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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, and 423

[CMS-4190-CN]

RIN 0938-AT97

Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on June 2, 2020 entitled "Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program."

DATES: *Effective date:* This correcting document is effective on [insert date of publication in the **Federal Register**.]

FOR FURTHER INFORMATION CONTACT:

Cali Diehl, (410) 786-4053 or Christopher McClintick, (410) 786-4682 – General Questions.

Kimberlee Levin, (410) 786-2549 – Part C Issues.

Stacy Davis, (410) 786-7813 – Part C and D Payment Issues.

Melissa Seeley, (212) 616-2329 – D-SNP Issues.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2020–11342 of June 2, 2020 (85 FR 33796), there were a number of technical errors that are identified and corrected in this correcting document. The provisions in this correction document are effective as if they had been included in the document published June 2, 2020. Accordingly, the corrections are effective August 3, 2020.

II. Summary of Errors

On page 33820, in our discussion of dual eligible special needs plans, we inadvertently included a disclaimer that was not applicable to the published final rule.

On pages 33876 and 33877, in our discussion of the information collection requirements regarding Special Supplemental Benefits for the Chronically Ill (SSBCI), we inadvertently identified the wrong Paperwork Reduction Act package in our narrative and omitted several Office of Management and Budget (OMB) control numbers from Table 3.

On page 33881, in our discussion of the information collection requirements regarding medical savings account (MSA) medical loss ratio (MLR), we made inadvertent errors the amount of time it would take beneficiaries to complete an enrollment form.

On page 33883, in the table that provides a summary of the annual information collection burden (Table 6), we made the following typographical errors:

- In the table title, we included the term "requirements" instead of "burden".
- In the SSBCI entries there were errors in the identification numbers in the “OMB Control No.” column.
- In the MSA MLR entries, there were errors in the values and numbers for the “Regulatory citation”, “OMB Control No.”, “Total number of respondents”, and the “Total

number of responses”.

On pages 33889 and 33890, in the table that displays the per-year calculations regarding kidney acquisition costs (Table 11), we made inadvertent errors in the table title (we omitted "s" in the term "costs"). Additionally, on page 33890, the column headings are listed for the years 2013 to 2020 instead of 2021 to 2030.

III. Waiver of Proposed Rulemaking

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.

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.

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 of the APA or section 1871 of the Act. This correcting document corrects technical errors in the preamble and regulation text of the 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 final rule accurately reflects the policies adopted in that final rule.

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 to ensure that final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering payment eligibility or benefit methodologies or policies, but rather, simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the final

rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2020–11342 of June 2, 2020 (85 FR 33796), make the following corrections:

1. On page 33820, lower third of the page, the text box that includes the phrase "DISCLAIMER: Based on the tight time constraints and the need to expedite" is corrected by removing the text box.

2. On page 33876, lower three-fourths of the page (after the table), second column, sixth full paragraph, lines 6 and 7, the reference to "control number 0938-0763 (CMS-R-262)" is corrected to read "control number 0938-0753 (CMS-R-267)".

3. On page 33877, lower third of the page, the table titled "TABLE 3--SUMMARY OF BURDEN FOR SSBCI AT § 422.102" is corrected by correcting the third column (OMB Control No.) for the listed entries (SSBCI provisions) to read as follows:

Provision	Regulatory citation	OMB Control No.	Subject	Number of respondents	Total number of responses	Time per response (hr)	Total time (hr)	Labor cost (\$/hr)	Annual cost (\$)
SSBCI	§ 422.102(f)(3)(i)	0938-0753	SSBCI: Criteria (Initial Software)	234	1	12	2808	103.33	96,717
SSBCI	§ 422.102(f)(3)(i)	0938-0753	SSBCI: Criteria (Physician review)	234	1	36	8424	193.7	1,631,729
SSBCI	§ 422.102(f)(3)(i)	0938-0753	SSBCI: Criteria (Software updates)	234	1	5	1170	85.26	99,754
SSBCI	§ 422.102(f)(3)(ii)	0938-0753	Written criteria	234	1	2	468	56.34	26,367
SSBCI	§ 422.102(f)(3)(iii)	0938-0753	Enrollee eligibility	234	1	9	2106	86.95	179,465

4. On page 33881, first column, fourth full paragraph, line 8, the phrase "0.5 hours at \$25.72/hr" is corrected to read "0.3333 hours at \$25.72/hr"

