

(b) *Effect of pardon.* If the President of the United States pardons the convicted individual, that individual regains (or may again seek) entitlement effective with the month following the month in which the pardon is granted.

[48 FR 12536, Mar. 25, 1983. Redesignated at 51 FR 41338, Nov. 14, 1986. Further redesignated at 57 FR 58717, Dec. 11, 1992]

## PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

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AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

SOURCE: 53 FR 47204, Nov. 22, 1988, unless otherwise noted.

## Subpart A—General Provisions

### § 407.1 Basis and scope.

(a) *Statutory basis.* The supplementary medical insurance (SMI) program is authorized by Part B of title XVIII of the Social Security Act.

(1) Section 1831 of the Act establishes the program.

(2) Sections 1836 and 1837 set forth the eligibility and enrollment requirements.

(3) Section 1838 specifies the entitlement periods, which vary depending on the time and method of enrollment and on the basis for termination.

(4) Section 1843 sets forth the requirements for State buy-in agreements under which States may enroll, and pay the SMI premiums for, eligible individuals who are also eligible for cash assistance or Medicaid.

(5) Section 104(b) of the Social Security Amendments of 1965 (Pub. L. 89-87) specifies the limitations that apply to certain aliens and persons convicted of subversive activities.

(b) *Scope.* This part sets forth the eligibility, enrollment, and entitlement requirements and procedures for supplementary medical insurance. (The rules about premiums are in part 408 of this chapter.)

### § 407.2 General description of program.

Part B of Title XVIII of the Act provides for voluntary “supplementary medical insurance” available to most individuals age 65 or over and to disabled individuals who are under age 65 and entitled to hospital insurance. The SMI program is financed by premiums paid by (or for) each individual enrolled in the program, plus contributions from Federal funds. It covers certain physicians’ services, outpatient services, home health services, services furnished by rural health clinics

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(RHCs), Federally qualified health centers (FQHCs), ambulatory surgical centers (ASCs), and comprehensive outpatient rehabilitation facilities (CORFs), and other medical and other health services.

[57 FR 24980, June 12, 1992]

### § 407.4 Basic requirements for entitlement.

(a) An individual must meet the following requirements to be entitled to SMI:

(1) *Eligibility.* The individual must meet the eligibility requirements specified in § 407.10(a).

(2) *Enrollment.* The individual must enroll for SMI, or must be enrolled by a State under a buy-in agreement as specified in § 407.40.

(b) SMI pays only for covered expenses incurred during an individual's period of entitlement.

### Subpart B—Individual Enrollment and Entitlement for SMI

#### § 407.10 Eligibility to enroll.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, an individual is eligible to enroll for SMI if he or she—

(1) Is entitled to hospital insurance under any of the rules set forth in §§ 406.10 through 406.15 of this chapter; or

(2) Meets the following requirements:

(i) Has attained age 65. (An individual is considered to have attained age 65 on the day before the 65th anniversary of his or her birth.)

(ii) Is a resident of the United States.

(iii) Is a citizen of the United States, or an alien lawfully admitted for permanent residence who has resided continuously in the United States during the 5 years preceding the month in which he or she applies for enrollment.

(b) *Exception.* An individual is not eligible to enroll for SMI if he or she has been convicted of—

(1) Spying, sabotage, treason, or subversive activities under chapter 37, 105, or 115 of title 18 of the United States Code; or

(2) Conspiracy to establish dictatorship under section 4 of the Internal Security Act of 1950.

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### § 407.11 Forms used to apply for enrollment under Medicare Part B.

The following forms, available free of charge by mail from CMS, or at any Social Security branch or district office, are used to apply for enrollment under the supplementary medical insurance program.

CMS-4040—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is used for enrollment by individuals who are not eligible for monthly benefits or for hospital insurance.)

CMS-40-B—Application for Medical Insurance. (For general use by the SSA District Office in requesting medical insurance protection during the general enrollment period or during the initial enrollment period if the enrollee is not subject to automatic enrollment is SMI.)

CMS-40-D—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is mailed to individuals who do not have current supplementary medical insurance because of prior refusals, voluntary withdrawal, or premium default from prior coverage. It is used during the annual general enrollment period.)

CMS-40-F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

CMS-18-F-5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

As an alternative, the individual may request enrollment by answering the Part B enrollment questions on an application for monthly Social Security benefits, or by signing a simple statement of request, if he or she is eligible to enroll at that time.

