



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 402

#### Office of the Secretary

#### 45 CFR Part 102

[CMS-6061-CN]

RIN 0938-AT86

### Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors in the final rule that appeared in the October 11, 2023 **Federal Register** titled “Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties”.

**DATES:** Effective date: This correcting document is effective December 11, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brian Broznovicz, (410) 786-3349.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This correcting document identifies and corrects errors in FR Doc. 2023-22282 of October 11, 2023 (88 FR 70363). The provisions in this correction document are effective as if they had been included in the document published October 11, 2023. Accordingly, the corrections are effective December 11, 2023.

## **II. Summary of Errors**

On page 70363, we inadvertently omitted a part of the header.

On page 70372, we made an error in the Words of Issuance.

On page 70373, we made technical errors in the amendatory instructions as well as the headings, entries, and table notes in the civil monetary penalty adjustment table at 45 CFR 102.3.

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

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with 5 U.S.C. section 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that this final rule correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document merely corrects typographical and technical errors in the final rule, and it does not make substantive changes to the policies or the implementing regulations that were adopted in the final rule. As a result, this final rule correcting document is intended to ensure that the information in the final rule accurately reflects the policies and regulatory amendments 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 minor corrections in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply

correctly implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized. This final rule correcting document is intended solely to ensure that the final rule accurately reflects these policies and regulatory changes. Furthermore, additional notice and comment procedures would be contrary to the public interest because it is in the public’s interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, for all of the reasons cited above, we believe we have good cause to waive the notice and comment and effective date requirements.

#### **IV. Correction of Errors**

In FR Doc. 2023-22282 of October 11, 2023 (88 FR 70363), we are making the following corrections:

1. On page 70363, second column, lines 5 and 6, the header of the document is corrected to read as follows:

**42 CFR Part 402**

**Office of the Secretary**

**45 CFR Part 102**

2. On page 70372, first column, the fifth full paragraph (Words of Issuance) is corrected to read as follows:

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

3. On page 70373, starting in the third column, amendatory instruction 5 and the accompanying regulatory text is corrected to read as follows:

5. Section 102.3 is amended in table 1 by—

- a. Revising the entries for “1395y(b)(6)(B)” and “1395y(b)(7)(B)(i)”; and
- b. Adding an entry for “1395y(b)(8)(E)(i)” in alphanumerical order.

The revisions and addition read as follows:

§ 102.3 Penalty adjustment and table.

\* \* \* \* \*

**Table 1 to §102.3—Civil Monetary Penalty Authorities Administered by HHS**

U.S.C. Section(s)	CFR <sup>1</sup>	HHS Agency	Description <sup>2</sup>	Date of Last Penalty, Figure or Adjustment <sup>3</sup>	2022 Maximum Adjusted Penalty (\$)	2023 Maximum Adjusted Penalty <sup>4</sup> (\$)
* * * * *						
42 U.S.C.						
* * * * *						
1395y(b)(6)(B)	42 CFR 402.1(c)(20), 402.105(a).	CMS	Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form.	2022	3,701	3,988
1395y(b)(7)(B)(i)	42 CFR 402.1(c)(21), 402.105(a).	CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2022	1325	1,428
* * * * *						
1395y(b)(8)(E)(i)	42 CFR 402.1(c)(22), 402.105(b)(2).	CMS	Penalty for any entity serving as insurer, third party administrator, or fiduciary for a non-group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary.	2022	1,325	1428
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<sup>1</sup>Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.

<sup>2</sup>The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable, should be consulted.

<sup>3</sup>Statutory or Inflation Act Adjustment.

<sup>4</sup> OMB Memorandum *M-16-06*, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published February 24, 2016, guided agencies on initial “catch-up” adjustment requirements, and *M-17-11*, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, published December 16, 2016; followed by *M-18-03*, *M-19-04*, *M-20-05*, *M-21-10*, *M-22-07*, and *M-23-05* guided agencies on annual adjustment requirements

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**Elizabeth J. Gramling,**

Executive Secretary,

Department of Health and Human Services.

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