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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Parts 422 and 423**

**[CMS-4173-CN]**

**RIN 0938-AR69**

### **Medicare Program; Medical Loss Ratio Requirements for the Medicare Advantage and the Medicare Prescription Drug Benefit Programs; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical, typographical, and cross-referencing errors in the final rule that appeared in the May 23, 2013 **Federal Register** titled "Medicare Program; Medical Loss Ratio Requirements for the Medicare Advantage and the Medicare Prescription Drug Benefit Programs."

**DATES:** This correction document is effective on July 22, 2013.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. 2013-12156 of May 23, 2013 (78 FR 31284), there were a number of technical, typographical, and cross-referencing errors that are identified and corrected in the Correction of Errors section of this correcting document. The provisions in this correction document are effective as if they had been included in the document published

May 23, 2013. Accordingly, the corrections are effective July 22, 2013.

## **II. Summary of Errors**

- On page 31307, in §422.2401-Definitions, Non-claims costs, paragraphs (3) and (4) of the regulations text, we made errors in the parenthetical cross-references for the definition of non-claims cost.
- On page 31308, in §422.2420(c) Determining the MLR denominator, we made an error in the parenthetical cross-references for the regulatory requirement for the total revenue.
- On page 31310, in the table of contents for part 423 Subpart X—Requirements for a Minimum Medical Loss Ratio, we made a typographical error in a section number.
- On page 31311, in §423.2410-General requirements, and in §423.2420-Calculation of medical loss ratio, of the regulations text, we made several technical errors in the regulatory requirements as well as typographical errors in several references.
- On page 31312, in §423.2420(c)(4) and (c)(5) of the regulations text, we incorrectly stated the section number for two parenthetical references. We also made a typographical error in the discussion of total revenue.

## **III. Waiver of Proposed Rulemaking**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C.

553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

In our view, this correcting document does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical, typographical, and cross-referencing errors in the Medicare Program; Medical Loss Ratio Requirements for the Medicare Advantage and the Medicare Prescription Drug Benefit Programs final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the regulations text of the final rule accurately reflects the policies adopted.

In addition, even if this were a rulemaking to which the notice and comment applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule. Therefore, we believe we have good cause to waive the notice and comment requirements.

#### **IV. Correction of Errors**

In FR Doc. 2013-12156 of May 23, 2013 (78 FR 31284), make the following corrections:

1. On page 31307, lower two-thirds of the page, second column, last paragraph

(§422.2401--definition of non-claims costs),

a. Line 9 (paragraph 3 of the definition of non-claims costs), the parenthetical cross-reference "§422.2420(c)(2)(ii)" is corrected to read "§422.2420(c)(2)(i)".

b. Last line (line 12--paragraph 4 of the definition of non-claims costs), the parenthetical cross-reference "§422.2420(c)(2)(i) and (iii)" is corrected to read "§422.2420(c)(2)(ii) and (iii)".

2. On page 31308, third column, first paragraph, §422.2420(c)-Determining the MLR denominator, lines 11 and 12, the phrase "in accordance with paragraph (c)(4) of this section" is corrected to read "in accordance with paragraphs (c)(4) and (c)(5) of this section."

3. On page 31310, third column, 10<sup>th</sup> paragraph (table of contents for part 423 Subpart X), line 2, the section number "423.2300" is corrected to read "423.2400".

4. On page 31311,

a. First column, 11<sup>th</sup> paragraph (§423.2410(d)),

(1) Line 4, the phrase "CMS does terminate" is corrected to read "CMS terminates".

(2) Line 5, the cross-reference "§423.509(a)(11) and (14)" is corrected to read "§423.509(b)(1) and (d)".

b. Second column, first paragraph (§423.2420(b)), line 7, the reference "paragraph (b)(1)(iv)" is corrected to read "paragraphs (b)(5) and (b)(6)".

c. Third column, third full paragraph (§423.2420(c)),

(1) Lines 4 through 6, the phrase "must be in accordance with paragraph (c)(4) of this section and equal" is corrected to read "must equal".

(2) Line 7, the phrase "Total revenue is as" is corrected to read "Total revenue under the contract is as".

(3) Line 12 the phrase "paragraph and (c)(3)" is corrected to read "and paragraph (c)(3)".

(4) Line 13, the phrase "in accordance with (c)(4)" is corrected to "in accordance with paragraphs (c)(4) and (5)".

5. On page 31312,

a. First column, last paragraph (§423.2420(c)(4)), line 2, the parenthetical cross-reference "§ 422.2420(c)" is corrected to read "§ 423.2420(c)"

b. Second column,

(1) First partial paragraph, lines 1 and 2, the phrase "were assumed and revenue" is corrected to read "were assumed and no revenue".

(2) First full paragraph (§423.2420(c)(5)), line 2, the parenthetical reference "§ 422.2420(c)" is corrected to read "§ 423.2420(c)".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Date: July 16, 2013

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**Jennifer M. Cannistra,**

Executive Secretary to the Department,

Department of Health and Human Services.

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