



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 417, 422, 423, 455, and 460**

**[CMS-4190-F3]**

**RIN 0938-AT97**

### **Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly; Corrections**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

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

**SUMMARY:** This document corrects technical and typographical errors in the final rule that appeared in the January 19, 2021 **Federal Register** titled "Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly." The effective date of the final rule was March 22, 2021.

**DATES:** This document is effective [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.

Lucia Patrone, (410) 786-8621 – Part D Issues.

Kristy Nishimoto, (206) 615-2367 – Beneficiary Enrollment and Appeals Issues.

Danielle Blaser, (410) 786-3487 – Program Integrity Issues.

Tobey Oliver, (202) 260-1113 – D-SNP Appeals and Grievances.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In FR Doc. 2021-00538 of January 19, 2021 (86 FR 5864), the final rule titled "Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly", there were technical errors that are identified and corrected in this correcting amendment.

### **II. Summary of Errors**

#### A. Summary of Errors in the Preamble

On pages 5870, 5895, 5950, 5975, 5983, 5985, 5987, 6007, 6016, and 6088, we made inadvertent grammatical and typographical errors.

On page 5938, in our discussion of tiering exceptions requests and the complaint tracking module, we inadvertently included an incorrect link.

On pages 5962 and 6058, we made typographical errors in several regulatory citations.

On pages 5977 and 5990, made typographical errors in cross-references to other sections of the final rule.

On page 6062, in our discussion of the information collection requirements (ICRs) regarding beneficiaries' education on opioid risks and alternative treatments (§ 423.128), we mistakenly referred to "Part D sponsors" rather than "Part D parent organizations."

## B. Summary of Errors in the Regulations Text

On page 6094, in the amendatory instructions for §422.101, we inadvertently omitted changes that would move existing paragraph (f)(2)(vi) to paragraph (f)(3)(i). This error caused a duplication of those paragraphs. Therefore, we are removing paragraph (f)(2)(vi) to correct this error..

On page 6103, we inadvertently changed the format in the regulation text for § 422.760(b)(3)(ii)(C) that was inconsistent with the language in § 423.760(b)(3)(ii)(C). In addition, we made a typographical error in §422.760(b)(3)(ii)(A).

On page 6120, in the regulation text for § 423.568(j)(2) and (3) and (k), we inadvertently use language applicable to MA plans instead of Part D plan sponsors.

On page 6128, in the regulations text for § 423.2267, we inadvertently misnumbered a paragraph.

## **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. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of the 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 for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (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, also provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act. 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 of the APA or section 1871 of the Act. This correcting document corrects technical errors in the preamble and regulations 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 requirements for notice and comment and delay of effective date.

#### **IV. Correction of Errors in the Preamble**

In FR Doc. 2021-00538, published in the Federal Register of January 19, 2021, beginning on page 5864, the following corrections are made:

1. On page 5870, second column of the table, first paragraph, line 3, the phrase “he RTBTI” is corrected to read “The RTBT”.

2. On page 5895, third column, second full paragraph, line 6, the terms “thatthis” are corrected to read “that this”.

3. On page 5938, second column, second full paragraph, lines 8 through 10, the website link “<https://www.cms.gov/files/document/cy2020part-d-reportingrequirements.pdf>” is corrected to read “<https://www.cms.gov/files/document/cy2020part-d-reporting-requirements082719.pdf>”.

4. On page 5950, third column, third full paragraph, lines 23 and 24, the phrase “will become” is corrected to “became”.

5. On page 5962, third column, second partial paragraph, line 7, the citation “§422.509 or §423.510” is corrected to read “§422.510 or § 423.509”.

6. On page 5975, first column, fifth paragraph, line 18, the word “reward” is corrected to read “rewards”.

7. On page 5977, third column, second full paragraph, line 19, the phrase “Section IIIC” is corrected to read “Section III.C.”.

8. On page 5983, second column, first partial paragraph, line 37, the word “provider” is corrected to read “provides”.

9. On page 5985, third column, first full paragraph, line 6, the word “are” is corrected to read “is”.

10. On page 5987, first column, second partial paragraph, line 17, the word “of” is corrected to read “or”.

11. On page 5990, second column, first full paragraph, line 25, the reference “section D.” is corrected to read “section V.D.”.

12. On page 6007, first column, second partial paragraph, lines 26 and 27, the phrase “used evaluating” is corrected to read “use in evaluating”.

13. On page 6016, first column, first full paragraph, line 1, the word “toe” is corrected to read “to”.

14. On page 6058, third column, first full paragraph, line 4:

a. The reference “0938-10396” is corrected to “0938-1154”.

b. The reference “CMS-1154” is corrected to read “CMS-10396”.

15. On page 6062, first column, first full paragraph, line 1, “288 Part D sponsors” is corrected to read “288 Part D parent organizations”.

16. On page 6088, second column, first full paragraph, line 12, “positon” is corrected to “position”.

## **List of Subjects**

### **42 CFR Part 422**

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

### **42 CFR Part 423**

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR parts 422 and 423 are corrected by making the following correcting amendments:

**PART 422--MEDICARE ADVANTAGE PROGRAM**

1. The authority citation for part 422 continues to read as follows:

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

**§ 422.101 [Amended]**

2. Section 422.101 is amended by removing paragraph (f)(2)(vi).

3. Section 422.760 is amended as follows:

a. In paragraph (b)(3)(ii)(A) by removing the word “increases” and adding in its place the phrase “are increased”.

b. By revising paragraph (b)(3)(ii)(C).

The revision reads as follows:

**§422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(C) CMS tracks the calculation and accrual of the standard minimum penalty and aggravating factor amounts and announces them on an annual basis.

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**PART 423--VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT**

4. The authority citation for part 423 continues to read as follows:

**Authority:** 42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.



**§ 423.568 [Amended]**

5. Section 423.568 is amended as follows:

a. In paragraph (j)(2) by removing the phrase “MA organization” and adding in its place the phrase “Part D plan sponsor”.

b. In paragraph (j)(3) by removing the term “reconsideration” adding in its place the term “redetermination”.

c. In paragraph (k) by removing the term “redetermination” adding in its place the term “coverage determination”.

**§ 423.2267 [Amended]**

6. Section 423.2267 is amended by redesignating paragraph (e)(13)(ii)(H) as paragraph (e)(13)(ii)(G).

Dated: May 25, 2021.

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**Karuna Seshasai,**

Executive Secretary to the Department,

Department of Health and Human Services.

[FR Doc. 2021-11446 Filed: 6/1/2021 8:45 am; Publication Date: 6/2/2021]