EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	* *
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	8/30/02	November 22, 2002 [and FR page citation].	Section (5), Emission Fees, has not been approved as part of the SIP.
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PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

2. Appendix A to Part 70 is amended by adding paragraph (m) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Missouri

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(m) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on September 9, 2002, approval effective January 21, 2003.

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[FR Doc. 02–29607 Filed 11–21–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1809–F2]

RIN 0938–AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

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

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until July 7, 2003, the effective date of the last sentence of 42 CFR 411.354(d)(1). Section 411.354(d)(1) was promulgated in the final rule entitled ''Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,'' published in the **Federal Register** on January 4, 2001 (66 FR 856). A 1-year delay of the effective date of the last sentence in § 411.354(d)(1) was published in the **Federal Register** on December 3, 2001 (66 FR 60154). This extension of the 1-year delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is ''set in advance'' as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective January 6, 2003, will not become effective until July 7, 2003. We expect a future final rule with comment period, entitled ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships'' (Phase II), to further address this issue prior to this effective date.

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed for an additional 6 month period to July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Raschke, (410) 786–0016.

SUPPLEMENTARY INFORMATION:

Copies: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site: *http://cms.hhs.gov/medlearn/refphys.asp.*

I. Background

The final rule, entitled ''Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,'' published in the **Federal Register** on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be ''set in advance.'' Section 411.354(d)(1) of the final rule defines the term ''set in advance.''

The last sentence of § 411.354(d)(1) reads: ''Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser.'' Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the commenters, this compensation methodology is frequently used by hospitals, physician group practices, academic medical centers, and medical foundations. Several commenters pointed out that this aspect of the final rule, which is applicable to academic medical centers and medical foundations (among others), is inconsistent with the compensation methods permitted under the statute for many physician group practices and employed physicians (that is, neither section 1877(h)(4)(B)(i) of the Act nor section 1877(e)(2) of the Act contains the ''set in advance'' requirement). We

understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154) in order to reconsider the definition of compensation that is ''set in advance'' as it relates to percentage compensation methodologies.

II. Response to Public Comments

In response to the publication of the interim final rule with comment period on December 3, 2001 (66 FR 60154), we received a total of four comments. Because the sole purpose of that interim final rule with comment period was to delay the effective date of the last sentence in § 411.354(d)(1), we only accepted comments addressing the length of the delay of that sentence. The following discussion includes a description of the two pertinent comments that we received, along with our responses.

Comment: Two commenters requested that we further postpone the effective date for an additional year in order to better effectuate our stated goals of providing stability in the health care services available to Medicare beneficiaries, and of avoiding unnecessary disruption of existing contractual arrangements. They were of the opinion that, although the current 1-year delay in effective date may provide us with enough time to publish further guidance, physicians and other health care entities will need additional time to renegotiate reimbursement and compensation arrangements in order to avoid disrupting existing contractual arrangements.

Response: We agree that additional time is necessary, both for us to reconsider this issue, and for health care entities to bring their arrangements into compliance. However, we believe that a further 6-month delay in the effective date will suffice because we expect a future final rule with comment period entitled ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships'' (Phase II) to further address this issue prior to this effective date.

III. Provisions of This Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this provision, we are further postponing, for an additional 6 months, until July 7, 2003, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on January 6, 2003. In the meantime, compensation that is required to be ''set in advance'' for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and ''volume and value'' requirements).

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B). We find that seeking public comment on this action would be impracticable and unnecessary. We are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation. In addition, given the imminence of the January 6, 2003 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by January 6, 2003 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 27, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 19, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–29797 Filed 11–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D005]

Defense Federal Acquisition Regulation Supplement; Foreign Military Sales Customer Involvement

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding the participation of foreign military sales (FMS) customers in the development of contracts that DoD awards on their behalf. The objective is to provide FMS customers with more visibility into the contract pricing and award process.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D005.