(3) The organization possesses an ownership or equity interest of 5 percent or more in the endorsed drug card sponsor on both the date on which the endorsed drug card sponsor markets the organization's Part D plan, and the date on which the endorsed drug card sponsor signed its endorsement contract with CMS.

* * * * *

Part D plan has the meaning given the term at § 423.4.

* * * * *

■ 3. Section 403.806(g)(5) is amended by—

■ A. Revising paragraph (g)(5)(i).

■ B. Revising paragraph (g)(5)(iii).

■ C. Adding paragraph (g)(5)(vi).

The revisions and addition read as follows:

§ 403.806 Sponsor requirements for eligibility for endorsement.

* * * * *

(g) * * *

(5) * * *

(i) Comply with the Information and Outreach Guidelines published by CMS except as provided in paragraph (g)(5)(vi) of this section.

* * * * *

(iii) If CMS does not disapprove the initial submission of information and outreach materials within 30 days of receipt of these materials, the materials are deemed approved under paragraph (g)(5)(ii) of this section.

* * * * *

(vi) All materials related to products and services that are Part D plans must comply with the requirements specified in § 423.50 of this chapter.

* * * * *

■ 4. Section 403.813 is amended by revising paragraph (a)(1) to read:

§ 403.813 Marketing limitations and record retention requirements.

(a) *Marketing limitations.* (1) An endorsed sponsor may only market the following:

(i) Those products and services offered under the endorsed program that are inside the scope of endorsement defined in § 403.806(h) and permitted under § 403.812(b).

(ii) A Part D plan offered by the endorsed sponsor or an affiliated organization of the endorsed sponsor.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 8, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 10, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–17424 Filed 8–29–05; 11:58 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4069–F3]

RIN 0938–AN06

Medicare Program; Establishment of the Medicare Advantage Program

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

ACTION: Final rule; correcting amendment; partial stay of effectiveness.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on January 28, 2005 entitled ''Establishment of the Medicare Advantage Program.'' It also stays several amendments made in the previous rule.

EFFECTIVE DATES: This final rule is effective March 22, 2005. Sections 422.152(a)(1) and (c), 422.156(b)(7), 422.316, and 422.527 are stayed from September 1, 2005 until January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Christopher McClintick, (410) 786–4682.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–1322 of January 28, 2005 (70 FR 4588), there were several errors that we identify in the ''Summary of Errors'' section and correct in the ''Correction of Errors'' section below. The provisions in this correcting amendment are effective as if they were included in the final rule published January 28, 2005. Accordingly, the corrections are effective retroactive to March 22, 2005, the effective date of most of the provisions of the January 28, 2005 final rule, except for those provisions that are specifically designated in the **EFFECTIVE DATES** section as being stayed effective September 1, 2005 until January 1, 2006.

II. Summary of Errors

In the January 28, 2005 final rule, on page 4588, we inadvertently omitted from the list of provisions that will become effective January 1, 2006, the following provisions relating to changes in the quality improvement provisions in subpart D: §§ 422.152(a)(1) and (c), and 422.156(b)(7). These provisions implement changes to section 1852(e) of the Social Security Act (the Act) that, under section 722(c) of the MMA, apply to contract years beginning on and after January 1, 2006. Sections 422.152(a)(1) and (c) concern the requirement that an MA organization must have a chronic care improvement program for each plan it offers. In order to clarify that these provisions of the quality improvement requirements do not apply to contracts previous to contract periods beginning January 1, 2006, and to comply with the Act, we are staying the effective dates of §§ 422.152(a)(1) and (c) until January 1, 2006. We are also staying § 422.156(b)(7), a quality improvement provision concerning deemable requirements and Part D prescription drug programs offered by MA programs. We also inadvertently omitted from the list of provisions that will become effective January 1, 2006, the following provisions relating to arrangements with federally qualified health centers: §§ 422.316 and 422.527. Section 237(c) of the MMA provides that these changes apply to services provided on or after January 1, 2006, and contract years beginning on or after that date. In order to clarify the effective dates of these provisions and to bring our regulations into conformance with the statute, we are also staying the effective dates of §§ 422.316 and 422.527 until January 1, 2006.