5. On page 33883, in the table titled "TABLE 6--ANNUAL INFORMATION COLLECTION REQUIREMENTS" the table is corrected by--

a. Correcting the table title "TABLE 6--ANNUAL INFORMATION COLLECTION REQUIREMENTS" to read "TABLE 6--ANNUAL INFORMATION COLLECTION BURDEN".

b. Correcting the second (Regulatory citation), third (OMB Control No.), sixth (Total number of respondents), and seventh columns (Total number of responses) for the listed entry (third row the first MSA MLR provision) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost (\$/hr)	Total annual cost (\$)
MSA MLR	§ 422.2440	0938-NEW	Enrollees	MSA MLR: Filling out enrollment forms.	2,765	2,765	0.3333	922	25.72	23,705

c. Correcting the identification numbers in third column (OMB Control No.) for the listed entries (SSBCI provisions) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost (\$/hr)	Total annual cost (\$)
SSCBI	§ 422.102(f)(3)(i)	0938-0753	MA Plans	SSBCI: Criteria (initial software update)	234	1	12	2808	103.33	96,717
SSCBI	§ 422.102(f)(3)(i)	0938-0753	MA Plans	SSBCI: Criteria (Annual physician review)	234	1	36	8424	193.7	1,631,729
SSCBI	§ 422.102(f)(3)(i)	0938-0753	MA Plans	SSBCI: Criteria (Software updates)	234	1	5	1170	85.26	99,754
SSCBI	§ 422.102(f)(3)(ii)	0938-0753	MA Plans	SSBCI: Documentation	234	1	2	468	56.34	26,367
SSCBI	§ 422.102(f)(3)(iii)	0938-0753	MA Plans	SSBCI: Enrollee records	234	1	9	702	86.95	61,039

d. Correcting the second (Regulatory citation) and seventh columns (Total number of responses) for the listed entries (the specified MSA MLR provisions) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost (\$/hr)	Total annual cost (\$)
MSA MLR	§ 422.2440	0938-0753	MA Plans	MSA MLR: Notify enrollees	8	2,765	0.0167	46	77.14	3,548
MSA MLR	§ 422.2440	0938-0753	MA Plans	MSA MLR: Submit to CMS	8	2,765	0.0167	46	77.14	3,548
MSA MLR	§ 422.2440	0938-0753	MA Plans	MSA MLR: Archive	8	2,765	0.0833	230	36.82	8,481

e. Correcting column 2 (Regulatory citation) for the listed entry (the specified MSA MLR provision) to read as follows:

Provision	Regulatory citation	OMB Control No.	Respondent type	Response summary	Total number of respondents	Total number of responses	Time per response (hr)	Total annual time (hr)	Labor cost (\$/hr)	Total annual cost (\$)
MSA MLR	§ 422.2440	0938-1252	MA Plans	MSA MLR: Calculation of the deductible factor	8	8	0.0833	0.6664	116.32	78

6. On pages 33889 and 33890, in the table titled "Table 11, Per-Year Calculations, Representing the Pre-Statute Baseline

Based on Medicare FFS Coverage of Kidney Acquisition Cost", the table title and table are corrected to read as follows:

TABLE 11: PER-YEAR CALCULATIONS, REPRESENTING THE PRE-STATUTE BASELINE BASED ON MEDICARE FFS COVERAGE OF KIDNEY ACQUISITION COSTS

	2013	2014	2015	2016	2017	2018	2019	2020			
Kidney Acquisition Costs (PMPM):	1.72	1.82	1.95	2.08	2.20	2.34	2.49	2.65			
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2021-2030
Kidney Acquisition Costs (PMPM):	2.82	3.00	3.20	3.40	3.62	3.85	4.10	4.36	4.64	4.94	--
Medicare Advantage Enrollment Projection (000's):	24,690	25,624	26,508	27,380	28,237	29,070	29,861	30,607	31,313	32,035	--
Gross Savings (\$Millions):	836.2	923.5	1,016.6	1,117.4	1,226.3	1,343.4	1,468.4	1,601.7	1,743.7	1,898.4	13,175.6
Average government share of Gross Savings:	83.0%	83.0%	83.0%	83.1%	83.2%	83.2%	83.2%	83.4%	83.4%	83.4%	--
Net of Part B Premium:	85.6%	85.6%	85.5%	85.4%	85.3%	85.2%	85.0%	84.9%	84.9%	84.9%	--
Net Savings (\$Millions):	594.1	655.7	721.5	792.3	869.5	951.7	1,038.9	1,134.1	1,235.9	1,345.6	9,339.3

Dated: October 1, 2020.

Wilma M. Robinson,

Deputy Executive Secretary to the Department,

Department of Health and Human Services.

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