

**DATES:** *Deadline for Nominations by Regular Mail:* Friday, January 18, 2008 at 5 p.m., e.s.t.

*Deadline for Nominations by Electronic Mail:* Friday, January 25, 2008 at 5 p.m., e.s.t.

**ADDRESSES:** *Regular Mail:* Lynne G. Johnson, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S1-05-06, Baltimore, MD 21244-1850.

*Electronic Mail:*  
Lynne.Johnson@cms.hhs.gov.

**FOR FURTHER INFORMATION CONTACT:** Lynne G. Johnson, Health Insurance Specialist, Division of Forum and Conference Development, (410) 786-0090. Please refer to the CMS Advisory Committees Information Line (1-877-449-5659 toll free)/(410-786-9379 local) or the Internet ([http://www.cms.hhs.gov/FACA/04\\_APME.asp](http://www.cms.hhs.gov/FACA/04_APME.asp)) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at [Lynne.Johnson@cms.hhs.gov](mailto:Lynne.Johnson@cms.hhs.gov). Press inquiries are handled through the CMS Press Office at (202) 690-6145.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed \* \* \* by law." Section 1804 of the Social Security Act (the Act) requires the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities \* \* \* to broadly disseminate information to Medicare beneficiaries \* \* \* on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options." To help inform these activities, section 1114(f) of the Act and section 222 of the Public Health Service Act (42 U.S.C. 217a) authorize the creation of an advisory panel. The Secretary signed the charter establishing this Panel on January 21, 1999 and approved the renewal of the charter on November 14, 2006. The establishment of the charter and the renewal of charter were announced in the February 17, 1999 *Federal Register* (64 FR 7899), and the March 23, 2007 *Federal Register* (72 FR 13796), respectively. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (the Administrator) on

opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. The Secretary delegates authority to the Administrator.

The goals of the Panel are as follows:

- To provide recommendations on the development and implementation of a national Medicare education program that describes the options for selecting a health plan and prescription drug benefits under Medicare.

- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.

- To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.

- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The Panel shall consist of a maximum of 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held approximately 4 times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in the fields of senior citizen advocacy; outreach to minority communities; health communications; disease-related health advocacy; disability policy and access; health economics research; health insurers and plans; providers and clinicians; labor and retirement, and web education. Members of the general public are invited to apply.

This notice is an invitation to interested organizations or individuals to submit their nominations for membership on the Panel. The Secretary or his designee will appoint new members to the Panel from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure an appropriate balance of membership.

**II. Nomination Requirements**

Each nomination must state that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a resume or description of the nominee's experience and a brief biographical summary. In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide

detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts. Self-nominations will also be accepted. All nominations must be received at the appropriate address listed in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

**Authority:** Sections 9(a) and 10 of Public L. 92-463 (5 U.S.C. App. 2, sections 9(a) and 10); 41 CFR Part 102-3; Sections 1114(f), 1804, and 1851(d) of the Social Security Act (42 U.S.C. 1314(f), 1395b-2, and 1394w-21(d)); and Section 222 of the Public Health Service Act (42 U.S.C. 217a).

Dated: December 3, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E7-24273 Filed 12-27-07; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[CMS-2269-N]

RIN 0938-AO75

**Medicaid Program; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal fiscal year (FFY) 2006 and the preliminary Federal share DSH allotments for FFY 2008. This notice also announces the final FFY 2006 and the preliminary FFY 2008 limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities. In addition, this notice includes background information describing the methodology for determining the amounts of States' FFY DSH allotments. **DATES:** *Effective Date:* December 28, 2007.

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786-2019.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Disproportionate Share Hospital Allotments for Federal Fiscal Year 2003*

Under section 1923(f)(3) of the Social Security Act (the Act), States' Federal

fiscal year (FFY) 2003 disproportionate share hospital (DSH) allotments were calculated by increasing the amounts of the FFY 2002 allotments for each State (as specified in the chart, entitled "DSH Allotment (in millions of dollars)," contained in section 1923(f)(2) of the Act) by the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the prior fiscal year. The allotment, determined in this way, is subject to the limitation that an increase to a State's DSH allotment for a fiscal year cannot result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous fiscal year or 12 percent of the State's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Most States' actual FY 2002 allotments were determined in accordance with the provisions of section 1923(f)(4) of the Act. However, as indicated previously, the calculation of States' FFY 2003 allotments was not based on the actual FFY 2002 DSH allotments; rather, section 1923(f)(3) of the Act requires that the States' FY 2003 allotments be determined using the amount of the States' FY 2002 allotments specified in the chart in section 1923(f)(2) of the Act. The exception to this is the calculation of the FFY 2003 DSH allotments for certain "Low-DSH States" (defined in section 1923(f)(5) of the Act). Under the Low-DSH State provision, there is a special calculation methodology for the Low-DSH States only. Under this methodology, the FFY 2003 allotments were determined by using (that is, increasing) States' actual FFY 2002 DSH allotments (not their FFY 2002 allotments specified in the chart in section 1923(f)(2) of the Act) by the percentage change in the CPI-U for the previous fiscal year.

#### B. DSH Allotments for FFY 2004

Section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173, enacted on December 8, 2003) amended section 1923(f)(3) of the Act to provide for a "Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis." Under this provision, States' FFY 2004 DSH allotments were determined by increasing their FFY 2003 allotments by 16 percent, and the fiscal year DSH allotment amounts so determined were not subject to the 12 percent limit.

#### C. DSH Allotments for Non-Low DSH States for FFY 2005, and Fiscal Years Thereafter

Under the methodology contained in section 1923(f)(3)(C) of the Act, as amended by section 1001(a)(2) of the MMA, the non-Low-DSH States' DSH allotments for FFY 2005 and subsequent fiscal years continue at the same level as the States' DSH allotments for FFY 2004 until a "fiscal year specified" occurs. The "fiscal year specified" is the first fiscal year for which the Secretary estimates that a State's DSH allotment equals (or no longer exceeds) the DSH allotment as would have been determined under the statute in effect before the enactment of the MMA. We determine whether the fiscal year specified has occurred under a special parallel process. Specifically, under this parallel process, a "parallel" DSH allotment is determined for FFYs after 2003 by increasing the State's DSH allotment for the previous fiscal year by the percentage change in the CPI-U for the prior fiscal year, subject to the 12 percent limit. This is the methodology as would otherwise have been applied under section 1923(f)(3)(A) of the Act notwithstanding the application of the provisions of MMA. The "fiscal year specified," is the fiscal year in which the parallel DSH allotment calculated under this special parallel process finally equals or exceeds the FY 2004 DSH allotment, as determined under the MMA provisions. Once the fiscal year specified occurs for a State, that State's fiscal year DSH allotment will be calculated by increasing the State's previous actual fiscal year DSH allotment (which would be equal to the FY 2004 DSH allotment) by the percentage change in the CPI-U for the previous fiscal year, subject to the 12 percent limit. The following example illustrates how the fiscal year DSH allotment would be calculated for fiscal years after FFY 2004.