On page 4676, we clarify that an MA organization and not a practitioner is responsible for providing a written notice to the beneficiary when an adverse decision is made in an office setting. In other words, if an enrollee requests an explanation of a practitioner's denial of an item or service, in whole or in part, the MA organization is responsible for giving the enrollee a written notice. We are making a corresponding change to § 422.568(d) of the regulation text.

On page 4681, we inadvertently specified 72 hours as the timeline for the expedited grievance process MA organizations must establish for complaints involving certain procedural matters in the appeals process. In that discussion, we were referring to 42 CFR 422.564(d), which we redesignated in the final rule as § 422.564(f), but did not otherwise change. The timeline, as

specified in redesignated § 422.564(f), is actually 24 hours. Our correction now specifies this.

On page 4685, we retained language based on, and references to the proposed rule. As a result, we incorrectly referred to the possibility of public comment, and referred to a table of information collection requirements instead of the section of the final rule specifying such requirements.

In addition to correcting errors in the preamble, in section III of this correcting amendment, we also correct several sections of the regulation text. In the summary of the regulation text corrections, we first discuss, in numerical order, changes that are primarily limited to a specific section of the regulation text. We then discuss changes with a broader scope.

A. Corrections to Specific Sections

In § 422.2 of the final rule, in the definition of ''Provider network,'' we inadvertently retained a reference to a ''network MSA plan'' that is no longer valid.

Also in § 422.2 of the final rule, in the definitions of ''Prescription drug plan (PDP)'' and ''Prescription drug plan (PDP) sponsor,'' we incorrectly referred to the pertinent definitions section of the prescription drug regulations. In both instances the references should be to ''§ 423.4,'' the corresponding definitions section for the prescription drug benefit requirements under Part 423.

In the heading for § 422.6, we are replacing the term ''MA user fee'' with ''Cost-sharing in enrollment-related costs,'' as well as removing the first reference in § 422.6(d)(2)(ii) to ''200 million'' in order to avoid repetition and confusion.

In § 422.6(f)(1)(ii) of the final rule, in our requirements concerning cost-sharing of enrollment-related costs for prescription drug plans (PDPs), we inadvertently did not include the text introducing the assessment formula for PDPs.

In § 422.132, we are replacing the incorrect reference to § 422.502(g) with § 422.504(g). The error came about as a result of our reorganization and revision of these contract-related sections of subpart K for the final rule.

In § 422.152(b)(3)(ii), we replace the incorrect reference to ''§ 422.64(c)(10),'' a non-existent provision, with the reference, ''§ 422.64.''

In § 422.208(c)(2) of the final rule, we retained a reference to periodic surveys that are no longer required as a result of section 222(h) of the Medicare Prescription Drug, Improvement and Modernization and Improvement Act of 2003 (MMA).

In § 422.210, we inadvertently deleted paragraph (b), Disclosure to Medicare beneficiaries, which we intended to retain, with the exception of a reference to surveys no longer required.

In § 422.252, in the definition of ''MA monthly supplemental beneficiary premium,'' we are correcting the cross reference to § 422.266(b)(2)(i), which does not exist, and replacing it with the correct reference, § 422.266(b)(1).

In § 422.254, paragraph (b)(1)(i), we are removing ''statutory non-drug bid amount'' and adding ''unadjusted MA statutory non-drug monthly bid amount,'' the defined term, in its place, which was our original intent.

We are amending § 422.314(c)(1)(i) to remove an inadvertent reference to § 422.306. Section 422.306 concerns the capitation rate but not the calculated payment for deposit in the MA MSA, the requirement that is the subject of § 422.314(c).

We are amending § 422.320(c)(1) by removing ''prescription drug beneficiary premium (described at § 422.252)'' and replacing this with ''prescription drug payment described in § 423.315 (if any)'' since § 422.252 refers to the basic definition while § 423.315 describes the actual payment to which § 422.320 is referring. Likewise, we are amending paragraph (c)(2)(ii) of § 422.320 by removing ''beneficiary premium (if any)'' and adding ''payment described in § 423.315 (if any).''

We are amending § 422.458 to include the correct reference to § 422.504(d)(1)(iii), a section specifying contract provisions. Although we revised several sections for the final rule, we inadvertently referred to the previous organization of the managed care regulations and § 422.502(d)(1)(iii) of those regulations.

