

FACT SHEET: MEDICARE PROGRAM; ESTABLISHMENT OF THE MEDICARE ADVANTAGE PROGRAM; INTERPRETATION (4069-F2)

CMS published a final regulation entitled “Medicare Program: Establishment of the Medicare Advantage Program” (CMS-4069) on January 28, 2005 (70 FR 4588). Subsequent to the publication of the Medicare Advantage (MA) regulation, CMS received inquiries from parties interested in offering an MA Regional Plan concerning whether they could jointly enter into a contract with us to offer a single MA regional Plan in a multi-state region. The participating health plans would contract with each other to create a single “joint enterprise.” They are interested in knowing what organizational requirements they would have to meet in order to offer such a plan. CMS was asked whether such a joint enterprise could be considered an “entity” under sections 1859(a)(1) and 1855(a)(1) of the Social Security Act, for purposes of offering an MA Regional Plan.

This final regulation clarifies that issue. Because this is a clarifying interpretation to the preamble of the final regulation, we are required to publish this final rule prior to the effective date of the Medicare Prescription Drug Benefit Final Rule, which is March 22, 2005. Our interpretation of the word “entity” in this final rule would be deemed to be included in that final rule.

The statute generally requires that the “entity” be licensed by the State as a risk bearing entity where it offers benefits. The health plans seeking jointly to offer an MA Regional Plan propose to meet this requirement through the State license that each participating health plan holds in the State in which it does business. Each plan would be at risk for, and fully responsible for, each MA plan enrollee in its State, or portion of a State in which it is licensed and operating. Together, the entire region would be covered by an insurer licensed by the State to bear risk where the enrollee lives. In considering this proposal, we have determined that such a joint enterprise could be treated as a single “entity” for purposes of offering an MA Regional Plan, as long as the enterprise as a whole meets all applicable Medicare requirements, and there is no substantive difference between this arrangement and a traditional entity from a Medicare enrollee’s perspective. We may also issue further guidance on how individual requirements (such as, for example, those related to termination, apportionment of liability, and the imposition of sanctions) will apply to joint enterprises and the plans participating in such enterprises.