*Example*—In this example, we are determining the parallel FFY 2008 DSH allotment. A State's actual FFY 2003 DSH allotment is \$100 million. Under the MMA, this State's actual FFY 2004 DSH allotment would be \$116 million (\$100 million increased by 16 percent). The State's DSH allotment for FFY 2005 and subsequent fiscal years would continue at the \$116 million FFY 2004 DSH allotment for fiscal years following FFY 2004 until the "fiscal year specified" occurs. In the separate parallel process, we determine whether the fiscal year specified has occurred by calculating the State's DSH allotments in accordance with the statute in effect before the enactment of the MMA. Under this special process, we would continue to determine the State's parallel DSH allotment for each fiscal year by increasing the State's parallel DSH allotment

for the previous fiscal year (as also determined under the special parallel process) by the percentage change in the CPI-U for the previous fiscal year, and subject to the 12 percent limit. Assume for purposes of this example that, in accordance with this special parallel process, the State's parallel FFY 2007 DSH allotment was determined to be \$115 million and the percentage change in the CPI-U for FFY 2007 (the previous fiscal year) relevant for the calculation of the FFY 2008 DSH allotment was 2.3 percent. That is, the percentage change for the CPI-U for FFY 2007, the year before FFY 2008, was 2.3 percent. Therefore, the State's special parallel process FFY 2008 DSH allotment amount would be calculated by increasing the special parallel process FFY 2007 DSH allotment amount of \$115 million by 2.3 percent; this results in a special DSH allotment process amount for FFY 2008 of \$117.6 million. Since \$117.6 million is greater than \$116 million (the actual FFY 2004 DSH allotment calculated under the MMA), we would determine that FFY 2008 is the "fiscal year specified" (the first year that the FFY 2004 allotment equals or no longer exceeds the parallel process allotment). We would then determine the State's FFY 2008 allotment as the State's actual FFY 2007 DSH allotment (\$116 million) increased by the percentage change in the CPI-U for FFY 2007 (2.3 percent). Therefore, the State's FFY 2008 DSH allotment would be \$118.67 million (\$116 million increased by 2.3 percent); for purposes of this example, the application of the 12 percent limit has no effect. Furthermore, for FFY 2009 and thereafter, the State's DSH allotment would be calculated by increasing the State's previous fiscal year's DSH allotment by the percentage change in the CPI-U for the previous fiscal year, subject to the 12 percent limit.

However, as amended by section 1001(b)(4) of the MMA, section 1923(f)(5)(B) of the Act also contains new criteria for determining whether a State is a Low-DSH State, beginning with FFY 2004. This provision is described in section I.D.

Finally, the provisions of section 6054 of the Deficit Reduction Act (DRA) of 2005 Public Law 109-171, enacted February 8, 2006) affected the determination of the DSH allotment for the District of Columbia. Under section 6054 of the DRA, for purposes of determining only the FFY 2006 and subsequent fiscal year DSH allotments for the District of Columbia, the table in section 1923(f)(2) of the Act is amended by increasing the FFY DSH allotment amounts indicated in that table for the District of Columbia for FFYs 2000, 2001, and 2002 to \$49 million for each of those fiscal years. Before the DRA amendment, the amount in the chart in section 1923(f)(2) of the Act for the District of Columbia for each of those fiscal years was \$32 million. This DRA provision increases the fiscal year DSH allotment for the District of Columbia effective with the FFY 2006 DSH

allotment. This change is because the DSH allotments for FFY 2003 were based on the amounts of States' DSH allotments for FFY 2002 as contained in the chart in section 1923(f)(2) of the Act. Since (for purposes of ultimately determining the FFY 2006 allotment) the DRA provision increased the FFY 2002 allotment for the District of Columbia, as indicated above, the FFY 2003 allotment was increased. Furthermore, for this purpose, the FFY 2004 allotment for the District of Columbia would then have been determined by increasing the FFY 2003 allotment (as so determined) by 16 percent. For fiscal years subsequent to FFY 2006, the DSH allotments are determined as described above. The final FFY 2006 DSH allotment and the preliminary FFY 2008 DSH allotment for the District of Columbia contained in this notice reflect the provision of section 6054 of the DRA.

As described below, in accordance with section 6054 of the DRA, the final FFY 2006 DSH allotment for the District of Columbia is \$57,692,600. As amended by section 6054 of the DRA, the FFY 2002 DSH allotment amount for the District of Columbia contained in the chart in section 1923(f)(2) of the Act was increased to \$49,000,000. In accordance with section 1923(f)(3)(A) of the Act, the FFY 2003 DSH allotment is determined by increasing the \$49,000,000 DSH Allotment for FFY 2002 (as referenced in section 1923(f)(2) of the Act) by the percentage change in the CPI-U for 2002 (in this case, 1.5 percent) to \$49,735,000. In accordance with section 1923(f)(3)(C)(i) of the Act, the FFY 2004 DSH allotment is determined by increasing the \$49,735,000 FFY 2003 DSH allotment amount by 16 percent to \$57,692,600. In accordance with the provisions of section 1923(f)(3)(C) of the Act, the District of Columbia's DSH allotments for FFYs 2005, 2006, and 2007 are also \$57,692,600. Finally, in accordance with section 6054 of the DRA, the District of Columbia's DSH allotment is increased as described above, effective beginning with FFY 2006.

