information as the Secretary may find necessary and appropriate. Section 1857(e)(1) of the Act applies to PDPs as indicated in section 1860D-12. Pursuant to our statutory authority, we codified these information collection requirements in regulation at §422.516(g) and §423.514(g), respectively.

CMS includes no authority applicable to the non-Part D benefits offered by Medicare cost plans and does not mention Medicare cost plans.

On April 15, 2010 CMS issued a final rule in which it added §422.516(g) and §423.514(g). Under that rule, CMS also revised Part 417 of the regulations, which applies to Medicare cost plans. If CMS had wished to require Medicare cost plans to undergo data validation for their Part A/B benefits, CMS could easily have included a regulatory requirement, but it did not.

If CMS decides to amend the Part 417 regulations and subsequently apply these requirements to cost plans, we recommend that CMS revise all of the material in the Paperwork reduction Act request. Independent data validation contractors will need to understand which measures apply to Medicare cost plans. Moreover, CMS should cite the regulatory or statutory authority that applies to Medicare cost plans. It should also not refer to Medicare cost plans as Medicare Advantage Organizations and should not refer to measures applicable to Medicare Cost plans as "Part C measures."

If you have questions regarding this letter or Medicare cost plans, please call me at (202) 457-6632.

Sincerely,



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