We are amending § 422.504(h) to reflect the correct reference to the False Claims Act. In the final rule we inadvertently cited ''32 U.S.C. 3729 *et seq.*,'' whereas the correct reference is ''31 U.S.C. 3729 *et seq.*''

In § 422.510(a)(4), we are replacing the term ''PDP sponsor'' with ''MA organization'' as we inadvertently used the term ''PDP sponsor'' in this section.

In § 422.552(a)(3)(iii), we inadvertently did not make a conforming change to the cross reference and, instead of referring to ''subpart J,'' we should have referred to ''subpart K,'' the subpart containing the application and contract requirements.

In § 422.553(b)(2), we inadvertently referred to ''subpart L,'' when intending to refer to ''subpart K,'' and the requirements for applications and contracts.

In §§ 422.562(c)(1)(ii) and 422.622(b)(1)(i), which concern the requirements for appeals of quality improvement organization (QIO) determinations, we incorrectly referenced the CFR Parts governing such appeals. As a result, we are amending these sections by replacing the incorrect references with ''Parts 476 and 478 of Chapter 42 of the CFR'', the correct references.

B. Corrections Affecting Multiple Sections

In the August 3, 2004 proposed rule (69 FR 46866), we proposed to reorganize and revise subparts F and G due to the substantial revisions that the MMA made to pricing and payment rules for MA organization. In reorganizing and revising these subparts to reflect the new MA bidding and payment procedures, we reversed the order of the subparts and reorganized several of the provisions within the subparts. However, in the final rule, we made several errors as a result of this reorganization. Errors primarily consist of cross-references to subparts F and G or sections of the subparts, and other technical changes resulting from our reference to the previous organization of the subparts. Because there are several related errors involving subparts F and G, we address these together, below.

As a result of reorganizing and revising subparts F and G, we incorrectly referred to, or identified several specific sections of these subparts. In the table of contents for subpart G, we incorrectly identified a section of the subpart. Instead of identifying the Announcement of annual capitation rate, benchmarks, and methodology changes as section § 422.312, we incorrectly identified the section as § 422.311. Other sections in which we incorrectly identified or referred to sections in subparts F and G include §§ 422.60(f), 422.66(f)(1), 422.101 (introductory text), 422.101(b)(3)(i), 422, 100(d)(2), 422.103(d)(2), 422.109(a)(1)(ii), 422.216(b)(2), 422.322(b), 422.500(b), and 422.504(a)(8).

Sections in which we revise incorrect references to the subparts F and G themselves include § 422.504(a)(9) through (a)(10), and the introductory text of § 422.504(l), and § 422.752(a)(2).

In another general change related to revision of the payment provisions, we are replacing incorrect terminology and references to the previous payment system. The changes, which replace the ''adjusted community rate'' (ACR), an element of the previous payment rate for

MA organizations, with language reflecting the new bidding process, affect several sections of the regulation. As we do in our discussion of the cross references to subparts F and G, we are discussing these payment language corrections together.

Sections in which we replace the term ''ACR'' with ''bid'' to reflect the new process include §§ 422.206(b)(2)(i) and § 422.503(d)(1). Several of the contract requirements specified in subpart K are also affected. Thus, in § 422.504 we make corrections to reflect the correct payment language in paragraphs (d)(1)(i), (d)(1)(iv), (d)(1)(v) and (l)(4). The changes to remove references to ACR are consistent with § 422.2 of the final rule, where we correctly deleted the definition of ACR.

In another correction affecting several sections of the regulations, we replace incorrect references referring to ''encounter data.'' Just as we changed the term ''ACR'' to ''bid'' in order to be consistent with the statute, we are also changing the term ''encounter data'' to ''data.'' Sections affected include § 422.504(a)(8), (l)(2) through (l)(3), and § 422.510(a)(7). In both the proposed and final rules we discussed that we were no longer requiring encounter data and, instead, are requiring other data, to include risk adjustment data. Although we discussed this change in the preamble (see 70 FR 4661), we inadvertently did not revise the regulation text to reflect this.

In our final rule, we stated that MA organizations, like PDP sponsors, are required to maintain data for the current contract period and 10 prior periods. We discussed this requirement in the comments section of the preamble of the final rule and correctly stated the requirement in the published regulation text. Several other sections of the regulation text should have been amended to reflect the data retention requirement. In this correcting amendment we are making conforming change to those sections (see § 422.504(d), (e)(1)(iii), and (i)(2)(ii)).