#### *D. DSH Allotments for Low-DSH States for FFY 2004 and Fiscal Years Thereafter*

Section 1001(b)(1) of the MMA amended section 1923(f)(5) of the Act regarding the calculation of the fiscal year DSH allotments for "Low-DSH" States for FFY 2004 and subsequent fiscal years. Specifically, under section 1923(f)(5)(B) of the Act, as amended by section 1001(b)(4) of the MMA, a State is considered a Low-DSH State for FFY 2004 if its total DSH payments under its

State plan for FFY 2000 (including Federal and State shares) as reported to CMS as of August 31, 2003, are greater than 0 percent and less than 3 percent of the State's total FFY 2000 expenditures under its State plan for medical assistance. For States that meet the new Low-DSH criteria, their FFY 2004 DSH allotments are calculated by increasing their FFY 2003 DSH allotments by 16 percent. Therefore, for FFY 2004, Low-DSH States' fiscal year DSH allotments are calculated in the same way as the DSH allotments for regular States, which under section 1923(f)(3) of the Act, get the special temporary increase for FFY 2004.

Furthermore, for States meeting the MMA's Low-DSH definition, the DSH allotments for FFYs 2005 through 2008 will continue to be determined by increasing the previous fiscal year's DSH allotment by 16 percent. The Low-DSH States' DSH allotments for FFYs 2004 through 2008 are not subject to the 12 percent limit. The Low-DSH States' DSH allotments for FFYs 2009 and subsequent fiscal years are calculated by increasing those States' DSH allotments for the prior fiscal year by the percentage change in the CPI-U for that prior fiscal year. For FFYs 2009 and thereafter, the DSH allotments so determined would be subject to the 12 percent limit.

#### *E. Institutions for Mental Diseases DSH Limits for FFYs 1998 and Thereafter*

Under section 1923(h) to the Act, Federal financial participation (FFP) is not available for DSH payments to institutions for mental diseases (IMDs) and other mental health facilities that are in excess of State-specific aggregate limits. Under this provision, this aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a State's FFY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment (as reported on the Form CMS-64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

Each State's IMD limit on DSH payments to IMDs and other mental health facilities was calculated by first determining the State's total computable DSH expenditures attributable to the FFY 1995 DSH allotment for mental health facilities and inpatient hospitals. This calculation was based on the total computable DSH expenditures reported by the State on the Form CMS-64 as mental health DSH and inpatient hospital as of January 1, 1997. We then

calculate an "applicable percentage." The applicable percentage for FFY 1998 through FFY 2000 (1995 IMD DSH percentage) is calculated by dividing the total computable amount of IMD and mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment by the total computable amount of all DSH expenditures (mental health facility plus inpatient hospital) applicable to the FFY 1995 DSH allotment. For FFY 2001 and thereafter, the applicable percentage is defined as the lesser of the applicable percentage as calculated above (for FFYs 1998 through 2001) or 50 percent for FFY 2001; 40 percent for FFY 2002; and 33 percent for each subsequent FFY.

The applicable percentage is then applied to each State's total computable FFY DSH allotment for the current FFY. The State's total computable FFY DSH allotment is calculated by dividing the State's Federal share DSH allotment for the FFY by the State's Federal medical assistance percentage (FMAP) for that FFY.

In the final step of the calculation of the IMD DSH Limit, the State's total computable IMD DSH limit for the FFY is set at the lesser of the product of a State's current fiscal year total computable DSH allotment and the applicable percentage for that fiscal year, or the State's FFY 1995 total computable IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS-64.

The MMA legislation did not amend the Medicaid statute with respect to the calculation of the IMD DSH limit.

#### *F. DSH Allotments and IMD DSH Limits Published in the Federal Register on October 3, 2006*

On October 3, 2006, we published a notice (71 FR 58398) in the **Federal Register** that announced the final Federal share DSH allotments for Federal fiscal year (FFY) 2005, and the preliminary Federal share DSH allotments for FFY 2006 and FFY 2007. It also announced the final FFY 2005, and the preliminary FFY 2006 and FFY 2007, limitations on aggregate DSH payments that States may make to institutions for mental disease (IMDs) and other mental health facilities.

#### *G. Publication in the Federal Register of Preliminary and Final Notice for DSH Allotments and IMD DSH Limits*

In general, we initially determine States' DSH allotments and IMD DSH limits for a fiscal year using estimates of medical assistance expenditures, including DSH expenditures in their

Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS-37) before the Federal fiscal year for which the DSH allotments and IMD DSH limits are being determined. The DSH allotments and IMD DSH limits determined using these estimates are referred to as "preliminary." Only after we receive States' reports of the actual related medical assistance expenditures through the quarterly expenditure report (Form CMS-64), which occurs after the end of the fiscal year, are the "final" DSH Allotments and IMD DSH limits determined.

As indicated in section I.F. of this notice, the notice published in the **Federal Register** on October 3, 2006 announced the final FFY 2005 DSH allotments and the final FFY 2005 IMD DSH limits (since they were based on the actual expenditures related to those years), the preliminary FFYs 2006 and 2007 DSH allotments (based on estimates), and the preliminary FFYs 2006 and 2007 IMD DSH limits (since they were based on the preliminary DSH allotments for FFYs 2006 and 2007).

This notice announces the final FFY 2006 DSH allotments and the final FFY 2006 IMD DSH limits (since these are now based on the actual expenditures for those fiscal years), the preliminary FFY 2008 DSH allotments (based on estimates), and the preliminary IMD DSH limits for FFY 2008 (since they are based on the preliminary DSH allotments for FFY 2008). This notice does not include the final FFY 2007 DSH allotments or the final FFY 2007 IMD DSH limits, since the associated actual expenditures for FFY 2007 are not available at this time.

## II. Provisions of the Notice

### A. Calculation of the Final FFY 2006 Federal Share State DSH Allotments the Preliminary FFY 2008 Federal Share State DSH Allotments

Chart 1 of the Addendum to this notice provides the States' "final" FFY 2006 DSH allotments. The final FFY 2006 DSH allotments for each State were computed in accordance with the provisions of the Medicaid statute as amended by the MMA. As required by the provisions of the MMA, the final FFY 2004 DSH allotments for the "Low-DSH" States and all the other States were calculated by increasing the FFY 2003 DSH allotments by 16 percent. In the notice published on March 26, 2004 in the **Federal Register**, we explained the definition and determination of the "Low-DSH" States under the MMA provisions. However, for following

fiscal years, the DSH allotments are determined under a process which incorporates a parallel process described in section I.C. of this notice. Under that parallel process, States final FFY 2006 DSH allotments were determined using the States' expenditure reports (Form CMS-64) for FFY 2006.