### § 407.12 General enrollment provisions.

(a) *Opportunity to enroll.* (1) An individual who is eligible to enroll for SMI may do so during an initial enrollment period or a general enrollment period as specified in §§ 407.14, and 407.15. An individual who meets the conditions specified in § 407.20 may enroll during a special enrollment period, as provided in that section.

(2) An individual who fails to enroll during his or her initial enrollment period or whose enrollment has been terminated may enroll or reenroll during a general enrollment period, or, if he or she meets the specified conditions, during a special enrollment period.

(b) *Enrollment periods ending on a non-workday.* (1) If an enrollment period ends on a Federal nonworkday, that period is automatically extended to the next succeeding workday.

(2) A Federal nonworkday is any Saturday, Sunday, or Federal legal holiday or a day that is declared by statute or executive order to be a day on which Federal employees are not required to work.

**§ 407.14 Initial enrollment period.**

(a) *Duration.* (1) The initial enrollment period is the 7-month period that begins 3 months before the month an individual first meets the eligibility requirements of § 407.10 and ends 3 months after that first month of eligibility.

(2) In determining the initial enrollment period of an individual who is age 65 or over and eligible for enrollment solely because of entitlement to hospital insurance, the individual is considered as first meeting the eligibility requirements for SMI on the first day he or she becomes entitled to hospital insurance or would have been entitled if he or she filed an application for that program.

(b) *Deemed initial enrollment period.* (1) SSA or CMS will establish a deemed initial enrollment period for an individual who fails to enroll during the initial enrollment period because of a belief, based on erroneous documentary evidence, that he or she had not yet attained age 65. The period will be established as though the individual had attained age 65 on the date indicated by the incorrect information.

(2) A deemed initial enrollment period established under paragraph (b)(1) of this section is used to determine the individual's premium and right to enroll in a general enrollment period if that is advantageous to the individual.

**§ 407.15 General enrollment period.**

(a) Except as specified in paragraph (b) of this section, the general enrollment

period is January through March of each calendar year.

(b) An unlimited general enrollment period existed between April 1 and September 30, 1981. Any eligible individual whose initial enrollment period had ended, or whose previous period of entitlement had terminated, could have enrolled or reenrolled during any month of that 6-month period.

**§ 407.17 Automatic enrollment.**

(a) *Who is automatically enrolled.* An individual is automatically enrolled for SMI if he or she:

(1) Resides in the United States, except in Puerto Rico;

(2) Becomes entitled to hospital insurance under any of the provisions set forth in §§ 406.10 through 406.15 of this chapter; and

(3) Does not decline SMI enrollment.

(b) *Opportunity to decline automatic enrollment.* (1) SSA will notify an individual that he or she is automatically enrolled under paragraph (a) of this section and grant the individual a specified period (at least 2 months after the month the notice is mailed) to decline enrollment.

(2) The individual may decline enrollment by submitting to SSA or CMS a signed statement that he or she does not wish SMI.

(3) The statement must be submitted before entitlement begins, or if later, within the time limits set in the notice of enrollment.

**§ 407.18 Determining month of automatic enrollment.**

(a) An individual who is automatically enrolled in SMI under § 407.17 will have the month of enrollment determined in accordance with paragraphs (b) through (f) of this section. The month of enrollment determines the month of entitlement.

(b) An individual is automatically enrolled in the third month of the initial enrollment period if he or she—

(1) Is entitled to social security benefits under section 202 of the Act on the first day of the initial enrollment period;

(2) Is entitled to hospital insurance based on end-stage renal disease; on entitlement to disability benefits as a social security or railroad retirement

beneficiary; or on deemed entitlement to disability benefits on the basis of Medicare-qualified government employment; or

(3) Establishes entitlement to hospital insurance by filing an application and meeting all other requirements (as set forth in subpart B of part 406 of this chapter) during the first 3 months of the initial enrollment period.

(c) If an individual establishes entitlement to hospital insurance on the basis of an application filed in the last 4 months of the SMI initial enrollment period, he or she is automatically enrolled for SMI in the month in which the application is filed.

(d) If an individual establishes entitlement to hospital insurance on the basis of an application filed after the SMI initial enrollment period but not during a general enrollment period in effect before April 1, 1981, or after September 30, 1981, he or she is automatically enrolled for SMI on the first day of the next general enrollment period.

