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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Parts 401 and 405**

**[CMS-6037-RCN]**

**RIN 0938-AQ58**

### **Medicare Program; Reporting and Returning of Overpayments; Extension of Timeline for Publication of the Final Rule**

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

**ACTION:** Extension of timeline for publication of a final rule.

**SUMMARY:** This document announces the extension of the timeline for publication of the “Medicare Program; Reporting and Returning of Overpayments” final rule. We are issuing this notice in accordance with the Social Security Act (the Act) which requires notice to be provided in the **Federal Register** if there are exceptional circumstances that cause us to publish a final rule more than 3 years after the publication date of the proposed rule. In this case, the complexity of the rule and scope of comments warrants the extension of the timeline for publication.

**DATES:** As of **February 13, 2015**, CMS extends by 1 year the timeline for publication of a final rule concerning policies and procedures for reporting and returning overpayments to the Medicare program for providers and suppliers of services under Parts A and B of title XVIII as outlined in the proposed rule published February 16, 2012, at 77 FR 9179.

**FOR FURTHER INFORMATION CONTACT:** Joe Strazzire, (410) 786-2775.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 1871(a)(3)(A) of the Social Security Act (the Act) requires the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to establish a regular timeline for the publication of a final rule based on the previous publication of a proposed rule or an interim final rule. In accordance with section 1871(a)(3)(B) of the Act, such regular timeline may vary among different final rules, based on the complexity of the rule, the number and scope of the comments received, and other relevant factors. The timeline for publishing the final rule, however, cannot exceed 3 years from the date of publication of the proposed or interim final rule, unless there are exceptional circumstances. After consultation with the Director of OMB, the Department, through CMS, published a notice in the December 30, 2004 **Federal Register** (69 FR 78442) establishing a general 3-year timeline for publishing Medicare final rules after the publication of a proposed or interim final rule.

### **II. Notice of Continuation**

The Medicare program (title XVIII of the Act) is the primary payer of health care for approximately 50 million enrolled beneficiaries. Providers and suppliers furnishing Medicare items and services must comply with the Medicare requirements set forth in the Act and in CMS regulations. The requirements are meant to ensure compliance with applicable statutes, promote the furnishing of high quality care, and to protect the Medicare Trust Funds against fraud and improper payments.

On March 23, 2010, the Affordable Care Act was enacted. Section 6402(a) of the Affordable Care Act established a new section 1128J(d) of the Act. Section 1128J(d)(1)

of the Act requires a person who has received an overpayment to report and return the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address, and to notify the Secretary, State, intermediary, carrier or contractor to whom the overpayment was returned in writing of the reason for the overpayment. Section 1128J(d)(2) of the Act requires that an overpayment be reported and returned by the later of-- (A) the date which is 60 days after the date on which the overpayment was identified; or (B) the date any corresponding cost report is due, if applicable. Section 1128J(d)(3) of the Act specifies that any overpayment retained by a person after the deadline for reporting and returning an overpayment is an obligation (as defined in 31 U.S.C. 3729(b)(3)) for purposes of 31 U.S.C. 3729.

In the February 16, 2012 **Federal Register** (77 FR 9179), we published a proposed rule that would implement the provisions of section 1128J(d) of the Act as to Medicare Parts A and B. This notice extends by 1 year the timeline for publication of a final rule concerning policies and procedures for reporting and returning overpayments to the Medicare program for providers and suppliers of services under Parts A and B of title XVIII as outlined in the February 16, 2012 proposed rule. However we continue to remind all stakeholders that even without a final regulation they are subject to the statutory requirements found in section 1128J(d) of the Act and could face potential False Claims Act liability, Civil Monetary Penalties Law liability, and exclusion from Federal health care programs for failure to report and return an overpayment.

Based on both public comments received and internal stakeholder feedback, we have determined that there are significant policy and operational issues that need to be resolved in order to address all of the issues raised by comments to the proposed rule and

to ensure appropriate coordination with other government agencies. Specifically, the development of the final rule requires collaboration among both the Department of Health and Human Services' (HHS') Office of the Inspector General and the Department of Justice.

Our decision to extend the timeline for issuing a final regulation related to the reporting and returning of Medicare overpayments should not be viewed as a diminution of the Department's commitment to timely and effective rulemaking in this area. Our goal remains to publish a final rule that provides clear requirements for persons to report and return Medicare overpayments. At this time, we believe we can best achieve this balance by issuing this continuation notice.

This notice extends the timeline for publication of the final rule for this rulemaking for 1 year - until February 16, 2016.

### **III. Collection of Information**

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

### **IV. Regulatory Impact Statement**

This document extends the timeline for publication of the Medicare Program; Reporting and Returning of Overpayments final rule; and therefore, there are no regulatory impact implications associated with this notice.

**CMS-6037-RCN**

**Authority:** Section 1871 of the Social Security Act (42 U.S.C. 1395hh).

**Dated:** February 9, 2015.

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**C'Reda Weeden,**

Executive Secretary to the Department,

Department of Health and Human Services.

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