Chart 2 of the Addendum to this notice provides the States' "preliminary" FFY 2008 DSH allotments. These preliminary allotments were determined using the States' August 2007 expenditure estimates submitted by the States on the Form CMS-37. We will publish the final FFY 2008 DSH allotments for each State following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS-64) for FFY 2008.

### B. Calculation of the FFYs 2006 and FFY 2008 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for IMD or DSH payments that exceed the lesser of the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported to us on the Form CMS-64 as of January 1, 1997; or the amount equal to the product of the State's current FFY total computable DSH allotment and the applicable percentage. We are publishing the final FFY 2006 IMD DSH limit, and the preliminary FFY 2008 IMD DSH limit, along with an explanation of the calculation of these limits.

For FFY 2003 and following fiscal years, the applicable percentage is the lesser of 33 percent or the 1995 DSH IMD percentage of the amount computed for FFY 2000. This percentage was applied to the State's fiscal year total computable DSH allotment. This result was then compared to the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS-64 as of January 1, 1997. The lesser of these two amounts was the State's limitation on total computable IMD/DSH expenditures for FFY 2003 and following fiscal years.

Charts 3 and 4 of the Addendum to this notice detail each State's final IMD/DSH limitation for FFY 2006 and the preliminary IMD/DSH limitation for FFY 2008, respectively, in accordance with section 1923(h) of the Act.

## 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. 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 notice does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of 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 \$6.5 million to \$31 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this notice will not have significant economic impact on a substantial number of small entities. Specifically the effects of the various controlling statutes on providers are not impacted by a result of any independent regulatory impact and not this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This 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 of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because we have determined and the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

In addition, the MMA set statutorily defined limits on the amount of Federal share DSH expenditures available for FFY 2004 and subsequent fiscal years. Specifically, section 1001 of the MMA increased the DSH allotment for States beginning with fiscal year 2004. While overall the statute mandated some

increases in DSH payments, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$140 million. This notice will have no consequential effect on State, local, or tribal governments 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 notice 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 notice was reviewed by the Office of Management and Budget.

**Addendum**

This addendum contains the charts 1 through 4 (preceded by associated keys) that are referred to in the preamble of this notice.

**KEY TO CHART 1.—FINAL DSH ALLOTMENTS FOR FY 2006**

[Key to the Chart of the Final FFY 2005 DSH Allotments. The final FFY 2006 DSH Allotments for the regular States Are Presented in the Top Section of this chart and the final FFY 2005 DSH Allotments for the Low-DSH States Are presented in the Bottom Section of the chart.]

Column	Description
For Non-Low-DSH States:	
Column A .....	State.
Column B .....	Final FY 2004 DSH Allotment Federal Share—This column contains the final FFY 2004 DSH Allotments.
Column C .....	FY 2006 DSH Allotment Federal Share—This column contains the final FFY 2006 DSH Allotments.
Column D .....	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A .....	State.
Column B .....	Prior FY DSH Allotment—This column contains the final FFY 2005 DSH Allotments.
Column C .....	FY 2006 DSH Allotments Federal Share—This column contains the final FFY 2006 DSH Allotments = Column B multiplied by 1.16.
Column D .....	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.

**KEY TO CHART 2.—PRELIMINARY DSH ALLOTMENTS FOR FY 2008**

[Key to the Chart of the Preliminary FFY 2008 DSH Allotments. The preliminary FFY 2008 DSH Allotments for the regular States are presented in the top section of this chart and the preliminary FFY 2008 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
For Non-Low-DSH States:	
Column A .....	State.
Column B .....	Final FY 2004 DSH Allotment Federal Share—This column contains the final FFY 2004 DSH Allotments.
Column C .....	FY 2008 DSH Allotment Federal Share—This column contains the preliminary FFY 2008 DSH Allotments.
Column D .....	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A .....	State.
Column B .....	Prior FY DSH Allotment—This column contains the preliminary FFY 2007 DSH Allotments.
Column C .....	FY 2008 DSH Allotments Federal Share—This column contains the preliminary FFY 2008 DSH Allotments = Column B multiplied by 1.16.
Column D .....	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.

**KEY TO CHART 3.—FINAL FFY 2006 IMD DSH LIMITS**

[Key to the Chart of the FFY 2006 IMD Limitations.—The final FFY 2006 IMD DSH Limits for the regular States are presented in the top section of this chart and the Final FFY IMD DSH Limits for the Low-DSH States are presented in the Bottom Section of the chart.]

Column	Description
Column A .....	State.
Column B .....	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64.
Column C .....	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.

KEY TO CHART 3.—FINAL FFY 2006 IMD DSH LIMITS—Continued

[Key to the Chart of the FFY 2006 IMD Limitations.—The final FFY 2006 IMD DSH Limits for the regular States are presented in the top section of this chart and the Final FFY IMD DSH Limits for the Low-DSH States are presented in the Bottom Section of the chart.]

Column	Description
Column D .....	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E .....	Applicable Percentage Col C/D. This column contains the “applicable percentage” representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F .....	FY 2006 Federal Share DSH Allotment. This column contains the States’ final FFY 2005 DSH allotments.
Column G .....	FFY 2006 FMAP.
Column H .....	FY 2006 DSH Allotments in TC. Col. F/G. This column contains FFY 2006 total computable DSH allotment (determined as Column F/Column G).
Column I .....	Col E * Col H in TC. This column contains the applicable percent of FFY 2006 total computable DSH allotment (calculated as Column E × Column H).
Column J .....	FY 2006 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K .....	FY 2006 IMD DSH Limit Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G × Col. J).
Column L .....	LOW DSH Status. This column contains Low DSH status for each State.

KEY TO CHART 4.—PRELIMINARY FFY 2008 IMD DSH LIMITS

[Key to the Chart of the FFY 2008 IMD Limitations.—The preliminary FFY 2008 IMD DSH Limits for the regular States are presented in the top section of this chart and the preliminary FFY 2008 IMD DSH Limits for the Low-DSH States are presented in the Bottom Section of the Chart

Column	Description
Column A .....	State.
Column B .....	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States’ total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64.
Column C .....	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column D .....	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E .....	Applicable Percentage Col. C/D. This column contains the “applicable percentage” representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F .....	FY 2008 Federal Share DSH Allotment. This column contains the States’ preliminary FFY 2008 DSH allotments.
Column G .....	FFY 2008 FMAP.
Column H .....	FY 2008 DSH Allotment Total Computable Col. F/G. This column contains FFY 2008 total computable DSH allotment (determined as Column F/Column G).
Column I .....	Col E * Col H in TC. This column contains the applicable percent of FFY 2008 total computable DSH allotment (calculated as Column E × Column H)
Column J .....	FY 2008 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K .....	FY 2008 IMD DSH Limit Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G × Col. J).
Column L .....	Low DSH Status. This column contains Low DSH status for each State.

