

**§ 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 Beneficiaries 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 of 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

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