



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 431**

**[CMS-6068-F2]**

**RIN 0938-AS74**

**Medicaid/CHIP Program; Medicaid Program and Children’s Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act; Correction**

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document corrects a technical error that appeared in the final rule published in the **Federal Register** on July 5, 2017 entitled “Medicaid/CHIP Program; Medicaid Program and Children’s Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act” (hereinafter referred to as the “PERM final rule”).

**DATES:** This correction is effective [Insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:**

Bridgett Rider, (410) 786-2602.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 2017-13710 (82 FR 31158), there was a technical error that is identified and corrected in this correcting document. The provision in this correction document is effective as if it had been included in the document published in the **Federal Register** on July 5, 2017.

Accordingly, the corrections are applicable beginning August 4, 2017.

## **II. Summary of Error in Regulation Text**

In the regulation text, we inadvertently omitted the removal of §431.802, which we discussed on page 31161 of the final rule.

## **III. Waiver of Proposed Rulemaking, 60-Day Comment Period, 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. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the Federal Register and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate 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 notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject

to the notice and comment or delayed effective date requirements. The document corrects technical errors in the PERM final rule, but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the PERM final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures 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 final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate information in as timely a manner as possible, and to ensure that the PERM final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not making substantive changes to our policies, but rather, we are simply implementing correctly the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the PERM final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

**List of Subjects in 42 CFR Part 431**

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

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

**PART 431— STATE ORGANIZATION AND GENERAL ADMINISTRATION**

1. The authority citation for part 431 continues to read as follows:

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

**§431.802 [Removed]**

2. Section 431.802 is removed.

**CMS-6068-F2**

Dated: April 26, 2018.

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**Ann C. Agnew,**

Executive Secretary to the Department,

Department of Health and Human Services.

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