Chart 1

FINAL DSH ALLOTMENTS FOR FY:			
A	B	C	D
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2006 DSH ALLOTMENTS	MMA LOW DSH STATUS
ALABAMA	\$289,640,400	\$289,640,400	N/A
ARIZONA	\$95,369,400	\$95,369,400	N/A
CALIFORNIA	\$1,032,579,800	\$1,032,579,800	N/A
COLORADO	\$87,127,600	\$87,127,600	N/A
CONNECTICUT	\$188,384,000	\$188,384,000	N/A
DISTRICT OF COLUMBIA*	\$37,676,800	\$57,692,600	N/A
FLORIDA	\$188,384,000	\$188,384,000	N/A
GEORGIA	\$253,141,000	\$253,141,000	N/A
HAWAII	\$0	\$0	N/A
ILLINOIS	\$202,512,800	\$202,512,800	N/A
INDIANA	\$201,335,400	\$201,335,400	N/A
KANSAS	\$38,854,200	\$38,854,200	N/A
KENTUCKY	\$136,578,400	\$136,578,400	N/A
LOUISIANA	\$731,960,000	\$731,960,000	N/A
MAINE	\$98,901,600	\$98,901,600	N/A
MARYLAND	\$71,821,400	\$71,821,400	N/A
MASSACHUSETTS	\$287,285,600	\$287,285,600	N/A
MICHIGAN	\$249,608,800	\$249,608,800	N/A
MISSISSIPPI	\$143,642,800	\$143,642,800	N/A
MISSOURI	\$446,234,600	\$446,234,600	N/A
NEVADA	\$43,563,800	\$43,563,800	N/A
NEW HAMPSHIRE	\$150,800,000	\$150,800,000	N/A
NEW JERSEY	\$606,361,000	\$606,361,000	N/A
NEW YORK	\$1,512,959,000	\$1,512,959,000	N/A
NORTH CAROLINA	\$277,866,400	\$277,866,400	N/A
OHIO	\$382,655,000	\$382,655,000	N/A
PENNSYLVANIA	\$528,652,600	\$528,652,600	N/A
RHODE ISLAND	\$61,224,800	\$61,224,800	N/A
SOUTH CAROLINA	\$308,478,800	\$308,478,800	N/A
TENNESSEE	\$0	\$0	N/A
TEXAS	\$900,711,000	\$900,711,000	N/A
VERMONT	\$21,193,200	\$21,193,200	N/A
VIRGINIA	\$82,519,327	\$82,519,327	N/A
WASHINGTON	\$174,255,200	\$174,255,200	N/A
WEST VIRGINIA	\$63,579,600	\$63,579,600	N/A
<b>SUBTOTAL</b>	<b>\$9,895,858,327</b>	<b>\$9,915,874,127</b>	
<b>LOW DSH STATES</b>			
STATE	PRIOR FY ALLOTMENT (FY 2005)	PRIOR FY ALLOTMENT X FACTOR:	
		1.16	
ALASKA	\$12,292,056	\$14,258,785	LOW DSH
ARKANSAS	\$26,031,420	\$30,196,447	LOW DSH
DELAWARE	\$5,463,136	\$6,337,238	LOW DSH
IDAHO	\$9,919,182	\$11,506,251	LOW DSH
IOWA	\$23,764,480	\$27,566,797	LOW DSH
MINNESOTA	\$45,070,872	\$52,282,212	LOW DSH
MONTANA	\$6,849,606	\$7,945,543	LOW DSH
NEBRASKA	\$17,076,513	\$19,808,755	LOW DSH
NEW MEXICO	\$12,292,056	\$14,258,785	LOW DSH
NORTH DAKOTA	\$5,764,127	\$6,686,387	LOW DSH
OKLAHOMA	\$21,852,544	\$25,348,951	LOW DSH
OREGON	\$27,315,680	\$31,686,189	LOW DSH
SOUTH DAKOTA	\$6,664,873	\$7,731,253	LOW DSH
UTAH	\$11,838,439	\$13,732,589	LOW DSH
WISCONSIN	\$57,045,668	\$66,172,975	LOW DSH
WYOMING	\$136,578	\$158,430	LOW DSH
<b>TOTAL LOW DSH STATES</b>	<b>\$289,377,230</b>	<b>\$335,677,587</b>	
<b>NATIONAL TOTAL</b>	<b>\$10,185,235,557</b>	<b>\$10,251,551,714</b>	
<b>Footnotes</b>			
*DC FY 2006 allotment determined under section 6054 of the Deficit Reduction Act of 2005			