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the Administrative Procedure Act ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. In addition, section 1871(e)(1)(B) of the Act, as amended by section 903(b) of Pub. L. 108–173, provides that substantive changes may take effect before the end of the 30-day period that begins on the date that the Secretary has issued the substantive change only if the waiver of the 30-day period is necessary to comply with statutory requirements or the application of the 30-day delay is contrary to the public interest.

Most of the revisions contained in this rule concern conforming changes, cross references, and typographical errors, and therefore, are not substantive. Because they are not substantive, we find that public comment on these revisions is not necessary. The revisions do not represent changes to our policy, and the public interest would, as a result, be best served by timely correction of these technical errors. A delay in the applicability of the non-substantive changes would be contrary to public interest in that such corrections are necessary for, especially, plans transitioning to the new Medicare Advantage program.

Several of the changes, however, are corrections that could be viewed as substantive. We are staying the effectiveness of certain quality improvement requirements to clarify that MA plans need not meet them until January 1, 2006. Similarly, we are staying the effectiveness of the provisions pertaining to Federally Qualified Health Centers (FQHC) payments. In the case of these substantive corrections, we find that public comment is unnecessary because the corrections are being made to bring the regulations into conformity with the statutory requirements, which themselves do not apply until January 1, 2006. We also find that the 30-day delay ordinarily called for under the APA and section 1871(e)(1)(B) of the Act is contrary to the public interest because there is no statutory authority for these regulatory provisions until January 1, 2006, the effective date of the statutory provisions.

Section 1871(e)(1)(A) of the Act, as amended by section 903(a) of Pub. L. 108–173, provides that a substantive change in regulations shall not be applied retroactively to items and services furnished before the effective date of the change, unless the Secretary finds that such retroactive application is necessary to comply with statutory requirements or failure to apply the change retroactively would be contrary to the public interest.

The provisions of this correcting amendment that apply retroactively make no substantive changes, but merely correct minor technical errors. Failure to make these changes retroactive to March 22, 2005, is contrary to the public interest because of the confusion that could result from the technical errors identified above. It is in the public interest to make the corrections retroactive in that it will help prevent confusion among plans that must now follow these requirements for plans offered in January 1, 2006, the year the new MA program requirements are implemented.

IV. Correction of Errors

Make the following corrections to the January 28, 2005 final rule (70 FR 4588):

1. On page 4676 in column 3, at the end of the first full paragraph add the following: ''Thus, we are making a conforming change to § 422.568(d) to provide that if an enrollee requests an MA organization to provide an explanation of a practitioner's denial of an item or service, in whole or in part, the MA organization must give the enrollee a written notice. This change eliminates the practitioner's requirement to deliver a general notice to an enrollee whenever an adverse decision is made in an office setting. An enrollee retains the right to obtain a detailed notice from an MA organization upon an enrollee's request for an explanation of a practitioner's denial.''

2. On page 4681, column 1, line 7, delete ''72-hour'' and add ''24-hour'' in its place.

3. On page 4685, column 2—

A. In line 8, remove the word ''proposed.''

B. In line 13, remove the word ''Table'' and add the word ''section'' in its place.

C. Remove the paragraph beginning line 15.

List of Subjects in 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 422:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Amend § 422.2 as follows:
■ A. Revise the definition for ''Provider network''.
■ B. In the definition for ''Prescription drug plan (PDP)'' remove the reference to ''§ 423.272'' and add ''§ 423.4'' in its place.
■ C. In the definition for ''Prescription drug plan (PDP) sponsor'' remove the reference to ''§ 423.2'' and add ''§ 423.4'' in its place.

The revisions read as follows:

§ 422.2 Definitions.

* * * * *

Provider network means the providers with which an MA organization contracts or makes arrangements to furnish covered health care services to Medicare enrollees under an MA coordinated care plan.

* * * * *

§ 422.4 [Corrected]

■ 3. In § 422.4, amend paragraph (a)(1)(iii) by removing the parenthetical phrase ''(except MSA and PFFS plans)'' and adding in its place ''(except PFFS plans).''

