DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422, 423, 438, and 498

[CMS—4185–CN]

RIN 0938–AT59

Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Programs of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the April 16, 2019 Federal Register titled “Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Programs of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021”.

DATES: Effective Date: The corrections to the preamble of the final rule published on April 16, 2019 (84 FR 15680), are effective June 7, 2019. The correction in instruction 8 (§ 422.107(d)) is effective June 17, 2019. The corrections in instructions 5 (§ 422.561), 6 (§ 422.562), 7 (§ 422.633), and 9 (§ 423.120) are effective on January 1, 2020. The correction in instruction 4 (§ 422.107(d)) is effective January 1, 2021.


SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2019–06822 of April 16, 2019 (84 FR 15680), there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section of this correcting document. The provisions in this correction document are effective as if they had been included in the document published April 16, 2019.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 15680, in our listing of the effective dates, we made an error in a regulatory citation.

On page 15713, in our discussion of dual eligible special needs plans and contracts with states, we made a typographical error.

On page 15736, in our discussion of integrated grievances, we made an error in regulatory citation.

B. Summary of Errors in the Regulations Text

On page 15828, in the regulation text for § 422.107(d), we made a typographical error.

On page 15834, in the regulation text for § 422.561, we inadvertently misspelled the term “complaint” and in § 422.562, we made errors in two cross-references.

On page 15838, in the regulation text § 422.633, we made inadvertent technical errors in language of two regulatory provisions regarding integrated reconsideration.

On page 15840, we made errors in the placement of the regulatory text revisions for § 423.120(c)(6)(iv) and (v). We inadvertently included the revisions for § 423.120(c)(6)(iv) with the amendments effective June 17, 2019 (instead of January 1, 2020) and the revisions for § 423.120(c)(6)(v) with the amendments effective January 1, 2020 (instead of June 17, 2019).

III. Waiver of Proposed Rulemaking

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. 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. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of 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 provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. 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.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the Federal Register. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

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 regulation 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 notice and comment and effective date requirements.
IV. Correction of Errors

In FR Doc. 2019–06822 of April 16, 2019 (84 FR 15680), make the following corrections:

A. Corrections of Errors in the Preamble

1. On page 15680, first column, fourth full paragraph (Dates section), line 9, the reference “§423.120(c)(6)(iv)” is corrected to read “§423.120(c)(6)(v)”.

2. On page 15713, third column, second full paragraph, line 29, the phrase “arrange for” is corrected to read “arranges for”.

3. On page 15736, first column, first partial paragraph, line 6, the reference “§422.630(e)(2)(ii)” is corrected to read: “§422.630(e)(2)”.

B. Corrections of Errors in the Regulations Text

§ 422.107 [Corrected]

4. Effective January 1, 2021, on page 15828, third column, in §422.107(d), the phrase “or arrange for” is corrected to read “or arranges for”.

§ 422.561 [Corrected]

5. Effective on January 1, 2020, on page 15834, first column, in §422.561, in the definition of “Integrated grievance,” the term “compliant” is corrected to read “complaint”.

§ 422.562 [Corrected]

6. Effective on January 1, 2020, on page 15834, in §422.562—

a. In paragraph (b)(2), the reference, “§422.631” is corrected to read, “§422.631(c)”.

b. In paragraph (b)(4)(ii), the reference “§422.633(f)” is corrected to read “§422.633(e)”.

§ 422.633 [Corrected]

7. Effective on January 1, 2020, on page 15838, in §422.633—

a. In paragraph (f)(1), the phrase, “no longer than” is corrected to read “no later than”.

b. In paragraph (f)(2), the phrase “of receipt for” is corrected to read “of receipt of”.

§ 423.120 [Corrected]

8. Effective June 17, 2019, on page 15840, in second column, amendatory instruction 28 for §423.120 and its corresponding text is corrected in its entirety to read as follows:

28. Effective June 17, 2019, §423.120 is amended by revising paragraph (c)(6)(v) to read as follows:

§ 423.120 Access to covered Part D drugs.

(c) * * *

(v)(A) CMS sends written notice to the prescriber via letter of his or her inclusion on the preclusion list. The notice must contain the reason for the inclusion on the preclusion list and inform the prescriber of the preclusion appeal rights. A prescriber may appeal his or her inclusion on the preclusion list under this section in accordance with part 498 of this chapter.

(B) If the prescriber’s inclusion on the preclusion list is based on a contemporaneous Medicare revocation under §424.535 of this chapter:

1. The notice described in paragraph (c)(6)(v)(A) of this section must also include notice of the revocation, the reason(s) for the revocation, and a description of the prescriber’s appeal rights concerning the revocation.

2. The appeals of the prescriber’s inclusion on the preclusion list and the prescriber’s revocation must be filed jointly by the prescriber and, as applicable, considered jointly under part 498 of this chapter.

(C)(1) Except as provided in paragraph (c)(6)(v)(C)(2) of this section, a prescriber who is revoked while the preclusion list exists, in the 60-day period in which the prescriber may request a reconsideration.

(ii) If the prescriber does not file a reconsideration request under §498.5(n)(1) of this chapter, the prescriber will be added to the preclusion list upon the expiration of the 60-day period in which the prescriber may request a reconsideration.

(2) An OIG excluded prescriber is added to the preclusion list effective on the expiration of the 60-day period in which the prescriber may request a reconsideration.

(D) If the prescriber files a reconsideration request under §498.5(n)(1) of this chapter, the prescriber will be added to the preclusion list effective on the date on which CMS, if applicable, denies the prescriber’s reconsideration.

