



CMS-2390-F2

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 457

[CMS-2390-F2]

RIN-0938-AS25

Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability; Correcting Amendment

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects a technical error that appeared in the final rule published in the May 6, 2016 **Federal Register** (81 FR 27498 through 27901) entitled, "Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability." The effective date for the rule was July 5, 2016.

DATES: Effective Date: This correcting document is effective July 18, 2016.

Applicability Date: The corrections indicated in this document are applicable beginning July 5, 2016.

FOR FURTHER INFORMATION CONTACT: Melissa Williams, (410) 786-4435, CHIP.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016-09581 (81 FR 27498 through 27901), the final rule entitled, “Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability” there was a technical error that is identified and corrected in this correcting document. The correction is applicable as of July 5, 2016.

II. Summary of Errors in the Regulations Text

On page 27896 of the Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule, we made a technical error in the regulation text of §457.10. In this paragraph, we inadvertently omitted an amendatory instruction to add the definition of “Federally Qualified HMO” in alphabetical order. Accordingly, we are revising the amendatory instruction for §457.10 to add this definition as it was published in the May 6, 2016 **Federal Register**.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. In addition, section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and

the reasons for it in the notice. In addition, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted subject to notice and comment procedures in the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule. As a result, the corrections made through this correcting document are intended to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements 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 Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule or delaying the effective date of the

corrections would be contrary to the public interest because it is in the public interest to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects our final policies as soon as possible following the date they take effect. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies or making any substantive revision to the description of the definition as proposed or purported to be finalized in the preamble of the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects these policies. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

List of Subjects in 42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment to part 457:

PART 457—ALLOTMENTS AND GRANTS TO STATES

1. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 457.10 is amended by adding the definition of “Federally Qualified HMO” in alphabetical order to read as follows:

§457.10 Definitions and use of terms.

* * * * *

Federally qualified HMO means an HMO that CMS has determined is a qualified HMO under section 2791(b)(3) of the Public Health Service Act.

* * * * *

Dated: July 14, 2016.

Madhura Valverde,
Executive Secretary to the
Department,
Department of Health and Human
Services.

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