(e) If the individual establishes entitlement to hospital insurance on the basis of an application filed during a SMI general enrollment period in effect before April 1, 1981 or after September 30, 1981, he or she is automatically enrolled on the first day of that period.

(f) If an individual established entitlement to hospital insurance on the basis of an application filed during the general enrollment period of April 1, 1981, through September 30, 1981, he or she was automatically enrolled for SMI on the first day of the month in which the application was filed.

**§ 407.20 Special enrollment period related to coverage under group health plans.**

(a) *Terminology*—(1) *Group health plan (GHP) and large group health plan (LGHP)*. These terms have the meanings given them in §411.101 of this chapter except that the “former employee” language of those definitions does not apply with respect to SEPs for the reasons specified in §406.24(a)(3) of this chapter.

(2) *Special enrollment period (SEP)*. This term has the meaning set forth in §406.24(a)(4) of this chapter. In order to use a SEP, an individual must meet the conditions of paragraph (b) and of para-

graph (c) or (d) of this section, as appropriate.

(b) *General rule*. All individuals must meet the following conditions:

(1) They are eligible to enroll for SMI on the basis of age or disability, but not on the basis of end-stage renal disease.

(2) When first eligible for SMI coverage (4th month of their initial enrollment period), they were covered under a GHP or LGHP on the basis of current employment status or, if not so covered, they enrolled in SMI during their initial enrollment period; and

(3) For all months thereafter, they maintained coverage under either SMI or a GHP or LGHP. (Generally, if an individual fails to enroll in SMI during any available SEP, he or she is not entitled to any additional SEPs. However, if an individual fails to enroll during a SEP because coverage under the same or a different GHP or LGHP was restored before the end of that particular SEP, that failure to enroll does not preclude additional SEPs.)

(c) *Special rule: Individual age 65 or over*. For an individual who is or was covered under a GHP, coverage must be by reason of the current employment status of the individual or the individual’s spouse.

(d) *Special rules: Disabled individual*.<sup>4</sup> Individuals entitled on the basis of disability (but not on the basis of end-stage renal disease) must meet conditions that vary depending on whether they were covered under a GHP or an LGHP.

(1) For a disabled individual who is or was covered under a GHP, coverage must be on the basis of the current employment status of the individual or the individual’s spouse.

(2) For a disabled individual who is or was covered under an LGHP, coverage must be as follows:

(i) Before August 10, 1993, as an “active individual”, that is, as an employee, employer, self-employed individual (such as the employer), individual associated with the employer in

<sup>4</sup>Under the current statute, the SEP provision applicable to disabled individuals covered under an LGHP expires on September 1998. Unless Congress changes that date, the last SEP available under those provisions will begin with June 1998.

a business relationship, or as a member of the family of any of those persons.

(ii) On or after August 10, 1993, by reason of current employment status of the individual or a member of the individual's family.

(e) *Effective date of coverage.* The rule set forth in § 406.24(d) for Medicare Part A applies equally to Medicare Part B.

[61 FR 40346, Aug. 2, 1996]

**§ 407.21 Special enrollment period for volunteers outside the United States.**

(a) *General rule.* A SEP, as defined in § 406.24(a)(4) of this subchapter, is provided for an individual who does not elect to enroll or to be deemed enrolled in SMI when first eligible, or who terminates SMI enrollment, if the individual meets the following requirements:

(1) The individual is serving as a volunteer outside of the United States in a program that covers at least a 12-month period.

(2) The individual is in a program that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(3) The individual demonstrates that he or she has health insurance that covers medical services that the individual receives outside of the United States while serving in the program.

(b) *Duration of SEP.* The SEP is the 6-month period beginning on the first day of the month that includes the date that the individual no longer satisfies the provisions of paragraph (a) of this section.

(c) *Effective date of coverage.* Coverage under a SEP authorized by this section, begins on the first day of the month following the month in which the individual enrolls.

[73 FR 36468, June 27, 2008]

**§ 407.22 Request for individual enrollment.**

(a) A request for enrollment is required of an individual who meets the eligibility requirements of § 407.10 and desires SMI, if the individual—

(1) Is not entitled to hospital insurance;

(2) Has previously declined enrollment in SMI;

(3) Has had a previous period of SMI entitlement which terminated;

(4) Resides in Puerto Rico or outside the United States; or

(5) Is enrolling or reenrolling during a special enrollment period under § 407.20.

