

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 430, 433, 447, 455, and 457

[CMS-2393-WN]

RIN 0938-AT50

Medicaid Program; Medicaid Fiscal Accountability Regulation

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the *Federal Register* on November 18, 2019. The proposed rule would have established new reporting requirements and codified other Medicaid financing requirements, including related to permissible sources for non-federal share financing.

DATES: The proposed rule on Medicaid Fiscal Accountability Regulation, published on November 18, 2019 at 84 FR 63722 is withdrawn January 21, 2021.

ADDRESSES: In commenting, please refer to file code CMS-2393-WN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2393-WN, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2393-WN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

FOR FURTHER INFORMATION CONTACT:

Andrew Badaracco, (410) 786-4589, Richard Kimball, (410) 786-2278, and Daniil Yablochnikov, (410) 786-8912, for Medicaid Provider Payments, Supplemental Payments, Upper Payment Limits, Provider Categories, Intergovernmental Transfers, and Certified Public Expenditures.

Timothy Davidson, (410) 786-1167, Jonathan Endelman, (410) 786-4738, and Stuart Goldstein, (410) 786-0694, for Health Care-Related Taxes, Provider-Related Donations, and Disallowances.

Lia Adams, (410) 786-8258, Charlie Arnold, (404) 562-7425, Richard Cuno, (410) 786-1111, and Charles Hines, (410) 786-0252, for Medicaid Disproportionate Share Hospital Payments and Overpayments.

Jennifer Clark, (410) 786-2013, and Deborah McClure, (410) 786-3128, for Children's Health Insurance Program (CHIP).

SUPPLEMENTARY INFORMATION: On November 18, 2019, we published a proposed rule that proposed to amend our regulations dealing with grants to states for medical assistance programs, state fiscal administration, payments for services, Medicaid program integrity, and allotments to states and grants. (84 FR 63722). After an internal review of the proposed rule, CMS has decided to withdraw the proposed rule.

The proposed rule sought to promote accountability and transparency for Medicaid payments by establishing new reporting requirements for states to provide CMS with certain information on supplemental payments to Medicaid providers, including supplemental payments approved under either Medicaid state plan or demonstration authority, codification of parameters for Medicaid upper payment limit calculations, provider definitions associated with data reporting and Medicaid financing, Medicaid disproportionate share hospital audit requirements and changes to some existing operational processes to better align with technology improvements. This proposed rule also sought to establish additional requirements to ensure that state plan amendments proposing new supplemental payments are consistent with the proper and efficient operation of the state plan and with efficiency, economy, and quality of care. Finally, this proposed rule sought to address the non-federal share financing of supplemental and base Medicaid payments, including states' uses of health care-related taxes and provider-related donations, and other requirements for sources of the non-federal share.

We received approximately 10,188 individual comments (4,225 unduplicated comment submissions) through the extended comment period.¹

¹ On December 30, 2019, CMS extended the comment period for the November 18, 2019, proposed rule by 15 days, from January 17, 2020, to February 1, 2020, in response to feedback from stakeholders indicating additional time was needed

We received significant comments on the proposed rule regarding its potential impact on states and their budgets, Medicaid providers and Medicaid beneficiary access to needed services. Many commenters stated their belief that the proposed rule did not include adequate analysis of these matters. Numerous commenters indicated that CMS, in some instances, lacked statutory authority for its proposals and was creating regulatory provisions that were ambiguous or unclear and subject to excessive Agency discretion.

While we continue to support the intent and purpose of the rule to increase fiscal accountability and improve transparency in the Medicaid program, based on the considerable feedback we received through the public comment process, we have determined it appropriate to withdraw the proposed provisions at this time. Moving forward, we want to ensure agency flexibility in re-examining these important issues and exploring options and possible alternative approaches that best implement the requirements of the Medicaid statute. We also believe it is important to re-examine and fully analyze the proposed Medicaid reporting requirements in consideration of the recent Congressional action through the Consolidated Appropriations Act of 2021 (H.R. 116-133, Pub. L. 116-260) which establishes new statutory requirements for Medicaid supplemental payment reporting. This withdrawal action does not limit our prerogative to make new regulatory proposals in the areas addressed by the withdrawn proposed rule, including new proposals that may be substantially identical or similar to those described therein.

