AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

Tuesday,
January 27, 2009

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 457

Medicaid Program; Premiums and Cost Sharing; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 457

[CMS–2244–F2]

RIN 0938–A047

Medicaid Program; Premiums and Cost Sharing

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

ACTION: Final rule; delay of effective date and reopening of comment period.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' this action temporarily delays for 60 days the effective date of the final rule entitled ''Medicaid Program; Premiums and Cost Sharing'' (73 FR 71828). The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations. In addition, this action reopens the comment period on the policies set out in the November 25, 2008 final rule.

DATES: *Effective Date.* This action is effective January 23, 2009. The effective date of the rule amending 42 CFR parts 447 and 457 published in the November 25, 2008 **Federal Register** (73 FR 71828) is delayed 60 days until March 27, 2009.

Comment Period. To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 26, 2009.

ADDRESSES: In commenting, please refer to file code CMS–2244–F2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four 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 instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2244–F2, P.O. Box 8010, Baltimore, MD 21244–8010.

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 (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2244–F2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8010.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786–0693.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2008, we published a final rule entitled ''Medicaid Program; Premiums and Cost Sharing'' in the **Federal Register** to implement and interpret the provisions of sections 6041, 6042, and 6043 of the Deficit Reduction Act of 2005 (DRA), and section 405(a)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA) (73 FR 71828). The DRA was amended by the TRHCA which revised sections 6041, 6042, and 6043 of the DRA including limitations on cost sharing for individuals with family incomes at or below 100 percent of the federal poverty line. These sections amended the Social Security Act (the Act) by adding a new section 1916A to provide State Medicaid agencies with increased flexibility to impose premium and cost sharing requirements on certain Medicaid recipients. The DRA provisions also specifically address cost sharing for non-preferred drugs and non-emergency care furnished in a hospital emergency department.

The November 25, 2008 final rule integrated into CMS regulations the statutory flexibility to impose premiums and cost sharing that was added by the DRA. In addition, in the November 25, 2008 final rule, we responded to public comments on the February 22, 2008 proposed rule (73 FR 9727).

II. Provisions of This Action

This action delays the effective date of the November 25, 2008 final rule and reopens the comment period on the policies set out in the final rule. The effective date of the November 25, 2008 final rule, which would have been January 26, 2009, is now March 27, 2009. The 60-day delay in the effective date is necessary to give the public the opportunity to submit additional comments on the policies set forth in the November 25, 2008 final rule, and to provide an opportunity for CMS to consider all additional public comments.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect, in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary or contrary to the public interest to follow the notice and comment procedure or to comply with the 30-day delay in the effective date, and incorporates a statement of the finding and the reasons in the notice.

This action delays the effective date of the November 25, 2008 final rule that was promulgated through notice and comment rulemaking. A delay in effective date and reopening of the comment period is necessary to ensure that we have the opportunity to receive additional public comments to fully inform our decisions before the policies contained in the final rule become effective. Moreover, we believe it would be contrary to the public interest for the November 25, 2008 final rule to become

effective until we are certain that all public comments, including any additional comments that are submitted in the reopened comment period, are considered. To do otherwise could potentially result in uncertainty and confusion as to the finality of the final rule. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this action are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this action.

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

Dated: January 22, 2009.

Approved:

Charles Johnson,

Acting Secretary.

[FR Doc. E9–1771 Filed 1–23–09; 11:15 am]

BILLING CODE 4120–01–P