(b) A request for enrollment under paragraph (a) of this section must:

(1) Be signed by the individual or someone acting in his or her behalf; and

(2) Be filed with SSA or CMS during the initial enrollment period, a general enrollment period, or a special enrollment period as provided in § 407.20.

**§ 407.25 Beginning of entitlement: Individual enrollment.**

The following apply whether an individual is self-enrolled or automatically enrolled in SMI:

(a) *Enrollment during initial enrollment period.* (1) If an individual enrolls during the first three months of the initial enrollment period, entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the fourth month of the initial enrollment period, entitlement begins with the following month.

(3) If an individual enrolls during the fifth month of the initial enrollment period, entitlement begins with the second month after the month of enrollment.

(4) If an individual enrolls in either of the last two months of the initial enrollment period, entitlement begins with the third month after the month of enrollment.

(5) *Example.* An individual first meets the eligibility requirements for enrollment in April. The initial enrollment period is January through July. The month in which the individual enrolls determines the month that begins the period of entitlement, as follows:

Enrolls in initial enrollment period	Entitlement begins on—
January .....	April 1 (month eligibility requirements first met).
February .....	April 1.
March .....	April 1.
April .....	May 1 (month following month of enrollment).
May .....	July 1 (second month after month of enrollment).

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Enrolls in initial enrollment period	Entitlement begins on—
June .....	September 1 (third month after month of enrollment).
July .....	October 1 (third month after month of enrollment).

(b) *Enrollment on reenrollment during general enrollment period.* (1) if an individual enrolls or reenrolls during a general enrollment period before April 1, 1981 or after September 30, 1981, entitlement begins on July 1 of that calendar year.

(2) If an individual enrolled or reenrolled during the general enrollment period between April 1, 1981 and September 30, 1981, entitlement began with the third month after the month in which the enrollment request was filed.

(c) *Enrollment or reenrollment during a SEP.* The rules set forth in §406.24(d) of this chapter apply.

[53 FR 47204, Nov. 22, 1988, as amended at 61 FR 40347, Aug. 2, 1996]

**§ 407.27 Termination of entitlement: Individual enrollment.**

An individual's entitlement will terminate for any of the following reasons:

(a) *Death.* Entitlement to SMI ends on the last day of the month in which the individual dies.

(b) *Termination of hospital insurance benefits.* If an individual's entitlement to hospital insurance ends before the month in which he or she attains age 65, entitlement to SMI will end on the same day unless it has been previously terminated in accordance with paragraph (c) or (d) of this section.

(c) *Request by individual.* An individual may at any time give CMS or SSA written notice that he or she no longer wishes to participate in SMI, and request disenrollment.

(1) Before July 1987, entitlement ended at the end of the calendar quarter after the quarter in which the individual filed the disenrollment request.

(2) For disenrollment requests filed in or after July 1987, entitlement ends at the end of the month after the month in which the individual files the disenrollment request.

(d) *Nonpayment of premiums.* If an individual fails to pay the premiums, entitlement will end as provided in the

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rules for SMI premiums, set forth in part 408 of this chapter.

**§ 407.30 Limitations on enrollment.**

(a) *Initial enrollment periods—(1) Individual under age 65.* An individual who has not attained age 65 may have one or more periods of entitlement to hospital insurance, based on disability. Since each period of disability entitlement entitles the individual to hospital insurance and since entitlement to hospital insurance makes the individual eligible for SMI enrollment, an individual may have an SMI initial enrollment period for each continuous period of entitlement to hospital insurance.

(2) *Individuals who have attained age 65.* An individual who has attained age 65 may not have more than one initial enrollment period on the basis of age. However, if the individual develops ESRD after age 65, he or she may have another initial enrollment period based on meeting the requirements of §406.13 of this chapter.

(b) *Number of enrollments.* There is no limitation on the number of enrollments.

(c) *Coverage under buy-in agreements.* For purposes of paragraph (a) of this section, the continued enrollment of an individual following the end of coverage under a State buy-in agreement is considered an initial enrollment.

