



This document is scheduled to be published in the Federal Register on 11/18/2016 and available online at <https://federalregister.gov/d/2016-27733>, and on [FDsys.gov](https://fdsys.gov)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 417, 422, 423, 424, 425, and 460

[CMS-1654-CN2]

RIN 0938-AS81

Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Bid Pricing Data Release; Medicare Advantage and Part D Medical Loss Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Medicare Shared Savings Program Requirements

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

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that was placed on public inspection at the Office of the Federal Register on November 2, 2016 and scheduled for publication in the **Federal Register** on November 15, 2016. That rule is entitled, “Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Bid Pricing Data Release; Medicare Advantage and Part D Medical Loss Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Medicare Shared Savings Program Requirements.”

DATES: This correcting document is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc 2016-26668, that was placed on public inspection at the Office of the Federal Register on November 2, 2016 and scheduled for publication in the **Federal Register** on November 15, 2016, there were technical errors that are identified and corrected in this correcting document.

II. Summary of Errors in the Regulations Text

In the CY 2017 PFS final rule, we inadvertently omitted or included language in §410.79(b), (c)(1)(ii) and (iv), (c)(2)(i) and §424.59(a)(1) and (5), (b)(4)(i), and (e)(2)(i).

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** and provide a period for public comment 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 rule. 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 CY 2017 PFS 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 proposed subject to notice and comment procedures in the CY 2017 PFS final rule. As a result, the correction made through this correcting document is intended to resolve inadvertent errors so that the rule accurately reflects the policies in the final 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 CY 2017 PFS 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 rule accurately reflects the public comment period. Further, such procedures would be unnecessary, because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors in the Regulations Text

In FR Doc. 16-26668 appearing on page 80170 in the Federal Register of Tuesday,

November 16, 2016, the following corrections are made:

- 1. On pages 80552 and 80553, correct §410.79 by—
 - a. In paragraph (b):
 - i. Removing the definition of “Evaluation weight”;
 - ii. Revising the definitions of “MDPP supplier”, “Medicare Diabetes Prevention Program (MDPP)”, and “Required minimum weight loss”;
 - iii. In the definition of “National Diabetes Prevention Program, removing “(DPP)” and adding in its place the term “(National DPP) ”; and
 - b. Revising paragraphs (c)(1)(ii), (c)(1)(iv) and (c)(2)(i).

The revisions read as follows:

§410.79 Medicare diabetes prevention program expanded model: Conditions of coverage.

* * * * *

(b) * * *

MDPP supplier refers to an entity that has enrolled in Medicare to furnish MDPP services.

Medicare Diabetes Prevention Program (MDPP) refers to a model test expanded under section 1115A(c) of the Act that makes MDPP services available to MDPP eligible beneficiaries.

* * * * *

Required minimum weight loss refers to the percentage by which the beneficiary's updated weight is less than the baseline weight. The required minimum weight loss percentage is 5 percent.

(c) * * *

(1) * * *

(ii) Have as of the date of attendance at the first core session a body mass index (BMI) of at least 25 if not self-identified as Asian or a BMI of at least 23 if self-identified as Asian.

* * * * *

(iv) Have no previous diagnosis of type 1 or type 2 diabetes (other than gestational diabetes).

* * * * *

(2) * * *

(i) Core sessions and core maintenance sessions. MDPP suppliers must furnish to MDPP eligible beneficiaries the MDPP core benefit. Sixteen core sessions must be furnished at least a week apart over the first 6 months. At least one core maintenance session must be furnished in each of the second 6 months. All core sessions and core maintenance sessions must have a duration of approximately one hour. MDPP suppliers must address at least 16 different curriculum topics in the core sessions and at least 6 different curriculum topics in the core maintenance sessions.

* * * * *

2. On page 80558, correct §424.59 by revising paragraphs (a)(1) and (5), (b)(4)(i), and (e)(2)(i) to read as follows:

§424.59 Requirements for Medicare diabetes prevention program suppliers.

(a) * * *

(1) At the time of enrollment has full CDC DPRP recognition.

* * * * *

(5) Submits a roster of all coaches who will be furnishing MDPP services on the entity's behalf that includes the coaches' first and last names, SSN, and NPI.

(b) * * *

(4) * * *

(i) Has attended one, four or nine core sessions, or

* * * * *

(e) * * *

(2) * * *

(i) Become eligible to bill for MDPP services again if it meets the requirements of paragraph (a)(1) of this section, and enrolls again in Medicare as an MDPP supplier subject to paragraph (a) of this section.

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CMS-1654-CN2

Dated: November 14, 2016_____

Madhura Valverde,

Executive Secretary to the

Department,

Department of Health and Human

Services.

BILLING CODE 4120-01-P

[FR Doc. 2016-27733 Filed: 11/15/2016 11:15 am; Publication Date: 11/18/2016]