Chart 2

PRELIMINARY DSH ALLOTMENTS FOR FY:			
A	B	2008	
STATE	FINAL FY 2004 DSH ALLOTMENTS	FY 2008 DSH ALLOTMENTS	MMA LOW DSH STATUS
ALABAMA	\$289,640,400	\$289,640,400	N/A
ARIZONA	\$95,369,400	\$95,369,400	N/A
CALIFORNIA	\$1,032,579,800	\$1,032,579,800	N/A
COLORADO	\$87,127,600	\$87,127,600	N/A
CONNECTICUT	\$188,384,000	\$188,384,000	N/A
DISTRICT OF COLUMBIA	\$37,676,800	\$57,692,600	N/A
FLORIDA	\$188,384,000	\$188,384,000	N/A
GEORGIA	\$253,141,000	\$253,141,000	N/A
HAWAII	\$0	\$0	N/A
ILLINOIS	\$202,512,800	\$202,512,800	N/A
INDIANA	\$201,335,400	\$201,335,400	N/A
KANSAS	\$38,854,200	\$38,854,200	N/A
KENTUCKY	\$136,578,400	\$136,578,400	N/A
LOUISIANA	\$731,960,000	\$731,960,000	N/A
MAINE	\$98,901,600	\$98,901,600	N/A
MARYLAND	\$71,821,400	\$71,821,400	N/A
MASSACHUSETTS	\$287,285,600	\$287,285,600	N/A
MICHIGAN	\$249,608,800	\$249,608,800	N/A
MISSISSIPPI	\$143,642,800	\$143,642,800	N/A
MISSOURI	\$446,234,600	\$446,234,600	N/A
NEVADA	\$43,563,800	\$43,563,800	N/A
NEW HAMPSHIRE	\$150,800,000	\$150,800,000	N/A
NEW JERSEY	\$606,361,000	\$606,361,000	N/A
NEW YORK	\$1,512,959,000	\$1,512,959,000	N/A
NORTH CAROLINA	\$277,866,400	\$277,866,400	N/A
OHIO	\$382,655,000	\$382,655,000	N/A
PENNSYLVANIA	\$528,652,600	\$528,652,600	N/A
RHODE ISLAND	\$61,224,800	\$61,224,800	N/A
SOUTH CAROLINA	\$308,478,800	\$308,478,800	N/A
TENNESSEE	\$0	\$0	N/A
TEXAS	\$900,711,000	\$900,711,000	N/A
VERMONT	\$21,193,200	\$21,193,200	N/A
VIRGINIA	\$82,519,327	\$82,519,327	N/A
WASHINGTON	\$174,255,200	\$174,255,200	N/A
WEST VIRGINIA	\$63,579,600	\$63,579,600	N/A
<b>SUBTOTAL</b>	<b>\$9,895,858,327</b>	<b>\$9,915,874,127</b>	
<b>LOW DSH STATES</b>			
STATE	PRIOR FY ALLOTMENT (FY 2007)	PRIOR FY ALLOTMENT X FACTOR: 1.16	
ALASKA	\$16,540,191	\$19,186,622	LOW DSH
ARKANSAS	\$35,027,879	\$40,632,340	LOW DSH
DELAWARE	\$7,351,196	\$8,527,387	LOW DSH
IDAHO	\$13,347,251	\$15,482,811	LOW DSH
IOWA	\$31,977,485	\$37,093,883	LOW DSH
MINNESOTA	\$60,647,366	\$70,350,945	LOW DSH
MONTANA	\$9,216,830	\$10,691,523	LOW DSH
NEBRASKA	\$22,978,156	\$26,654,661	LOW DSH
NEW MEXICO	\$16,540,191	\$19,186,622	LOW DSH
NORTH DAKOTA	\$7,756,209	\$8,997,202	LOW DSH
OKLAHOMA	\$29,404,783	\$34,109,548	LOW DSH
OREGON	\$36,755,979	\$42,636,936	LOW DSH
SOUTH DAKOTA	\$8,968,253	\$10,403,173	LOW DSH
UTAH	\$15,929,803	\$18,478,571	LOW DSH
WISCONSIN	\$76,760,651	\$89,042,355	LOW DSH
WYOMING	\$183,779	\$213,184	LOW DSH
<b>TOTAL LOW DSH STATES</b>	<b>\$389,386,002</b>	<b>\$451,687,763</b>	
<b>NATIONAL TOTAL</b>	<b>\$10,285,244,329</b>	<b>\$10,367,561,890</b>	