■ 4. In § 422.6—
■ A. Revise the section heading to read as set forth below.
■ B. Revise paragraph (d)(2)(ii) to read as set forth below.
■ C. In paragraph (e), remove the phrase ''for those PDP sponsors PDP sponsors'' and add ''for those PDP sponsors'' in its place.
■ D. Revise paragraph (f)(1)(ii) to read as set forth below.

The revisions read as follows:

§ 422.6 Cost-sharing in enrollment-related costs.

* * * * *

(d) * * *

(2) * * *

(ii) For fiscal year 2006 and each succeeding year, the applicable portion (as defined in paragraph (e) of this section) of $200 million.''

* * * * *

(f) * * *

(1) * * *

(ii) The assessment formula for PDPs: C divided by A times B where—A is the total estimated January payments to all PDP sponsors subject to the assessment; B is the 9-month (January through September) assessment period; and C is the total fiscal year PDP sponsor's user fee assessment amount determined in accordance with paragraph (d)(2) of this section.

* * * * *

§ 422.50 [Corrected]

■ 5. In § 422.50, amend paragraph (a)(4) by removing the reference to ''§ 422.12'' and adding in its place ''§ 422.112.''

§ 422.60 [Corrected]

■ 6. In § 422.60, amend paragraph (f) introductory text by removing the reference to ''§ 422.250(b)'' and adding ''§ 422.308(f)(2)'' in its place.

§ 422.66 [Corrected]

■ 7. In § 422.66 amend paragraph (f)(1) by removing the reference to ''§ 422.250(b)'' and adding ''§ 422.308 (f)(2)'' in its place.

§ 422.100 [Amended]

■ 8. In § 422.100 amend paragraph (d)(2) by removing the reference to ''§ 422.304(b)(2)'' and adding ''§ 422.262(c)(2)'' in its place.

§ 422.101 [Corrected]

■ 9. In § 422.101—
■ A. Amend the introductory text by removing the references to ''§ 422.264'' and ''§ 422.266'' and adding in their place ''§ 422.318'' and ''§ 422.320'', respectively.
■ B. Amend paragraph (b)(3)(i) by removing the reference to ''§ 422.306(a)'' and adding in its place ''§ 422.254(a)(1),'' and by removing the phrase ''adjusted community rate proposals'' and adding ''bid amounts'' in its place.
■ C. Amend paragraph (d)(1) by removing the phrase ''are only permitted'' and adding in its place ''are permitted.''

§ 422.103 [Corrected]

■ 10. In § 422.103, amend paragraph (d)(2) by removing the reference to ''§ 422.252(b)'' and adding in its place ''§ 422.306(a)(2).''

§ 422.109 [Corrected]

■ 11. In § 422.109, amend paragraph (a)(1)(ii) by removing the reference to ''§ 422.254(b)'' and adding in its place ''§ 422.308(a).''

§ 422.111 [Corrected]

■ 12. In § 422.111, amend paragraph (b)(2) by removing the reference to ''MD-PD'' and adding ''MA-PD'' in its place.

§ 422.132 [Amended]

■ 13. In § 422.132 remove the reference to ''§ 422.502(g)'' and add ''§ 422.504(g)'' in its place.

§ 422.152 [Stayed in part]

■ 14. Section 422.152(a)(1) and (c) is stayed effective September 1, 2005 until January 1, 2006.

§ 422.152 [Corrected]

■ 14a. In § 422.152, amend paragraph (b)(3)(ii) by removing the reference to ''§ 422.64(c)(10)'' and adding in its place, ''§ 422.64.''

§ 422.156 [Stayed in part]

■ 15. Section 422.156(b)(7) is stayed effective September 1, 2005 until January 1, 2006.

§ 422.206 [Amended]

■ 16. In § 422.206, amend paragraph (b)(2)(i) by removing the phrase ''ACR'' and adding in its place ''bid''.

§ 422.208 [Corrected]

■ 17. In § 422.208, amend paragraph (c)(2) by removing the phrase ''and conduct periodic surveys in accordance with paragraph (h) of this section''.

■ 18. Revise § 422.210 to read as follows.

§ 422.210 Assurances to CMS.

(a) Assurances to CMS. Each organization will provide assurance satisfactory to the Secretary that the requirements of § 422.208 are met.

