

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[CMS-3302-WN]

42 CFR Part 416, 418, 482, 483, and 485**Medicare and Medicaid Programs; Revisions to Certain Patient's Rights Conditions for Participation and Conditions for Coverage; Withdrawal****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the *Federal Register* on December 12, 2014. This proposed rule would revise the applicable conditions of participation for certain providers, conditions for coverage for certain suppliers, and requirements for long-term care facilities, to ensure that the requirements are consistent with the Supreme Court decision in *United States v. Windsor* (570 U.S.12, 133 S. Ct. 2675 (2013)), and HHS policy. Specifically, it proposed to revise certain definitions and patient's rights provisions that currently defer to state law, in order to ensure that same-sex spouses are recognized and afforded equal rights in certain Medicare and Medicaid-participating facilities.

DATES: As of October 4, 2017, the proposed rule published December 12, 2014, at 79 FR 73873, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Ronisha Blackstone, 410-786-6882.

SUPPLEMENTARY INFORMATION: On December 12, 2014, we published a proposed rule in the *Federal Register* entitled, "Medicare and Medicaid Program; Revisions to Certain Patient's Rights Conditions of Participation and Conditions for Coverage" (79 FR 73873). In *United States v. Windsor*, 570 U.S.12, 133 S. Ct. 2675 (2013), the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA) was unconstitutional because it violated the Fifth Amendment (See *Windsor*, 133 S. Ct. 2675, 2695). Section 3 of DOMA provided that in determining the meaning of any Act of the Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" meant only a legal union between one man and one woman as husband and wife, and the word "spouse" could refer only to a person of the opposite sex who was a husband or a wife (1 U.S.C. 7).

Following the Supreme Court's opinion in *Windsor*, the Federal government was permitted to recognize the validity of same-sex marriages when administering Federal statutes and programs.

The December 2014 rulemaking proposed to revise certain conditions of participation (CoPs), conditions for coverage (CfCs), and requirements for certain Medicare- and Medicaid-participating facilities to ensure that the requirements at issue were consistent with the *Windsor* decision. We received 97 public comments in response to the December 2014 proposed rule. Following publication of the proposed rule, on June 26, 2015 in *Obergefell v. Hodges*, (135 S. Ct. 2584 (2015)), the Supreme Court held that the Due Process and Equal Protection clauses of the Fourteenth Amendment requires a state to license a marriage between two people of the same sex, and to recognize same-sex marriages lawfully performed in other States. In light of the *Obergefell* decision, we have decided to withdraw the December 2014 proposed rule. We believe that the *Obergefell* decision has addressed many of the concerns raised in the December 2014 proposed rule.

Accordingly, the proposed rule published December 12, 2014, at 79 FR 73873, is withdrawn.

Dated: August 24, 2017.

Seema Verma,
Administrator, Centers for Medicare & Medicaid Services.

Approved: September 7, 2017.

Thomas E. Price,
Secretary, Department of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 424**

[CMS-6012-WN]

RIN 0938-AR84**Medicare Program; Establishment of Special Payment Provisions and Requirements for Qualified Practitioners and Qualified Suppliers of Prosthetics and Custom-Fabricated Orthotics; Withdrawal****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the

Federal Register on January 12, 2017. The proposed rule specified the qualifications needed for qualified practitioners to furnish and fabricate, and qualified suppliers to fabricate prosthetics and custom-fabricated orthotics; accreditation requirements that qualified suppliers must meet in order to bill for prosthetics and custom fabricated orthotics; requirements that an organization must meet in order to accredit qualified suppliers to bill for prosthetics and custom-fabricated orthotics; and a timeframe by which qualified practitioners and qualified suppliers must meet the applicable licensure, certification, and accreditation requirements. In addition, the proposed rule removed the current exemption from accreditation and quality standards for certain practitioners and suppliers.

DATES: As of October 4, 2017, the proposed rule published January 12, 2017, at 82 FR 3678, is withdrawn.

FOR FURTHER INFORMATION CONTACT: John Spiegel, (410) 786-1909.

SUPPLEMENTARY INFORMATION: In the January 12, 2017 *Federal Register* (82 FR 3678), we published a proposed rule titled, "Medicare Program; Establishment of Special Payment Provisions and Requirements for Qualified Practitioners and Qualified Suppliers of Prosthetics and Custom Fabricated Orthotics" to ensure that only those who are qualified to do so can furnish, fabricate, and bill for the prosthetics and custom-fabricated orthotics addressed by the proposed rule.

We received over 5,000 public comments in response to the January 12, 2017 proposed rule.

In light of the cost and time burdens that the proposed rule would create for many providers and suppliers, particularly the cost and burden for those providers and suppliers that are small businesses, and the complexity of the issues raised in the detailed public comments received, we are withdrawing the January 12, 2017 proposed rule in order to assure agency flexibility in re-examining the issues and exploring options and alternatives with stakeholders.

Accordingly, the proposed rule published January 12, 2017, at 82 FR 3678, is withdrawn.