Chart 4

A STATE	B INFANT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	C IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	D TOTAL IMPAIRMENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	E APPLICABLE PERCENT Col D	F FY 2008 ALLOTMENT IN FS	G FY 2008 FMAP	H FY 2008 ALLOTMENTS IN TC Col F/G	I COL E - COL H IN TC	PRELIMINARY IMD DSH LIMIT FOR FY:		L MMA LOW DSH STATUS
									J TC IMD LIMIT (Leasee or Col I or Col C)	K FY 2008 IMD LIMIT Col G x J	
ALABAMA	\$413,006,228	\$4,451,770	\$417,457,999	1.07%	\$293,640,400	67.62%	\$428,335,404	\$4,567,767	\$4,451,770	\$3,010,287	N/A
ALASKA	\$2,506,627	\$17,611,765	\$20,118,592	33.00%	\$19,186,622	52.48%	\$36,559,874	\$12,064,758	\$12,064,758	\$5,331,985	LOW DSH
ARIZONA	\$2,422,646	\$3,242,000	\$5,664,646	25.27%	\$4,032,340	72.94%	\$5,706,526	\$1,076,716	\$1,076,716	\$897,635	LOW DSH
ARKANSAS	\$2,422,646	\$3,242,000	\$5,664,646	25.27%	\$4,032,340	72.94%	\$5,706,526	\$1,076,716	\$1,076,716	\$897,635	LOW DSH
CALIFORNIA	\$2,189,879,543	\$1,555,918	\$2,191,435,462	0.071%	\$6,527,387	50.00%	\$17,054,774	\$5,628,075	\$5,628,075	\$2,814,038	LOW DSH
COLORADO	\$173,909,441	\$599,726	\$174,509,167	0.34%	\$15,482,811	69.87%	\$22,159,455	\$0	\$0	\$0	LOW DSH
CONNECTICUT	\$303,589,273	\$105,573,725	\$409,163,000	26.82%	\$188,984,000	50.00%	\$376,768,000	\$0	\$0	\$0	LOW DSH
DISTRICT OF COLUMBIA	\$303,589,273	\$105,573,725	\$409,163,000	26.82%	\$188,984,000	50.00%	\$376,768,000	\$0	\$0	\$0	LOW DSH
FLORIDA	\$184,488,074	\$149,714,985	\$334,203,060	14.20%	\$157,882,000	70.00%	\$221,418,000	\$11,707,201	\$6,545,136	\$4,841,695	N/A
GEORGIA	\$407,343,557	\$0	\$407,343,557	0.00%	\$253,141,000	63.10%	\$401,174,326	\$109,350,674	\$0	\$62,168,720	N/A
HAWAII	\$0	\$0	\$0	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	N/A
ILLINOIS	\$315,868,508	\$89,408,276	\$405,276,784	22.06%	\$202,512,800	50.00%	\$405,026,600	\$89,352,822	\$89,352,822	\$44,676,431	N/A
INDIANA	\$19,960,783	\$153,566,302	\$173,527,085	33.00%	\$301,335,400	69.69%	\$321,150,313	\$105,982,933	\$105,982,933	\$95,440,882	N/A
KANSAS	\$1,587,208	\$76,663,508	\$78,250,716	33.00%	\$38,854,200	59.43%	\$65,378,092	\$21,574,770	\$21,574,770	\$12,821,866	N/A
KENTUCKY	\$158,804,908	\$37,443,073	\$196,247,981	19.08%	\$136,578,400	69.78%	\$195,721,142	\$37,343,700	\$37,343,700	\$26,058,434	N/A
LOUISIANA	\$1,076,512,168	\$132,917,148	\$1,209,429,316	10.97%	\$71,860,000	72.47%	\$1,010,017,358	\$110,818,438	\$110,818,438	\$90,310,122	N/A
MAINE	\$29,228,467	\$120,874,531	\$150,103,000	33.00%	\$86,501,600	63.31%	\$156,217,975	\$51,551,932	\$51,551,932	\$32,837,529	N/A
MARYLAND	\$469,653,946	\$105,635,054	\$575,289,000	18.36%	\$297,285,600	50.00%	\$43,642,800	\$47,402,124	\$47,402,124	\$23,701,062	N/A
MASSACHUSETTS	\$133,268,800	\$304,765,152	\$438,033,952	33.00%	\$143,642,800	50.10%	\$439,619,277	\$105,503,251	\$105,503,251	\$82,751,625	N/A
MICHIGAN	\$182,638,033	\$207,234,618	\$389,872,651	28.42%	\$446,234,600	62.42%	\$714,890,450	\$141,774,361	\$141,774,361	\$82,370,904	N/A
MISSISSIPPI	\$21,146,632	\$0	\$21,146,632	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	N/A
MISSOURI	\$21,146,632	\$0	\$21,146,632	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	N/A
NEVADA	\$21,146,632	\$0	\$21,146,632	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	N/A
NEW HAMPSHIRE	\$92,675,915	\$84,753,988	\$177,429,903	33.00%	\$152,800,000	50.00%	\$301,600,000	\$99,529,025	\$99,529,025	\$47,018,974	N/A
NEW JERSEY	\$736,742,539	\$37,370,461	\$774,113,000	32.86%	\$606,361,000	71.04%	\$853,946,705	\$2,784,872	\$2,784,872	\$188,555,877	N/A
NEW YORK	\$2,418,663,368	\$650,000,000	\$3,068,663,368	20.01%	\$2,418,663,368	64.03%	\$3,068,663,368	\$42,607,644	\$42,607,644	\$20,134,940	N/A
NORTH CAROLINA	\$193,201,866	\$629,072,627	\$822,274,493	33.00%	\$277,866,400	63.78%	\$435,968,825	\$143,836,725	\$143,836,725	\$91,695,912	N/A
OHIO	\$35,731,856	\$59,439,758	\$95,171,614	14.85%	\$69,285,000	69.78%	\$97,758,000	\$35,478,140	\$35,478,140	\$26,197,174	N/A
PENNSYLVANIA	\$386,207,318	\$579,199,682	\$965,407,000	33.00%	\$528,652,600	54.08%	\$977,538,000	\$32,587,570	\$32,587,570	\$174,465,388	N/A
RHODE ISLAND	\$108,503,167	\$2,397,833	\$110,901,000	2.16%	\$61,224,800	59.51%	\$116,956,458	\$2,397,833	\$2,397,833	\$1,259,102	N/A
SOUTH CAROLINA	\$366,681,364	\$72,076,341	\$438,757,705	16.43%	\$308,478,800	69.78%	\$442,010,030	\$72,076,341	\$72,076,341	\$50,302,078	N/A
TENNESSEE	\$0	\$0	\$0	0.00%	\$0	63.71%	\$0	\$0	\$0	\$0	N/A
TEXAS	\$1,220,151,401	\$292,513,532	\$1,512,664,933	19.33%	\$900,711,000	60.56%	\$1,487,303,501	\$287,540,088	\$287,540,088	\$174,134,277	N/A
VERMONT	\$19,970,259	\$90,050,549	\$110,020,808	31.23%	\$21,182,200	59.03%	\$35,902,422	\$11,210,857	\$11,210,857	\$5,354,787	N/A
VIRGINIA	\$129,313,468	\$7,770,298	\$137,083,766	5.67%	\$82,519,327	50.00%	\$80,358,654	\$8,354,826	\$8,354,826	\$3,885,134	N/A
WASHINGTON	\$171,726,815	\$163,836,435	\$335,563,250	33.00%	\$174,255,200	51.52%	\$338,228,261	\$111,615,326	\$111,615,326	\$57,904,216	N/A
WEST VIRGINIA	\$65,562,626	\$18,987,045	\$84,549,671	22.00%	\$63,578,600	74.26%	\$85,620,601	\$18,838,321	\$18,838,321	\$13,987,602	N/A
TOTAL	\$13,402,480,848	\$4,118,796,904	\$17,521,277,752		\$8,915,874,121		\$15,526,210,933	\$3,097,513,725	\$3,097,513,725	\$1,864,377,357	
LOW DSH STATES											
ALASKA	\$2,506,627	\$17,611,765	\$20,118,592	33.00%	\$19,186,622	52.48%	\$36,559,874	\$12,064,758	\$12,064,758	\$5,331,985	LOW DSH
ARKANSAS	\$2,422,646	\$3,242,000	\$5,664,646	25.27%	\$4,032,340	72.94%	\$5,706,526	\$1,076,716	\$1,076,716	\$897,635	LOW DSH
DELAWARE	\$0	\$0	\$0	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	LOW DSH
IDAHO	\$2,081,429	\$2,081,429	\$4,162,858	0.00%	\$15,482,811	69.87%	\$22,159,455	\$0	\$0	\$0	LOW DSH
IOWA	\$12,011,250	\$12,011,250	\$24,022,500	0.00%	\$17,059,855	71.29%	\$26,090,526	\$0	\$0	\$0	LOW DSH
MINNESOTA	\$24,240,000	\$5,262,214	\$29,502,214	17.82%	\$20,240,000	50.00%	\$40,701,890	\$25,076,943	\$25,076,943	\$2,628,607	LOW DSH
MONTANA	\$27,048	\$27,048	\$54,096	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	LOW DSH
NEBRASKA	\$5,468,002	\$1,811,337	\$7,279,339	21.83%	\$26,654,661	52.64%	\$50,635,754	\$11,103,334	\$11,103,334	\$863,468	LOW DSH
NEW MEXICO	\$6,480,015	\$254,728	\$6,734,743	3.78%	\$19,186,622	50.00%	\$38,373,244	\$449,555	\$449,555	\$127,363	LOW DSH
NORTH DAKOTA	\$20,919,959	\$274,522	\$21,194,481	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	LOW DSH
OKLAHOMA	\$11,457,908	\$19,975,022	\$31,432,930	14.05%	\$34,109,548	60.86%	\$70,167,404	\$23,163,843	\$23,163,843	\$12,158,841	LOW DSH
OREGON	\$321,120	\$1,075,120	\$1,396,240	33.00%	\$42,836,948	60.03%	\$71,248,957	\$5,719,888	\$5,719,888	\$91,005	LOW DSH
SOUTH DAKOTA	\$391,120	\$4,555,720	\$4,946,840	20.51%	\$18,478,571	71.63%	\$35,797,251	\$5,282,214	\$5,282,214	\$89,444	LOW DSH
UTAH	\$6,609,524	\$4,492,011	\$11,101,535	33.00%	\$89,042,355	57.82%	\$154,533,764	\$50,956,142	\$50,956,142	\$4,492,011	LOW DSH
WISCONSIN	\$0	\$0	\$0	0.00%	\$0	50.00%	\$0	\$0	\$0	\$0	LOW DSH
WYOMING	\$89,662,400	\$53,238,167	\$142,900,567	33.00%	\$451,687,763	50.00%	\$773,856,325	\$167,600,087	\$167,600,087	\$32,008,971	LOW DSH
TOTAL	\$13,501,123,328	\$4,181,997,071	\$17,683,120,397		\$10,367,861,898		\$17,300,067,258	\$3,285,122,838	\$3,285,122,838	\$1,844,242,866	