(b) Disclosure to Medicare Beneficiaries. Each MA organization must provide the following information to any Medicare beneficiary who requests it:

(1) Whether the MA organization uses a physician incentive plan that affects the use of referral services.

(2) The type of incentive arrangement.

(3) Whether stop-loss protection is provided.

§ 422.216 [Amended]

■ 19. In § 422.216, amend paragraph (b)(2) by removing the reference to ''§ 422.308(b)'' and adding in its place ''§ 422.256(b)(3).''

§ 422.252 [Corrected]

■ 20. In § 422.252, amend the entry, ''MA monthly supplemental beneficiary premium'' by removing the reference to ''§ 422.266(b)(2)(i)'' and adding in its place ''§ 422.266(b)(1).''

§ 422.254 [Corrected]

■ 21. In § 422.254 amend paragraph (b)(1)(i) by removing the phrase ''statutory non-drug bid amount'' and adding ''unadjusted MA statutory non-drug monthly bid amount'' in its place.

§ 422.256 [Corrected]

■ 22. Amend paragraph (c) by removing the reference to ''§ 422.258(b)'' and adding ''§ 422.258(c)'' in its place.

§ 422.314 [Corrected]

■ 23. In § 422.314, amend paragraph (c)(1)(i) by removing the phrase ''determined under § 422.306''.

§ 422. 316 [Stayed]

■ 23a. Section 422.316 is stayed effective September 1, 2005 until January 1, 2006.

§ 422.320 [Corrected]

■ 24. In § 422.320—
■ A. Amend paragraph (c)(1) by removing the phrase ''prescription drug beneficiary premium (described at § 422.252)'' and adding ''prescription drug payment described in § 423.315 (if any)'' in its place.
■ B. Amend paragraph (c)(2)(ii) by removing the phrase ''beneficiary premium (if any)'' and adding ''payment described in § 423.315 (if any)'' in its place.

§ 422.322 [Corrected]

■ 25. In § 422.322—
■ A. Amend paragraph (b) by removing the reference to ''§ 422.264'' and adding ''§ 422.316'' in its place; by removing the reference to ''§ 422.266'' and adding ''§ 422.320'' in its place.
■ B. Amend paragraph (c) by adding the reference ''§ 422.316,'' immediately following the reference to ''§ 422.314''.

■ 26. In § 422.458, revise paragraph (d)(2) to read as follows:

§ 422.458 Risk sharing with regional MA organizations for 2006 and 2007.

* * * * *

(d) * * *

(2) According to § 422.504(d)(1)(iii), CMS has the right to inspect and audit any books and records of the organization that pertain to the information regarding costs provided to CMS under paragraph (b)(2) of this section.

* * * * *

§ 422.500 [Corrected]

■ 27. In § 422.500(b), amend paragraph (1) of the definition of ''Clean claim'' by removing the reference to ''§ 422.257(d)'' and adding ''§ 422.310(d)'' in its place.

§ 422.503 [Corrected]

■ 28. In § 422.503—
■ A. Amend paragraph (b)(4)(vi)(H) by removing the phrase ''MA-PDPs'' and adding ''MA-PDs'' in its place.
■ B. Amend paragraph (d)(1) by removing the phrase ''ACR'' and adding ''bid'' in its place.

§ 422.504 [Corrected]

