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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 170

RIN 0955-AA02

Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency; Correction

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors found in the interim final rule entitled “Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency” that was published in the **Federal Register** on November 4, 2020.

DATES: The corrections in this document are effective on December 4, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Lipinski, Office of Policy, National Coordinator for Health Information Technology, 202-690-7151.

SUPPLEMENTARY INFORMATION:

I. Background

This document corrects typographical errors found in the interim final rule entitled “Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency,” (**Federal Register** document 2020-24376) (85 FR 70064), that was published in the **Federal Register** on November 4, 2020. We summarize and correct these errors in the “Summary of Errors” and “Corrections of Errors” sections below.

II. Summary of Errors

A. Standardized API for Patient and Population Services

As discussed in the preamble of the interim final rule, page 70077, second

column, top of page, we stated that we added a new paragraph at § 170.315(g)(10)(v)(A)(1)(iii). However, in the amendatory instruction for the regulation text, we inadvertently added the wrong citation. In amendatory instruction 11.b., on page 70083, the words “Adding paragraph (g)(10)(iv)(A)(1)(iii)” should have read “Adding paragraph (g)(10)(v)(A)(1)(iii).” We are correcting the error by including the correct citation in this document.

B. Real World Testing

In the interim final rule, on page 70076, second column, top half of the page, we corrected the real world testing regulation text in § 170.405(b)(3) by removing the words “for C-CDA” from the heading of the paragraph (85 FR 70076). In § 170.405, we also extended the compliance dates for updating certain criteria until December 31, 2022 (85 FR 70072). However, in amendatory instruction 16.a., on page 70084, we inadvertently only included the instruction for “(b)(3) introductory text.” Because the revisions are being made to both the heading of § 170.405(b)(3) and the compliance date in § 170.405(b)(3)(ii), we are correcting the error in the amendatory instruction by adding “(b)(3)(ii),” after the phrase “(b)(3) introductory text.”

III. Waiver of Proposed Rulemaking, Comment Period, and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking 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 notice and comment and delay in effective date requirements. Section 553(b)(B) of the APA authorizes 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, section 553(d)(3) of the APA allows 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.

We believe this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This document corrects typographical errors in regulation text of the interim

final rule, but does not make substantive changes to the policies that were adopted in the interim final rule. As a result, this correcting document is intended to ensure that the information in the interim 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 procedures and requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the interim final rule or delaying the effective date would be contrary to the public interest because they are obvious typographical errors that are being corrected. Furthermore, such procedures would be unnecessary, as we are not making substantive changes to our methodologies or policies, but rather, we are simply implementing correctly the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the ONC Cures Act Final Rule and the interim final rule accurately reflect these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Corrections of Errors

In FR Doc 2020-24376 appearing on page 70064 in the **Federal Register** of Wednesday, November 4, 2020, for the reasons stated above, the Office of the Secretary corrects the following:

§ 170.315 [Corrected]

- 1. On page 70083, in the first column, the text of amendatory instruction 11 is corrected to read as follows:
- 11. Amend § 170.315 by:
 - a. Revising paragraphs (b)(1)(iii)(A)(2), (b)(2)(i), (b)(2)(iii)(D) introductory text, (b)(2)(iv), (b)(3)(ii)(B)(2), (b)(7)(ii), (b)(8)(i)(B), (b)(9)(ii), (c)(3), (d)(13)(ii), (e)(1)(i)(A)(2), (f)(5)(iii)(B)(1) and (2), (g)(6)(i)(B), (g)(9)(i)(A)(2), (g)(10)(v)(A)(1)(ii), and (g)(10)(v)(A)(2)(ii); and
 - b. Adding paragraph (g)(10)(v)(A)(1)(iii).

The revisions and addition read as follows:

§ 170.405 [Corrected]

- 2. On page 70084, in the second column, the text of amendatory instruction 16 is corrected to read as follows:
- 16. Amend § 170.405 by:

■ a. Revising paragraphs (b)(1) introductory text, (b)(2)(ii) introductory text, (b)(3) introductory text, (b)(3)(ii), (b)(4)(ii), (b)(5)(ii), (b)(6)(ii), and (b)(7)(ii); and

■ b. Adding paragraph (b)(10).

The revisions and addition read as follows:

Wilma M. Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2020-26666 Filed 12-2-20; 4:15 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 16-42, CS Docket No. 97-80; FCC 20-124; FRS 17231]

Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminates outdated CableCARD support and reporting requirements and terminates related dockets.