(2) An OIG excluded prescriber is added to the preclusion list effective on the date of the exclusion.

§ 423.120 [Corrected]

9. Effective on January 1, 2020, on page 15840, beginning in the second column, amendatory instruction 29 for §423.120 and its corresponding text is corrected in its entirety to read as follows:

29. Section 423.120 is further amended by—

a. Revising paragraph (c)(6)(iv); and

b. Adding paragraphs (c)(6)(vii) and (viii).

The revision and additions read as follows:

§ 423.120 Access to covered Part D drugs.

(c) * * *

(v)(A) CMS sends written notice to the prescriber via letter of his or her inclusion on the preclusion list. The notice must contain the reason for the inclusion on the preclusion list and inform the prescriber of the preclusion appeal rights. A prescriber may appeal his or her inclusion on the preclusion list under this section in accordance with part 498 of this chapter.

(B) If the prescriber’s inclusion on the preclusion list is based on a contemporaneous Medicare revocation under §424.535 of this chapter:

1. The notice described in paragraph (c)(6)(v)(A) of this section must also include notice of the revocation, the reason(s) for the revocation, and a description of the prescriber’s appeal rights concerning the revocation.

2. The appeals of the prescriber’s inclusion on the preclusion list and the prescriber’s revocation must be filed jointly by the prescriber and, as applicable, considered jointly under part 498 of this chapter.

(C)(1) Except as provided in paragraph (c)(6)(v)(C)(2) of this section, a prescriber who is revoked while the preclusion list exists, in the 60-day period in which the prescriber may request a reconsideration.

(ii) If the prescriber does not file a reconsideration request under §498.5(n)(1) of this chapter, the prescriber will be added to the preclusion list upon the expiration of the 60-day period in which the prescriber may request a reconsideration.

(2) An OIG excluded prescriber is added to the preclusion list effective on the expiration of the 60-day period in which the prescriber may request a reconsideration.

(D) If the prescriber files a reconsideration request under §498.5(n)(1) of this chapter, the prescriber will be added to the preclusion list effective on the date on which CMS, if applicable, denies the prescriber’s reconsideration.

(2) An OIG excluded prescriber is added to the preclusion list effective on the date of the exclusion.

(vii)(A) Except as provided in paragraph (c)(6)(vii)(C) and (D) of this section, a prescriber who is revoked under §424.535 of this chapter will be included on the preclusion list for the same length of time as the prescriber’s revocation period.

(B) Except as provided in paragraphs (c)(6)(vii)(C) and (D) of this section, a prescriber who is not enrolled in Medicare will be included on the preclusion list for the same length of time as the enrollee’s enrollment period.

(C) Except as provided in paragraph (c)(6)(vii)(D) of this section, an individual, regardless of whether the individual is or was enrolled in

§ 423.120 [Corrected]
Medicare, that is included on the preclusion list because of a felony conviction will remain on the preclusion list for a 10-year period, beginning on the date of the felony conviction, unless CMS determines that a shorter length of time is warranted. Factors that CMS considers in making such a determination are—

(1) The severity of the offense;
(2) When the offense occurred; and
(3) Any other information that CMS deems relevant to its determination.

(D) In cases where an individual is excluded by the OIG, the individual must remain on the preclusion list until the expiration of the CMS-imposed preclusion list period or reinstatement by the OIG, whichever occurs later.

(viii) Payment denials under paragraph (c)(6) of this section that are based upon the prescriber’s inclusion on the preclusion list are not appealable by beneficiaries.

DEPARTMENT OF HOMELAND SECURITY
Coast Guard
46 CFR Parts 10, 11, and 15
[Docket No. USCG–2018–0100]
RIN 1625–AC46
Amendments to the Marine Radar Observer Refresher Training Regulations
AGENCY: Coast Guard, DHS.
ACTION: Final rule.

SUMMARY: The Coast Guard is revising its merchant mariner credentialing regulations to remove obsolete portions of the radar observer requirements and harmonize the radar observer endorsement with the merchant mariner credential. These revisions will reduce an unnecessary financial burden on mariners required to hold a radar observer endorsement. This rule will affect mariners who have served on radar-equipped vessels, in a position that routinely uses radar for 1 year in the previous 5 years for navigation and collision avoidance purposes, and mariners who have taught a Coast Guard-approved or accepted radar course at least twice within the past 5 years. These mariners will no longer be required to complete a Coast Guard-approved or accepted radar refresher or recertification course in order to renew their radar observer endorsements. We are retaining the existing requirements for mariners seeking an original radar observer endorsement and for mariners who do not have 1 year of routine relevant sea service on board radar-equipped vessels in the previous 5 years or have not taught a Coast Guard-approved or accepted radar course at least twice within the past 5 years. This final rule adopts, with modification, the notice of proposed rulemaking published on June 11, 2018.

DATES: This final rule is effective July 22, 2019.


FOR FURTHER INFORMATION CONTACT: For information about this document call or email Mr. Davis Breyer, Coast Guard; telephone 202–372–1445, email davis.j.breyer@uscg.mil.

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I. Abbreviations
ARPA Automatic Radar Plotting Aids
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CGAA 2015 Coast Guard Authorization Act of 2015
CGAA 2018 Coast Guard Authorization Act of 2018
DHS Department of Homeland Security
FR Federal Register
MERPAC Merchant Marine Personnel Advisory Committee
MMC Merchant Mariner Credential
MMDL Merchant Mariner Licensing and Documentation
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
RA Regulatory analysis
RFA Regulatory Flexibility Act
STCW Code Seafarers’ Training, Certification and Watchkeeping Code