**Authority:** Section 1923(a)(2), (f), and (h) of the Social Security Act (42 U.S.C. 1396r-4(a)(2), (f), and (h), and Pub. L. 105-33) (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 23, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: November 8, 2007.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. E7-24486 Filed 12-27-07; 8:45 am]

**BILLING CODE 4120-01-C**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1556-N]

#### Medicare Program; Notice of Supplemental Election Period for Participation in the Calendar Year (CY) 2008 Competitive Acquisition Program for Part B Drugs

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

**ACTION:** Notice.

**SUMMARY:** This notice announces an additional physician election period for physicians who are not currently participating in the competitive acquisition program (CAP) for Medicare Part B drugs for calendar year (CY) 2008. The additional physician election period begins on January 15, 2008 and ends on February 15, 2008. Physicians who elect to join the CAP during this additional election period will enter into a physician election agreement effective April 1, 2008 through December 31, 2008.

**DATES:** The additional CAP physician election period will begin on January 15, 2008 and end on February 15, 2008. Physicians electing to join the CAP during this period will participate in the CAP effective April 1, 2008 through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Edmund Kasaitis (410) 786-0477.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173) (MMA) requires the implementation of a competitive acquisition program (CAP) for certain Medicare Part B drugs not paid on a cost or prospective payment system basis. Physicians who elect to participate in

the CAP obtain certain Part B covered drugs from vendors selected through a competitive bidding process. Physicians who do not elect to participate in the CAP purchase these drugs themselves and are paid under the average sales price (ASP) system. (For more information on the CAP, see the March 4, 2005 proposed rule (70 FR 10746), interim final rule with comment period (70 FR 39022), November 21, 2005 final rule (70 FR 70116), and the November 27, 2007 final rule with comment period (72 FR 66222)). In accordance with section 1874B(a) of the Social Security Act (the Act), statute and our regulations, the annual CAP physician election period for CY 2009 will occur in the fall of 2008.

#### II. Provisions of the Notice

Under the authority described in section 1847B(a)(5)(A)(i) of the Act and § 414.908(a)(2) of our regulations, which allows for physician election at times other than the regular, annual election period in such exigent circumstances as defined by CMS, we are designating an additional election period for physicians who wish to join the CAP for 2008. We are providing for this additional election period in recognition of the statutory changes we recently made to § 414.908(a)(2)(v) of our regulations. These changes were described and published in the November 27, 2007 final rule with comment period (72 FR 66265) with comment period. The changes will become effective on January 1, 2008.

In the November 27, 2007 **Federal Register** (72 FR 66256), we published a final rule, that defined a new exigent circumstance that would allow a participating CAP physician to opt out of the CAP due to the burden that the CAP places on the physician's practice. We established a two-tiered process, under which a physician may opt out of the CAP up to and including the first 60 days after the effective date of his or her CAP election agreement if continuing participation will impose a burden on the physician's practice. A participating CAP physician may also opt out of CAP participation more than 60 days after the effective date of his or her CAP election agreement based on a change of circumstances which creates a new burden to the practice.

The two-tiered process was developed in response to public comments to the CY 2008 Physician Fee Schedule proposed rule. However, the CY 2008 Physician Fee Schedule final rule was not issued until the end of the CY 2008 CAP physician election period, and therefore, we were not able to disseminate sufficient information to

make the large number of Medicare physicians aware of this new and desirable program change before the election period closed. Thus, we believe this is an "exigent circumstance" for which we should allow physicians an additional opportunity to join the CAP for CY 2008. The additional election period—

- Takes place from January 15, 2008 until February 15, 2008.
- Is open to physicians as defined in section 1861(r) of the Act (The term "physician" includes persons who are authorized to provide services under the Act and who can, within their State's scope of practice, prescribe and order drugs covered under Medicare Part B.
- Does not affect the terms of CAP participation for physicians who have already elected to participate in the CAP for 2008.
- Uses the same procedures, forms, etc. as the regular, annual 2008 election period.

Physicians who elect to participate in the CAP during the additional CY 2008 election period will have their CAP election agreement effective from April 1, 2008 through December 31, 2008. We note that participation in the CAP for CY 2009 requires renewal of CAP election during the regular fall election period, which will run from October 1, 2008 to November 15, 2008.

Completed and signed forms must be returned by mail to the physician's local carrier (the carrier that processes the physician's Part B claims). Forms must be postmarked no later than February 15, 2008. Additional details about CAP physician election will be available on the CMS Web site at [http://www.cms.hhs.gov/CompetitiveAcquisforBios/02\\_infophys.asp#TopOfPage](http://www.cms.hhs.gov/CompetitiveAcquisforBios/02_infophys.asp#TopOfPage).

**Authority:** Section 1847B(a)(5)(A)(i) of the Social Security Act (42 U.S.C 1395w-3b(a)(5)(A)(i).)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 18, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E7-25037 Filed 12-27-07; 8:45 am]

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