■ 29. In § 422.504—
■ A. Amend paragraph (a)(8) by removing the cross reference to ''§ 422.257'' and adding ''§ 422.310'' in its place, and by removing ''encounter data'' and adding ''data'' in its place.
■ B. Amend paragraph (a)(9) by removing the cross reference to ''subpart F'' and adding ''subpart G'' in its place.
■ C. Amend paragraph (a)(10) by removing the phrase ''ACR'' and adding ''bid'' in its place; by removing the phrase ''May 1'' and adding ''not later than the first Monday in June'' in its place; and by removing the phrase ''subpart G'' and adding ''subpart F'' in its place.
■ D. Amend paragraph (d), introductory text, by removing the phrase ''6 years'' and adding ''10 years'' in its place.
■ E. Amend paragraphs (d)(1)(i), (d)(1)(iv) and (d)(1)(v) by removing the phrase ''ACR'' and adding ''bid'' in its place wherever it occurs.
■ F. Amend paragraphs (d)(2)(ii) and (d)(2)(iii) by removing the phrase ''six prior periods'' and adding ''10 prior periods'' in its place wherever it occurs.
■ G. Amend paragraph (e)(1)(iii) by removing the phrase ''six prior periods'' and adding ''10 prior periods'' in its place.
■ H. Amend paragraph (h)(1) by removing the reference to ''32 U.S.C. 3729 *et seq.*'' and adding ''31 U.S.C. 3729 *et seq.*'' in its place.
■ I. Amend paragraph (i)(2)(ii) by removing the phrase ''6 years'' and adding ''10 years'' in its place.
■ J. Amend the introductory text of paragraph (l) by removing the cross reference to ''subpart F'' and adding ''subpart G'' in its place, and by removing the phrase ''encounter data.''
■ K. Amend paragraph (l)(2) by removing the phrase ''encounter data'' and adding ''data'' in its place, and by removing the cross reference to ''§ 422.257'' and adding ''§ 422.310'' in its place.
■ L. Amend paragraph (l)(3) by removing the phrase ''encounter data'' and adding ''data'' in its place.''
■ M. Amend paragraph (l)(4) by removing the phrase ''ACR'' and adding ''bid'' in its place and by removing the cross reference to ''§ 422.310'' and adding ''§ 422.254'' in its place.

§ 422.510 [Corrected]

■ 30. In § 422.510—
■ A. Amend paragraph (a)(4) by removing the phrase ''PDP sponsor'' and adding ''MA organization'' in its place.
■ B. Amend paragraph (a)(7) by removing the phrase ''encounter data'' and adding ''data'' in its place, and by removing the reference to ''§ 422.257'' and adding ''§ 422.310'' in its place.

§ 422.527 [Stayed]

■ 30a. Section 422.527 is stayed effective September 1, 2005 until January 1, 2006.

§ 422.552 [Amended]

■ 31. In § 422.552—
■ A. Amend paragraph (a) by removing the phrase ''HCFA'' and adding ''CMS'' in its place.
■ B. Amend paragraph (a)(3)(iii) by removing the reference to ''subpart J'' and adding ''subpart K'' in its place.

§ 422.553 [Amended]

■ 32. In § 422.553, amend paragraph (b)(2) by removing the reference to ''subpart L'' and adding ''subpart K'' in its place.

§ 422.562 [Corrected]

■ 33. In § 422.562, amend paragraph (c)(1)(ii) by removing the phrase ''in part 478 of this chapter'' and adding in its place ''in parts 476 and 478 of this chapter.''

■ 34. In § 422.568 revise paragraph (d) to read as follows:

§ 422.568 Standard timeframes and notice requirements for organization determinations.

* * * * *

(d) *Written notice for MA Organization denials.* If an enrollee requests an MA organization to provide an explanation of a practitioner's denial of an item or service, in whole or in part, the MA organization must give the enrollee a written notice.

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■ 35. In § 422.622 revise paragraph (b)(1)(i) to read as follows:

§ 422.622 Requesting immediate QIO review of noncoverage of inpatient hospital care.

* * * * *

(b) * * *

(1) * * *

(i) To the QIO that has an agreement with the hospital under parts 476 and 478 of this chapter.

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§ 422.752 [Corrected]

■ 36. In § 422.752, amend paragraph (a)(2) by removing the reference to ''subpart G,'' and adding in its place ''subpart F.''

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 16, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–17280 Filed 8–26–05; 10:10 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3834

[WO–620–1990–00–24 1A]

RIN 1004–AD75

Mining Claim and Site Maintenance and Location Fees—Fee Adjustment

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim rule.

SUMMARY: The Bureau of Land Management (BLM) is publishing this interim rule to amend regulations found at 43 CFR part 3834, subpart B, related to adjustments of the fees required to be paid for mining claims and mill sites, so as to clarify that mining claimants may cure the filing of an insufficient payment of fees when the fees have changed through any means, including a Consumer Price Index (CPI) adjustment or other statutorily required adjustment.

DATES: The interim rule is effective September 1, 2005.

