



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 418

[CMS-1629-F2]

RIN-0938-AS39

### Medicare Program; FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements; Correcting Amendment

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** In the August 6, 2015 issue of the **Federal Register**, we published a final rule that provided hospice quality reporting program updates, including finalizing the proposal to codify the Hospice Quality Reporting Program Submission Extension and Exemption Requirements. The effective date of the final rule was October 1, 2015. This correcting amendment corrects an omission identified in the August 6, 2015 final rule.

**DATES:** Effective date: [Insert date of publication in the **Federal Register**].

Applicability dates: This correcting amendment is applicable beginning October 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Cindy Massuda, (443) 570-9589.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 2015-19033 (80 FR 47142), the final rule entitled "FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements" (hereinafter referred to as the FY 2016 final rule), there were technical errors that are identified and corrected in the regulations text of this correcting amendment. The provisions of this correcting amendment are applicable beginning October 1, 2015.

## **II. Summary of Errors**

### A. Summary of Errors in the Preamble

On page 47194, in the first paragraph of the second column states, “Final Action: After consideration of comments, and given the clarification above, CMS is finalizing our proposal to codify the HQRP Submission Extension and Exemption Requirements at § 418.312.”

The revision needs to be added to the regulations text and the Code of Federal Regulations (CFR).

### B. Summary of Errors in the Regulations Text

On page 47207 of the FY 2016 final rule, we made technical errors in the regulations text of § 418.312. In this section, we inadvertently omitted language on our extension and exemption requirements policy. Accordingly, we are adding § 418.312(i) to accurately reflect our policy on extension and exemption requirements for the hospice quality reporting program (HQRP).

### C. Summary and Corrections of Errors in the Addenda on the CMS Website

We inadvertently omitted language on our extension and exemption requirements policy. Accordingly, we are adding § 418.312(i) to accurately reflect our policy on extension and exemption requirements for the HQRP.

## **III. Waiver of Proposed Rulemaking and Delay in Effective Date**

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 of the Department of Health and Human Services (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.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

Our policy on HQRP Submission Extension and Exemption Requirements at § 418.312 in the FY 2016 final rule has previously been subjected to notice and comment procedures.

These corrections are consistent with the discussion of this policy in the FY 2016 final rule and do not make substantive changes to this policy as referenced at 80 FR 47193, “in order to be considered, a request for an exemption or extension must contain all of the finalized

requirements as outlined on our Web site at <https://wayback.archive->

[it.org/2744/20150127181435/http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/index.html](https://wayback.archive-it.org/2744/20150127181435/http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/index.html).”

This correcting amendment merely corrects technical errors in the regulations text of the FY 2016 final rule. As a result, this correcting amendment is intended to ensure that the FY 2016 final rule accurately reflects the policy adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

For the same reasons, we are also waiving the 30-day delay in effective date for this correcting amendment. We believe that it is in the public interest to ensure that the FY 2016 final rule accurately states our policy on HQRP Submission Extension and Exemption Requirements at § 418.312. Thus delaying the effective date of these corrections would be contrary to the public interest. Therefore, we also find good cause to waive the 30-day delay in effective date.

**List of Subjects in 42 CFR Part 418**

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

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

**PART 418—HOSPICE CARE**

1. The authority citation for part 418 continues to read as follows:

**Authority:** 42 U.S.C. 1302 and 1395hh.

2. Section 418.312 is amended by adding paragraph (i) to read as follows:

**§418.312 Data submission requirements under the hospice quality reporting program.**

\* \* \* \* \*

(i) *Exemptions and extensions requirements.* (1) A hospice may request and CMS may grant exemptions or extensions to the reporting requirements under paragraph (b) of this section for one or more quarters, when there are certain extraordinary circumstances beyond the control of the hospice.

(2) A hospice requesting an exemption or extension must do so within 90 days of the date that the extraordinary circumstances occurred by sending an email to CMS Hospice QRP Reconsiderations at [HospiceQRPreconsiderations@cms.hhs.gov](mailto:HospiceQRPreconsiderations@cms.hhs.gov) that contains all of the following information:

(i) Hospice CMS Certification Number (CCN).

(ii) Hospice Business Name.

(iii) Hospice Business Address.

(iv) CEO or CEO-designated personnel contact information including name, title, telephone number, email address, and mailing address (the address must be a physical address, not a post office box).

(v) Hospice's reason for requesting the exemption or extension.

(vi) Evidence of the impact of extraordinary circumstances beyond the hospice's control, including, but not limited to photographs, newspaper, other media articles, or independent

sources attesting to the incident that can be reasonably corroborated. Include dates of occurrence and other documentation that may support the rationale for seeking extension or exemption.

(vii) Date when the hospice believes it will be able to again submit data under paragraph (b) of this section and a justification for the proposed date.

(3) CMS may grant exemptions or extensions to hospices without a request if it determines that one or more of the following has occurred:

(i) An extraordinary circumstance, such as an act of nature including a pandemic, affects an entire region or locale.

(ii) A systemic problem with one of CMS' data collection systems directly affect the ability of a hospice to submit data under paragraph (b) of this section.

Dated: August 24, 2020

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**Wilma M. Robinson,**

Deputy Executive Secretary to the

Department,

Department of Health and Human Services.

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