



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 417, 422, 423, 424, 425, and 460

[CMS-1654-CN]

RIN 0938-AS81

**Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Pricing Data Release; Medicare Advantage and Part D Medical Low Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Correction**

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

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a technical error in the proposed rule that appeared in the July 15, 2016 **Federal Register** (81 FR 46162-46476) entitled, “Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Pricing Data Release; Medicare Advantage and Part D Medical Low Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model.”

**DATES:** The proposed rule published July 15, 2016 (81 FR 46162-46476) is corrected as of August 9, 2016.

**FOR FURTHER INFORMATION CONTACT:**

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In FR Doc. 2016–16097 (81 FR 46162), the proposed rule entitled, “Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Pricing Data Release; Medicare Advantage and Part D Medical Low Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model” (referred to hereafter as the “CY 2017 PFS proposed rule,”) there was a technical error that is identified and corrected in this correcting document. The correction is applicable as of August 9, 2016.

### **II. Summary of Errors in the Preamble**

On page 46457 of the CY 2017 PFS proposed rule, we inadvertently stated that comments related to information collection requirements were due September 13, 2016. However, on page 46162, in the DATES section of the rule, we state that comments are due “no later than 5 p.m. on September 6, 2016.” Accordingly, we are correcting the date on page 46457 to align with the DATES section of the rule on page 46162.

### **III. Waiver of Proposed Rulemaking 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 rule in the **Federal Register** and provide a period for public comment 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

APA notice and comment, and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and the reasons for it in the rule. 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 the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects a technical error in the CY 2017 PFS proposed rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed subject to notice and comment procedures in the CY 2017 PFS proposed rule. As a result, the correction made through this correcting document is intended to resolve an inadvertent error so that the rule accurately reflects the correct date for comments to be submitted in order to assure their consideration in the final rule.

Even if this were a rulemaking to which the notice and comment 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 CY 2017 PFS proposed rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects the public comment period. Further, such procedures would be unnecessary, because we are not making any

substantive revision to the proposed rule, but rather, we are simply correcting the **Federal Register** document to reflect the correct date by which public comments must be received in order to assure their consideration for the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

#### **IV. Correction of Errors**

In FR Doc. 2016–16097 (81 FR 46162), published July 15, 2016, on page 46457, in the first column, in the third paragraph, line 2, the phrase “September 13, 2016” is corrected to read “September 6, 2016”.

Dated: August 3, 2016. \_\_\_\_\_

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**Madhura Valverde,**  
Executive Secretary to the  
Department,  
Department of Health and Human  
Services.

**BILLING CODE 4120-01-P**

CMS-1654-CN

[FR Doc. 2016-19012 Filed: 8/9/2016 8:45 am; Publication Date: 8/10/2016]