

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–0057–F2]

RIN 0938–AU87

Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children’s Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, Merit-Based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical errors in the final rule that appeared in the February 8, 2024 **Federal Register** titled “Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children’s Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, Merit-Based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program”.

DATES: This correcting amendment is effective October 25, 2024.

FOR FURTHER INFORMATION CONTACT: David Koppel (303) 844–2883.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2024–00895 of February 8, 2024 (89 FR 8758), the final rule titled “Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization

Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children’s Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, Merit-Based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program” (hereinafter referred to as “CMS Interoperability and Prior Authorization final rule”), there were technical errors associated with the regulations text that are identified and corrected in this correcting amendment.

II. Summary of Errors

In §§ 431.60 and 457.730, we are correcting errors in executing the amendatory instructions regarding the removal of paragraph (g) (Data availability) and the redesignation of paragraph (f) (Beneficiary resources regarding privacy and security) as the new paragraph (g).

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** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment on a proposed rule. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (the Act) mandate 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 notice and comment and delay in effective date APA requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act, also provide exceptions from the notice and 60-day

comment period and delay in effective date requirements of the Act. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting amendment does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting amendment corrects technical errors in the regulatory text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the regulations at §§ 431.60 and 457.730 accurately reflect the policies adopted in the final rule.

In addition, even if this were a rule to which the notice and comment procedures 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 regulatory text correction in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized.

This final rule correcting amendment is intended solely to ensure that the final rule and the Code of Federal Regulations (CFR) accurately reflect policies and regulatory changes that have been adopted through rulemaking. Furthermore, such notice and comment procedures would be contrary to the public interest because it is in the public’s interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting

and recordkeeping requirements, State fair hearings.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services corrects 42 CFR chapter IV by making the following correcting amendments:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Section 431.60 is amended by revising paragraph (g) to read as follows:

§ 431.60 Beneficiary access to and exchange of data.

* * * * *

(g) *Beneficiary resources regarding privacy and security.* The State must provide in an easily accessible location on its public website and through other appropriate mechanisms through which it ordinarily communicates with current and former beneficiaries seeking to access their health information held by the State Medicaid agency, educational resources in non-technical, simple and easy-to-understand language explaining at a minimum—

(1) General information on steps the individual may consider taking to help protect the privacy and security of their health information, including factors to consider in selecting an application including secondary uses of data, and the importance of understanding the security and privacy practices of any application to which they will entrust their health information; and

(2) An overview of which types of organizations or individuals are and are not likely to be HIPAA covered entities, the oversight responsibilities of the Office for Civil Rights (OCR) and the Federal Trade Commission (FTC), and how to submit a complaint to—

(i) The HHS Office for Civil Rights (OCR); and

(ii) The Federal Trade Commission (FTC).

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PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 3. The authority citation for part 457 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 4. Section 457.730 is amended by revising paragraph (g) to read as follows:

§ 457.730 Beneficiary access to and exchange of data.

* * * * *

(g) *Beneficiary resources regarding privacy and security.* A State must provide in an easily accessible location on its public website and through other appropriate mechanisms through which it ordinarily communicates with current and former beneficiaries seeking to access their health information held by the State CHIP agency, educational resources in non-technical, simple and easy-to-understand language explaining at a minimum—

(1) General information on steps the individual may consider taking to help protect the privacy and security of their health information, including factors to consider in selecting an application including secondary uses of data, and the importance of understanding the security and privacy practices of any application to which they will entrust their health information; and

(2) An overview of which types of organizations or individuals are and are not likely to be HIPAA covered entities, the oversight responsibilities of OCR and FTC, and how to submit a complaint to—

(i) The HHS Office for Civil Rights (OCR); and

(ii) The Federal Trade Commission (FTC).

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Elizabeth J. Gramling,

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

[FR Doc. 2024–24801 Filed 10–24–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AD02

Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF); Corrections

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Correcting amendments.

SUMMARY: On March 1, 2024, the Department of Health and Human Services published a final rule to

improve child care access, affordability, and stability in the Child Care and Development Fund. An amendment in the final rule was incorporated incorrectly due to technical inaccuracies in the instructions. Additionally, this document addresses one reference error of the rule. This document makes technical changes to correct the final regulations.

DATES: Effective on October 25, 2024.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202–690–6499 or megan.campbell@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: The “Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)” rule, published at 89 FR 15366 on March 1, 2024, included an inaccurate amendatory instruction for § 98.21. Another reference error in § 98.83 dates to a previous amendment to the CCDF rule, published at 81 FR 67438 on September 30, 2016. This document corrects the final regulations.

List of Subjects in 45 CFR Part 98

Child care, Grant programs—social programs.

Accordingly, 45 CFR part 98 is corrected by making the following correcting amendments:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858.

§ 98.21 [Amended]

■ 2. Amend § 98.21 by removing paragraph (h) and redesignating paragraphs (i) through (k) as paragraphs (h) through (j).

■ 3. Amend § 98.83 by revising paragraph (j)(2) to read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(j) * * *

(2) Federal obligation of funds for planning costs, pursuant to paragraph (j)(1) of this section, is subject to the actual availability of the appropriation.

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Elizabeth J. Gramling,

Executive Secretary, Department of Health and Human Services.

[FR Doc. 2024–24781 Filed 10–24–24; 8:45 am]

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