



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 [insert date of publication in the **Federal Register**], the proposed rule published December 12, 2014, at 79 FR 73873, is withdrawn.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.

BILLING CODE 4120-01-P

[FR Doc. 2017-21419 Filed: 10/3/2017 8:45 am; Publication Date: 10/4/2017]