Authority: 33 U.S.C. 1221 through 1236; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 4. A new § 165.1407 is added to read as follows:

§ 165.1407 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI.

(a) Location. The following areas, from the surface of the water to the ocean floor, are security zones:

(1) All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of the following coordinates: The shoreline at 21°17.68′ N, 157°52.0′ W; thence due south to 21°16.0′ N, 157°52.0′ W; thence due west to 21°16.0′ N, 157°55.58′ W; thence due north to Honolulu International Airport Reef Runway at 21°18.25′ N, 157°55.58′ W.

(2) The waters around the Tesoro Single Point and the Chevron Conventional Buoy Moorings beginning at 21°16.43′ N, 158°6.03′ W; thence northeast to 21°17.35′ N, 158°3.95′ W; thence southeast to 21°16.47′ N, 158°3.5′ W; thence southwest to 21°15.53′ N, 158°5.56′ W; thence north to the beginning point.

(3) The Kahului Harbor and Entrance Channel, Maui, HI consisting of all waters shoreward of the COLREGS DEMARCATION line. (*See* 33 CFR 80.1460).

(4) All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (*See* 33 CFR 80.1450).

(5) All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line (*See* 33 CFR 80.1440).

(6) The waters within a 100-yard radius centered on each cruise ship in Hilo Harbor, Hawaii, HI and Entrance Channel shoreward of the COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the cruise ship is in transit and becomes a fixed zone when the cruise ship is anchored or moored.

(7) The waters extending out 500 yards in all directions from cruise ships anchored or position keeping within 3 miles of:

(i) Lahaina Harbor, Maui, HI, between Makila Point and Puunoa Point.

(ii) Kailua-Kona Harbor, Hawaii, HI, between Keahulolu Point and Puapuaa Point.

(8) All waters contained within the Barbers Point Harbor, Oahu, HI, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21° 19.5′ N, 158°07.3′ W.

(b) Designated Representative: A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf.

(c) Cruise ship: For the purposes of this section, the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. A ''voyage'' in this section means the cruise ship's entire course of travel, from the first port at which the cruise ship embarks passengers until its return to its last port of call where the majority of passengers are disembarked.

(d) Regulations. (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port by calling the Command Center at telephone numbers (808) 541–2477 or (800) 552–6458, or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of the Port, Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, HI 96813 or faxed to (808) 522–8270. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

(4) Persons entering a security zone without authorization of the Captain of the Port may be subject to a civil penalty of not more than $25,000 for each violation or a criminal penalty resulting in imprisonment of not more than ten years and a fine not more than $10,000.

Dated: April 14, 2003.

G.A. Wiltshire,

Captain, U.S. Coast Guard, Commander, Fourteenth Coast Guard District, Acting.

[FR Doc. 03–10215 Filed 4–24–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1809–F3]

RIN 0938–AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

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

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until January 7, 2004, the effective date of the last sentence of 42 CFR 411.354(d)(1). This section was promulgated in the final rule entitled ''Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,'' published in the **Federal Register** on January 4, 2001. A 1-year delay of the effective date of the last sentence in this section was published in the **Federal Register** on December 3, 2001. An additional 6-month delay, until July 7, 2003, was published on November 22, 2002. This further extension of the delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is ''set in advance'' as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective July 7, 2003, will not become effective until January 7, 2004. We expect that the definition of ''set in advance'' will be addressed definitively before January 7, 2004 in a final rule with comment period, entitled ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships'' (Phase II).

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed to January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Raschke, (410) 786–0016.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service

of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site: *http://cms.hhs.gov/medlearn/refphys.asp.*

I. Background

The final rule, entitled ''Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,'' published in the **Federal Register** on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be ''set in advance.'' Section 411.354(d)(1) of the final rule defines the term ''set in advance.''

The last sentence of § 411.354(d)(1) reads: ''Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser.'' Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the commenters, this compensation methodology is frequently used by hospitals, physician group practices, academic medical centers, and medical foundations. Several commenters pointed out that this aspect of the final rule, which is applicable to academic medical centers and medical foundations (among others), is inconsistent with the compensation methods permitted under the statute for many physician group practices and employed physicians (that is, neither section 1877(h)(4)(B)(i) of the Act nor section 1877(e)(2) of the Act contains the ''set in advance'' requirement). We understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154), and an additional 6-month delay in the effective date on November 22, 2002 (67 FR 70322,) in order to reconsider the definition of compensation that is ''set in advance'' as it relates to percentage compensation methodologies.

II. Provisions of this Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this provision, we are further postponing, for an additional 6 months, until January 7, 2004, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on July 7, 2003. In the meantime, compensation that is required to be ''set in advance'' for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and ''volume and value'' requirements.)

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b). We find that seeking public comment on this action would be impracticable and unnecessary. We believe public comment is unnecessary because we are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation. In addition, given the imminence of the July 7, 2003 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by July 7, 2003 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: March 31, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 10, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–9495 Filed 4–24–03; 8:45 am]

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