



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 155

[CMS-9914-CN]

RIN 0938-AU18

### Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors in the final rule that appeared in the May 5, 2021, **Federal Register** entitled, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards”.

**DATES:** This correction is effective on July 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Wu, (301) 492-4305, Rogelyn McLean, (301) 492-4229, Grace Bristol, (410) 786-8437, Kiahana Brooks, (301) 492-5229, or Sara Rosta, (301) 492-4223 for general information.

### SUPPLEMENTARY INFORMATION:

#### I. Background

In FR Doc. 2021–09102 of May 5, 2021, the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule (86 FR 24140), there were technical errors that are identified and corrected in the regulation text of this correcting document. The correction is effective on July 6, 2021, as this is the date that the relevant regulations contained in

the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule take effect.

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

On page 24289 of the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule, we made technical errors in amendatory instructions 27b and d for § 155.221. In these amendatory instructions, we inadvertently noted that we were: (1) Redesignating paragraphs (c) through (h) as paragraphs (d) through (i), respectively; and (2) amending newly redesignated paragraphs (g) introductory text, (g)(6) and (7), and (h) by removing the reference to “paragraph (e)” and adding in its place a reference to “paragraph (f)”.

These amendatory instructions were duplicative of amendatory instructions 6a and c of the final rule that appeared in the January 19, 2021 **Federal Register**, entitled “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022; Updates to State Innovation Waiver (Section 1332 Waiver) Implementing Regulations” (86 FR 6176). Therefore, in addition to amendatory instruction 27a, we should have only included the addition of paragraph (c) for changes to § 155.221 in the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule. Accordingly, we are revising amendatory instruction 27b to accurately reflect the addition of paragraph (c) and removing amendatory instructions 27c and d.

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

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the 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. 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 waive 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.

This document merely corrects technical errors in the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022 and Pharmacy Benefit Manager Standards final rule that was published on May 5, 2021 for amendments that become effective on July 6, 2021. The corrections do not make substantive changes to the policies or standards set forth in the final rule. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections and delay the effective date for these changes is unnecessary. In addition, we believe that it is important for the public to have the correct information as soon as possible and believe it is contrary to the public interest to delay when they become effective. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date for this correction document.

### **Correction**

In FR 2021-09102, appearing on page 24140 in the Federal Register of Wednesday, May 5, 2021, the following correction is made:

#### **§ 155.221 [Corrected]**

On page 24289, in the first column, the text of instruction 27 for § 155.221 is corrected to read as follows:

27. Section 155.221 is amended by revising paragraphs (b)(1), (3), and (4) and adding paragraph (c) to read as follows:

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**Karuna Seshasai,**

Executive Secretary to the Department,

Department of Health and Human Services.

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