ADDRESSES: Inquiries may be addressed to the to Bureau of Land Management, Solid Minerals Group, Room 501 LS, 1849 C Street, NW., Washington, DC 20240–001.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2004, the Department of the Interior adjusted the location and maintenance fees for mining claims and sites based upon the CPI, as required by the Mining Law. See 69 FR 40294. The Department increased the location fee from $25 to $30 and increased the annual maintenance fee from $100 to $125. The Interior and Related Agencies Appropriations Act for fiscal year 2005, Division E, Title I, Section 120 of Public Law 108–447 of December 8, 2004, directed the Department of the Interior to roll back these location and maintenance fees for mining claims and sites to their pre-July 2004 level. This meant that, as of December 8, 2004, the location fee was rolled back from $30 to $25 per new location and the annual maintenance fee was rolled back from $125 to $100 per mining claim or site.

However, the 2005 Appropriations Act also provided that the fees would return to their increased levels when the Department met certain conditions, including establishing a plan of operations tracking system and filing a report with Congress regarding the length of time it takes the Department to approve proposed mining plans of operations and recommending steps to reduce current delays. As described in the **Federal Register** on July 1, 2005 (70 FR 38192) the Department met these conditions on June 30, 2005. Therefore, in accordance with the terms of the 2005 Appropriations Act, the fees returned to the rates established in 2004 on June 30, 2005. Mining claim holders must pay a $30 location fee and a $125 maintenance fee for all mining claims and sites recorded on or after June 30, 2005. In addition, the annual maintenance fee due on or before September 1, 2005, is $125 per mining claim or site.

BLM noted in the July 1, 2005, **Federal Register** notice that the regulation at 43 CFR 3834.23(c) provides that, if a mining claimant timely pays pre-increase fees, the BLM will provide notice to the claimant and an opportunity to pay the difference. BLM noted that although the fee increase at issue in the July 1, 2005, **Federal Register** notice was not directly a CPI-based increase, the 2004 increase that has been restored was CPI-based. Therefore, BLM noted that it believed that the cure provisions of the rule will apply if a claimant timely pays at least $100 for a claim or site on or before September 1, 2005. However, the BLM noted that it would publish an additional rule before September 1, 2005, further clarifying that mining claimants may cure the filing of an insufficient payment of fees when the fees have changed through any means, including a Consumer Price Index (CPI) adjustment or other statutorily required adjustment. The purpose of this interim rule is to amend the regulations found at 43 CFR part 3834, subpart B, to make this clarification.

II. Discussion of the Interim Rule

Why the Rule Is Being Published on a Interim Basis

BLM is adopting this interim rule to clarify that mining claimants may cure the filing of an insufficient payment of fees when the fees have changed through means other than a CPI adjustment. The existing provision found at 43 CFR 3834.23(b) provides that, after BLM adjusts the fees to reflect a change in the CPI, as required by the Mining Law, claimants who pay the fees timely, but pay the pre-adjustment amount, will be given an opportunity to cure that insufficient payment. This rule will make this curing provision applicable whenever Congress enacts any other statutes that require an adjustment of the fees.

The Department of the Interior, for good cause, finds under 5 U.S.C. 553(b)(B) that notice and public procedure are unnecessary and contrary to the public interest. The clarification to the curing provision is a reasonable and equitable administrative way in which to handle fee adjustments and to avoid inadvertent loss of mining claims due to lack of actual notice of an adjustment. It is in the public interest to provide such equitable means for a mining claimant to be able to cure an underpayment of the fees when the claimant has shown an intent to maintain the claim by paying the pre-adjusted fee amount in a timely manner. This will avoid the disruption of mining operations that would be caused if the mining claimant unintentionally loses their mining claim or site due to a minimal underpayment of fees.

We also determine under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because a fee adjustment has already occurred and the deadline for filing the adjusted fees for all existing mining claims and sites is September 1, 2005. This rule will make it clear that the BLM will give any claimant who pays the pre-adjusted fee amount in a timely fashion an opportunity to pay the additional amount within 30 days. As such, it grants temporary exemption to the immediate forfeiture of a mining claim due to failure to timely pay fees.

Organization of the Interim Rule

This interim rule amends existing regulations at Subpart B of Part 3834. The existing regulations apply to fee adjustments made in accordance with the CPI, as required by the Mining Law. The amendment will apply to fee adjustments made in accordance with other statutes.