**§ 407.32 Prejudice to enrollment rights because of Federal Government misrepresentation, inaction, or error.**

If an individual's enrollment or non-enrollment in SMI is unintentional, inadvertent, or erroneous because of the error, misrepresentation, or inaction of a Federal employee or any person authorized by the Federal Government to act in its behalf, the Social Security Administration or CMS may take whatever action it determines is necessary to provide appropriate relief. The action may include:

(a) Designation of a special initial or general enrollment period;

(b) Designation of an entitlement period based on that enrollment period;

(c) Adjustment of premiums;

(d) Any combination of actions under paragraphs (a) through (c) of this section; or

(e) Any other remedial action that may be necessary to correct or eliminate the effects of the error, misrepresentation, or inaction.

### Subpart C—State Buy-In Agreements

#### § 407.40 Enrollment under a State buy-in agreement.

(a) *Statutory basis.* (1) Section 1843 of the Act, as amended through 1969, permitted a State to enter into an agreement with the Secretary to enroll in the SMI program certain individuals who are eligible for SMI and who are members of the buy-in group specified in the agreement. A buy-in group could include certain individuals receiving Federally-aided State cash assistance (with the option of excluding individuals also entitled to social security benefits or railroad retirement benefits) or could include all individuals eligible for Medicaid. Before 1981, December 31, 1969 was the last day on which a State could request a buy-in agreement or a modification to include a coverage group broader than the one originally selected.

(2) Section 945(e) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) further amended section 1843 to provide that, during calendar year 1981, a State could request a buy-in agreement if it did not already have one, or request a broader coverage group for an existing agreement.

(3) Several laws enacted during 1980–1987 had the effect of requiring that the buy-in groups available under section 1843 of the Act be expanded to include certain individuals who lose eligibility for cash assistance payments but are treated as if they were cash assistance recipients for Medicaid eligibility purposes.

(4) Section 301(e)(1) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) amends section 1843 of the Act to restore the 1981 provisions on a permanent basis, effective “after 1988.”

(5) The same section 301, as amended by section 608(d)(14)(H) of the Family Support Act of 1988 (Pub. L. 100-485), further amended section 1843 of the Act, beginning January 1, 1989, to establish a new buy-in category consisting of Qualified Medicare Bene-

ficiaries and to provide that a State may request a buy-in agreement if it does not already have one, or request a broader buy-in group for the existing agreement.

(b) *Definitions.* As used in this section, unless the context indicates otherwise—

*Cash assistance* means any of the following kinds of monthly cash benefits, authorized by specified titles of the Act and, for convenience, represented by initials, as follows:

*AABD* stands for aid to the aged, blind or disabled under the first title XVI of the Act in effect until December 31, 1973.

*AB* stands for aid to the blind under title X of the Act.

*AFDC* stands for aid to families with dependent children under Part A of title IV of the Act.

*APTD* stands for aid to the permanently and totally disabled under title XIV of the Act.

*OAA* stands for old-age assistance under title I of the Act.

*SSI* stands for supplemental security income for the aged, blind, and disabled under the second title XVI of the Act, effective January 1, 1974.

*SSP* stands for State supplementary payments, whether mandatory or optional, to an aged, blind, or disabled individual under the second title XVI or the Act.

*Qualified Medicare Beneficiary* or *QMB* means an individual who meets the definition in § 400.200 of this chapter and, therefore, is eligible to have the State Medicaid agency pay Medicare cost sharing amounts on his or her behalf.

*Railroad retirement beneficiary* means an individual entitled to receive an annuity under the Railroad Retirement Act of 1974.

*State* means one of the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, or the Northern Mariana Islands, except when reference is made to “the 50 States”.

*State buy-in agreement* or *buy-in agreement* means an agreement authorized by section 1843 of the Act, under which a State secures SMI or premium HI coverage for individuals who are members of the buy-in group specified in

the agreement, by enrolling them and paying the premiums on their behalf.

(c) *Basic rules.* (1) A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10.

(2) Any State that does not have a buy-in agreement in effect may request buy-in for any one of the groups specified in §§ 407.42 and 407.43.

(3) Any State that does have an agreement may request a modification to cover a broader buy-in group or cancel its current agreement and request a new agreement to cover a narrower group.

