



THE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM
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The Obama Administration's Medicare Advantage Quality Bonus Payment (MA QBP) Demonstration: Frequently Asked Questions

How will seniors enrolled in Medicare Advantage be impacted by the Administration's scheme?

The Actuary at the Centers for Medicare and Medicaid Services (CMS) projects that Obamacare cuts spending on Medicare Advantage by over \$200 billion over the next decade.¹ More than one in four seniors are enrolled in Medicare Advantage, but the CMS Actuary predicts that enrollment in the program in 2017 will be reduced by half because of Obamacare's Medicare cuts.² Seniors remaining in Medicare Advantage will face higher premiums and lower benefits. For many seniors, the first time they would have learned of Obamacare's Medicare cuts would have been in late October since Medicare's open enrollment period begins October 15th.

Because of Obamacare's negative impact on seniors enrolled in Medicare Advantage, the Administration devised this scheme – the Medicare Advantage Quality Bonus Payment (MA QBP) – to minimize the impact of Obamacare's cuts on seniors enrolled in Medicare Advantage before the election. The three-year Demonstration is projected to offset 71% of Obamacare's Medicare Advantage cuts in 2012, 32% of its Medicare Advantage cuts in 2013, and 16% of its Medicare Advantage cuts in 2014.³

What is unusual about this particular Medicare demonstration project?

Medicare demonstration projects are intended to test the impact of changes to Medicare's payment structure. The demonstrations are typically instituted at a local level, such as at a county level, in order for a reliable comparison group to test the impact of the payment changes. The MA QBP Demonstration, however, is conducted at a national level and includes nearly all Medicare Advantage plans offered in the country. Additionally, demonstration projects are not intended to reward past actions. The MA QBP Demonstration violates this criterion by using

¹ Richard S. Foster, Chief Actuary, Centers for Medicare and Medicaid Services, "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act,' as Amended," U.S. Dept. of Health and Human Services (Apr. 22, 2011) at 11.

² *Id.*

³ Gov't Accountability Office, *Medicare Advantage: Quality Bonus Payment Demonstration Undermined by High Estimated Costs and Design Shortcomings*, GAO-12-409R (Mar. 21, 2012).

performance data from before the demonstration project was finalized to reward the Medicare Advantage plans. Finally, Demonstration projects are also intended to be revenue neutral. The MA QBP Demonstration will spend more than \$8 billion, which makes this Demonstration more costly than the combined cost of all 85 other Medicare demonstrations that have taken place since 1995.

How unusual is the recommendation from the Government Accountability Office that the Centers for Medicare and Medicaid Services (CMS) cancel this demonstration project?

It is extremely unusual for GAO to recommend CMS cancel a demonstration project. In fact, this is the first time GAO has ever recommended CMS cancel a demonstration project.

Why did GAO conclude that the Secretary of Health and Human Services (HHS) lacked the legal authority to initiate this demonstration project?

According to Section 402(a) of the Social Security Act, the Secretary of HHS may waive Medicare payment rules and initiate a Medicare demonstration project if the demonstration contains additional incentives for Medicare Advantage plans to increase efficiency and economy of Medicare services *and* if the Demonstration project's design allows for a determination of the impact of the Demonstration on the efficiency or economy of Medicare services. GAO's evaluation of the Demonstration concluded that the MA QBP Demonstration will not meet either of these requirements. Since the bonus payments are based on data collected before the Demonstration was finalized, the Demonstration does not provide incentives to increase efficiency or economy of Medicare services in either 2012 or 2013. Moreover, the Demonstration's flawed design means evaluators will not be able to determine the impact of the Demonstration on Medicare Advantage plans. Since the Demonstration neither incentivizes Plans to increase efficiency or economy of Medicare services nor allows for a credible evaluation of its impact, GAO concluded that the Secretary of HHS acted outside her legal authority in implementing the Demonstration.

What are the implications of the Administration abusing its Medicare demonstration authority in this manner?

In addition to the Committee's concerns about the political motivations behind the Demonstration, Jonathan Blum, the Director of the Center for Medicare at CMS, testified before Congress that there is no limit to the HHS Secretary's authority to conduct demonstrations under Section 402(a)(1)(A). According to Mr. Blum's testimony, there is no limit and no congressional check on the Obama Administration's ability change Medicare payment policy unilaterally. Mr. Blum's testimony is at odds with GAO's view that the HHS Secretary's authority under Section 402 is *not* unlimited.⁴

⁴ *Id.*