



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 482, 484 and 485

[CMS-3317-RCN]

RIN 0938-AS59

Medicare and Medicaid Programs; Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies; Extension of Timeline for Publication of Final Rule

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

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

SUMMARY: This document announces the extension of the timeline for publication of the “Medicare and Medicaid Program; Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies” final rule. We are issuing this document in accordance with section 1871(a)(3)(B) of 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 public comments warrants the extension of the timeline for publication.

DATES: This extension is effective on [insert date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT:

Alpha-Banu Wilson, (410) 786-8687.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1871(a)(3)(A) of the Social Security Act (the Act) requires the Secretary of the Department of Health and Human Services (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. Section 1871(a)(3)(B) of the Act allows the timeline for publishing Medicare final regulations to vary based on the complexity of the regulation, number and scope of comments received, and other related factors. The timeline for publishing the final regulation, however, cannot exceed 3 years from the date of publishing the proposed regulation unless there are exceptional circumstances. The Secretary may extend the initial targeted publication date of the final regulation, if the Secretary provides public notice including a brief explanation of the justification for the variation no later than the regulation's previously established proposed publication date.

After consultation with the Director of OMB, the Department, through the Centers for Medicare & Medicaid Services (CMS), published a notice in the **Federal Register** on December 30, 2004 (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. Notification of Continuation

Section 1861(e)(1) through (9), section 1861(m), section 1861(mm), section 1861(o), section 1891, and section 1820(e) of the Act list the requirements that hospitals, home health agencies (HHAs), and critical access hospitals (CAHs) must meet to be eligible for Medicare and Medicaid participation. The Medicare Conditions of Participation (CoPs) and Conditions for Coverage (CfCs) set forth the federal health and

safety standards that providers and suppliers must meet to participate in the Medicare and Medicaid programs. The purposes of these conditions are to protect patient health and safety and to ensure that quality care is furnished to all patients in Medicare and Medicaid-participating facilities. The statute also specifies that the Secretary may establish other requirements as necessary in the interest of the health and safety of patients.

On November 3, 2015, we published a proposed rule in the **Federal Register** titled, “Medicare and Medicaid Program; Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies” (80 FR 68126) that would update the discharge planning requirements for hospitals, CAHs, and HHAs. We also proposed to implement the discharge planning requirements of the Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113-185), that requires hospitals, including, but not limited to, short-term acute care hospitals, CAHs and certain post-acute care (PAC) providers, including long term care hospitals, inpatient rehabilitation facilities, HHAs, and skilled nursing facilities, to take into account quality measures and resource use measures to assist patients and their families during the discharge planning process in order to encourage patients and their families to become active participants in the planning of their transition to the PAC setting (or between PAC settings). In response to the proposed rule, we received 299 public comments. Commenters included individuals, health care professionals and corporations, national associations and coalitions, state health departments, patient advocacy organizations, and individual facilities that would be impacted by the rule. The commenters presented procedural and cost information related to their specific circumstances, and the

information presented requires additional analysis.

This document announces an extension of the timeline for publication of the final rule based on the following exceptional circumstances, which we believe, justify such an extension. Based on both public comments received and stakeholder feedback, we have determined that there are significant policy issues that need to be resolved in order to address all of the issues raised by public comments to the proposed rule and to ensure appropriate coordination with other government agencies. Specifically, the development of the final rule requires collaboration with the Department of Health and Human Services' Office of the National Coordinator for Health Information Technology.

We, therefore, are not able to meet the 3-year timeline for publication of the final rule and are instead extending the timeline for publication of the final rule.

Our decision to extend the timeline for issuing a final rule that would update the CoPs should not be viewed as a diminution of the Department's commitment to timely and effective rulemaking in this area. We are committed to publishing a final rule that provides clear health and safety standards for hospitals, HHAs, and CAHs. At this time, we believe we can best achieve this balance by issuing this notification of continuation.

This document extends the timeline for publication of the final rule until November 3, 2019.

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 (44 U.S.C. 3501 et seq.).

Dated: October 24, 2018

Ann C. Agnew,

Executive Secretary to the Department,

Department of Health and Human Services.

[FR Doc. 2018-23922 Filed: 10/30/2018 4:15 pm; Publication Date: 11/2/2018]