[56 FR 38080, Aug. 12, 1991; 56 FR 50058, Oct. 3, 1991]

**§ 407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.**

(a) *Categories included in the buy-in groups.* The buy-in groups that are available to the 50 States, the District of Columbia, and the Northern Mariana Islands are specified in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals who—

(i) Receive SSI or SSP or both; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(2) *Category B:* Individuals who—

(i) Under the Act or any other provision of Federal law are treated, for Medicaid eligibility purposes, as though they were receiving SSI or SSP; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(3) *Category C:* Individuals who are receiving AFDC.

(4) *Category D:* Individuals who, under the Act or any other provision of Federal law, are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(5) *Category E:* Individuals who, in accordance with § 435.114 or § 435.134 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Public Law 92-336.

(6) *Category F:* Individuals who are Qualified Medicare Beneficiaries.<sup>1</sup>

(7) *Category G:* All other individuals who are eligible for Medicaid.

(b) *Buy-in groups available.* Any of the 50 States, the District of Columbia, and the Northern Mariana Islands may buy-in for one of the following groups:

(1) *Group 1:* Categories A through G.

(2) *Group 2:* Categories A through F.

(3) *Group 3:* Categories A through E.

(4) *Group 4:* Categories A, B, and F, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive such cash assistance for that month if they had applied or had not been institutionalized.

(5) *Group 5:* Categories A and B, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive such cash assistance for that month if they had applied or had not been institutionalized.

(6) *Group 6:* Categories A, B, and F, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This option is available only to those States that had an AABD program as of December 31, 1973.

(7) *Group 7:* Categories A and B, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This option is available only to those

<sup>1</sup>Rules for buy-in for premium hospital insurance for QMBs are set forth in § 406.26 of this chapter.

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States that had an AABD program as of December 31, 1973.

[56 FR 38081, Aug. 12, 1991]

### § 407.43 Buy-in groups available to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(a) *Categories included in buy-in groups.* The buy-in groups that are available to Puerto Rico, Guam, the Virgin Islands, and American Samoa, which are not covered by the SSI program, are described in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals receiving OAA, AB, APTD, or AFDC.

(2) *Category B:* Individuals who, under the Act or any other provision of Federal law, are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(3) *Category C:* Individuals who, in accordance with § 436.112 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Public Law 92-336.

(4) *Category D:* Individuals who are Qualified Medicare Beneficiaries.<sup>1</sup>

(5) *Category E:* All other individuals who are eligible for Medicaid.

(b) *Buy-in groups available.* Puerto Rico, Guam, the Virgin Islands, and American Samoa may choose any of the following coverage groups:

(1) *Group 1:* Categories A through E.

(2) *Group 2:* Categories A through D.

(3) *Group 3:* Categories A through C.

(4) *Group 4:* Individuals in category D, and individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(5) *Group 5:* Individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(6) *Group 6:* Individuals in category D, individuals in category A who are receiving OAA, and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that

month if they had applied or had not been institutionalized.

(7) *Group 7:* Individuals in category A who are receiving OAA, and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or had not been institutionalized.

(8) *Group 8:* Individuals in category D and individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

(9) *Group 9:* Individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

[56 FR 38082, Aug. 12, 1991]

### § 407.45 Termination of State buy-in agreements.

(a) *Termination by the State—(1) Termination after advance notice.* A State may terminate its buy-in agreement after giving CMS 3 months, advance notice.

(2) *Termination without advance notice.* A State may terminate its buy-in agreement without advance notice if—

(i) The State gives CMS written certification to the effect that it is no longer legally able to comply with one or more of the provisions of the agreement; and

(ii) Submits a supporting opinion from the appropriate State legal officer, if CMS requests such an opinion.

(b) *Termination by CMS.* If CMS, after giving the State notice and opportunity for hearing, finds that the State has failed to comply substantially with one or more of the provisions of the agreement, other than the requirement for timely payment of premiums, CMS will give the State written notice to the effect that the agreement will terminate on the date indicated in the notice unless, before that date, CMS finds that there is no longer that failure to comply. (Rules for collection of overdue premiums, including assessment of interest and offset against FFP due the State, are those set forth in the Notice published on September 30, 1985 at 50 FR 39784.)

<sup>1</sup>Rules for buy-in for premium hospital insurance for QMBs are set forth in § 406.26 of this chapter.

**§ 407.47 Beginning of coverage under a State buy-in agreement.**

(a) *General rule.* The beginning of an individual's coverage period depends on two factors:

(1) The individual's meeting the SMI eligibility requirements and the requirements for being a member of the buy-in group; and

(2) The effective date of the buy-in agreement or agreement modification that covers the group to which the individual belongs, and which may not be earlier than the third month after the month in which the agreement or modification is executed.