DATES: Effective December 4, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, Brendan.Murray@fcc.gov, of the Media Bureau, (202) 418-1573.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 20-124, adopted and released on September 4, 2020. The full text of this document is available for public inspection via ECFS (<http://www.fcc.gov/cgb/ecfs/>). To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

In this Report and Order, we terminate a proceeding in which we sought comment on the adoption of new regulations for "navigation devices"—devices that consumers use to access multichannel video programming and other services offered over multichannel video programming networks—and eliminate outdated CableCARD support

and reporting requirements. Four years ago, the Commission published a notice of proposed rulemaking (NPRM) (81 FR 14033, March 16, 2016) that proposed a complex framework of regulations which would have required multichannel video programming distributors (MVPDs) to provide unbundled flows of programming information to third-party manufacturers, retailers, and software developers to enable them to create navigation devices in an attempt to assure a commercial market for navigation devices.¹ However, the record submitted in response to the NPRM raises serious and significant questions about whether the proposed rules would adequately protect multichannel video programming content. Moreover, the record fails to convince us that the proposal is necessary to accomplish its intended goal, and we conclude that the proposed regulations do not reflect the past four years of substantial marketplace changes in the delivery and consumption of video programming. Separately, we eliminate the CableCARD consumer support rules and the requirement that large cable operators report to the Commission about support and deployment of CableCARD modules because these regulations no longer serve a useful purpose and thus are no longer necessary.

Section 629 of the Communications Act of 1934, as amended (Act), directs the Commission to adopt regulations to assure the commercial availability of devices that consumers use to access multichannel video programming and other services offered over multichannel video programming networks. Section 629 further directs that the Commission shall not prescribe such regulations "which would jeopardize the security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service." Through a series of rulemakings, the Commission has adopted regulations intended to assure this commercial availability of devices. The bellwether requirement of these rulemakings, which led to the "CableCARD" standard, allows viewers to receive digital cable services by attaching their own equipment directly to the cable network. In 2005, to better monitor support for the then-nascent CableCARD

technology, the Commission required the six largest cable operators to submit status reports to the Commission every 90 days that detail how these cable operators met "their obligations to deploy and support CableCARD." (70 FR 36048, June 22, 2005).² In 2010, the Commission adopted regulations to further ensure cable operator support for retail CableCARD devices. (76 FR 40263, July 8, 2011).³ In 2016, the Commission's NPRM proposed a new and complicated regulatory regime for navigation devices.⁴

We conclude that further Commission intervention in the navigation device marketplace is not necessary at this time. We have serious and unresolved concerns about the security of multichannel video programming and copyright licensing under the proposed rules. Moreover, we conclude that the record raises other substantial doubts about the wisdom and necessity of the complex regulations proposed in the NPRM. On the other hand, we find that the CableCARD consumer support rules no longer serve a useful purpose following the D.C. Circuit's 2013 decision in *Echostar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013) (*Echostar*), and accordingly eliminate these rules. We also conclude that the 15-year-old CableCARD reporting requirement is no longer necessary.

Closing the 2016 Proceeding. In 2016, the Commission sought comment on the need for new rules to implement section 629. We conclude that we need not adopt any new rules at this time. Although the NPRM tentatively concluded that the Commission "should adopt new regulations to further section 629,"⁵ there is substantial evidence in the record challenging that tentative conclusion. The consequences of adopting the proposed regulations could be substantial and detrimental to consumers, copyright holders, and MVPDs, and thus we are reluctant to adopt these additional regulations to implement section 629, quite apart from the substantial doubts in the record as to whether they will help assure a commercial market for devices that

² *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order, 20 FCC Rcd 6794, 6814-15, para. 39 (2005) (2005 Report and Order).

³ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80 and PP Docket No. 00-67, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657 (Third Plug and Play Report and Order), *recon. granted in part sua sponte*, Order on Reconsideration, 26 FCC Rcd 791 (2011).

⁴ NPRM, 31 FCC Rcd at 1558-82, paras. 25-78.

⁵ NPRM, 31 FCC Rcd at 1551, para. 13.

¹ *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket No. 16-42 and CS Docket No. 97-80, Notice of Proposed Rulemaking & Memorandum Opinion and Order, 31 FCC Rcd 1544, 1558-82, paras. 25-78 (2016).