Finally, the withdrawal of this proposed rule does not affect existing federal legal requirements or policy that were merely proposed to be codified in regulation, including certain provisions related to Medicaid financing and Medicaid Upper Payment Limit (UPL) requirements. For example, without limitation, this includes guidance in State Medicaid Director Letter (SMDL) #13-003, which discussed a submission process to comply with the UPL requirements; SMDL #14-004, which discussed Medicaid financing and provider-related donations; as well as State Health Officials (SHO) Letter #14-001, which addressed health care-related taxes. This withdrawal action does not affect CMS' ongoing application of existing statutory and regulatory requirements or its

to review the proposed rule in light of several holidays and the complexity of the rule.

responsibility to faithfully administer the Medicaid program.

Dated: January 12, 2021.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 12, 2021.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

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FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 20-22]

RIN 3072-AC84

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its service contract filing requirements to permit ocean common carriers to file original service contracts up to 30 days after the contract goes into effect.

DATES: Submit comments on or before March 5, 2021.

In compliance with the Paperwork Reduction Act (PRA), the Commission is also seeking comment on revisions to an information collection. See the Paperwork Reduction Act section under Rulemaking Analyses and Notices below. Please submit all comments relating to the revised information collection requirements to the FMC and to the Office of Management and Budget (OMB) at the address listed below under **ADDRESSES** on or before March 22, 2021. Comments to OMB are most useful if submitted within 30 days after publication.

ADDRESSES: You may submit comments, identified by Docket No. 20-22, by the following methods:

- *Email: secretary@fmc.gov.* For comments, include in the subject line: "Docket No. 20-22, Comments on Service Contract Rulemaking." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

Comments regarding the proposed revisions to the relevant information collection should be submitted to the FMC through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime

Commission, 725 17th Street NW, Washington, DC 20503; by Fax: (202) 395-5167; or by email: *OIRA_Submission@OMB.EOP.GOV*.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: <https://www2.fmc.gov/readingroom/proceeding/20-22/>.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523-5725; Email: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

The Shipping Act of 1984, as amended (46 U.S.C. 40101-41309) (Shipping Act or Act) permits ocean common carriers and shippers to enter into individual, confidential service contracts for the international transportation of cargo, and requires that these contracts be filed with the Federal Maritime Commission. Under the current regulations in 46 CFR part 530, original service contracts must be filed on or before their effective date, while service contract amendments must be filed within 30 days *after* they go into effect. The disparate treatment of original service contracts versus amendments was the result of a 2016-2017 rulemaking in which the

Commission determined to allow delayed filing for amendments while retaining the requirement that original service contracts be filed on or before their effective date.

In response to the COVID-19 pandemic and its impact on service contract negotiation and filing, the Commission recently granted a temporary exemption permitting original service contracts, like amendments, to be filed up to 30 days after their effective date. Based on the Commission's experience during the exemption period and the perceived benefits of allowing delayed filing for original service contracts, the Commission has tentatively determined to make the status quo permanent. Accordingly, the Commission is proposing to revise its service contract regulations in part 530 to allow original service contracts, like amendments, to be filed up to 30 days after they go into effect. The Commission is also proposing several technical amendments to the service contract regulations.

The Commission requests comments on these proposed amendments and any other amendments necessary to implement delayed filing for original service contracts.

II. Background

A. Service Contract Requirements

The Shipping Act permits ocean common carriers and shippers to enter into individual, confidential service contracts for the international transportation of cargo, and requires that these contracts be filed with the Federal Maritime Commission.¹ For many years, the Commission's implementing regulations required that ocean common carriers file all service contracts and amendments with the Commission before the contract or amendment could go into effect.²

B. 2016-2018 Rulemakings

In 2016, the Commission published an advanced notice of proposed rulemaking (ANPRM) to revise its regulations governing service contracts and non-vessel-operating common carrier (NVOCC) negotiated service arrangements (NSAs).³ The rulemaking was based on the Commission's retrospective review of its regulations and feedback from the industry and shippers. One suggestion from ocean common carriers was to allow service contract amendments to go into effect

¹ See 46 U.S.C. 40502.

² See, e.g., 46 CFR 530.8(a) (2016).

³ ANPRM: Service Contracts and NVOCC Service Arrangements, 81 FR 10198 (Feb. 29, 2016).