(b) *Application of general rule: Medicaid eligibles who are, or are treated as, cash assistance recipients.* For Medicaid eligibles who are, or are treated as, cash assistance recipients (that is, are members of categories A through E of § 407.42(a) or categories A through C of § 407.43(a)), coverage begins with the later of the following:

(1) The first month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is a member of one of those categories.

(2) The month in which the buy-in agreement is effective.

(c) *Application of general rule: Qualified Medicare Beneficiaries.* For individuals who are QMBs (that is, are members of category F of § 407.42 or category D of § 407.43(a)), coverage begins with the later of the following:

(1) The first month in which the individual meets the SMI eligibility requirements specified in § 407.10, and has QMB status.

(2) The month in which the buy-in agreement or agreement modification covering QMBs is effective.

(d) *Application of general rule: Other individuals eligible for Medicaid.* For individuals who are members of category G of § 407.42(a) or category E of § 407.43(a), coverage begins with the later of the following:

(1) The second month after the month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is determined to be eligible for Medicaid.

(2) The month in which the buy-in agreement or agreement modification is effective.

(e) *Coverage based on erroneous report.* If the State erroneously reports to SSA that an individual is a member of its coverage group, the rules of paragraphs (a) through (d) of this section apply, and coverage begins as though the individual were in fact a member of the group. Coverage will end only as provided in § 407.48.

[56 FR 38082, Aug. 12, 1991]

**§ 407.48 Termination of coverage under a State buy-in agreement.**

An individual's coverage under a buy-in agreement terminates with the earliest of the following events:

(a) *Death.* Coverage ends on the last day of the month in which the individual dies.

(b) *Loss of entitlement to hospital insurance benefits before age 65.* If an individual loses entitlement to hospital insurance benefits before attaining age 65, coverage ends on the last day of the last month for which he or she is entitled to hospital insurance.

(c) *Loss of eligibility for the buy-in group.* If an individual loses eligibility for inclusion in the buy-in group, buy-in coverage ends as follows:

(1) On the last day of the last month for which he or she is eligible for inclusion in the group, if CMS determines ineligibility or receives a State ineligibility notice by the 25th day of the second month after the month in which the individual becomes ineligible for inclusion in the group.

(2) On the last day of the second month before the month in which CMS receives a State ineligibility notice later than the time specified in paragraph (c)(1) of this section. A notice received by CMS after the 25th day of the month is considered to have been received in the following month.

(d) *Termination or modification of buy-in agreement.* If the State's buy-in agreement is terminated, or modified to substitute a narrower buy-in group, coverage ends on the last day of the last month for which the agreement

was in effect, or covered the broader buy-in group.

[53 FR 47204, Nov. 22, 1988, as amended at 56 FR 38082, Aug. 12, 1991]

**§ 407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.**

(a) *Deemed enrollment.* When coverage under a buy-in agreement ends because the agreement terminates, or is modified to substitute a narrower buy-in group, or because the individual is no longer eligible for inclusion in the buy-in group, the individual—

(1) Is considered to have enrolled during his or her initial enrollment period; and

(2) Will be entitled to SMI on this basis and liable for SMI premiums beginning with the first month for which he or she is no longer covered under the buy-in agreement.

(b) *Voluntary termination.* (1) An individual may voluntarily terminate entitlement acquired under paragraph (a) of this section by filing, with SSA or CMS, a request for disenrollment.

(2) Voluntary disenrollment is effective as follows:

(i) If the individual files a request within 30 days after the date of CMS's notice that buy-in coverage has ended, the individual's entitlement ends on the last day of the last month for which the State paid the premium.

(ii) If the individual files the request more than 30 days but not more than 6 months after buy-in coverage ends, entitlement ends on the last day of the month in which the request is filed.

(iii) If the individual files the request later than the 6th month after buy-in coverage ends, entitlement ends at the end of the month after the month in which request is filed.<sup>1</sup>

[53 FR 47204, Nov. 22, 1988, as amended at 56 FR 38082, Aug. 12, 1991]

<sup>1</sup>For requests filed before July 1987, entitlement ended on the last day of the calendar quarter after the quarter in which the disenrollment request was filed.

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