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 incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA 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. Therefore, we are waiving proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This correction notice merely corrects technical errors in Addendum B of the Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2009 and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. Therefore, we do not believe this correction notice is a substantive rule that would be subject to notice and comment rulemaking or a delay in effective date; but rather, merely reflects policies or payment methodologies that were already subject to notice and comment rulemaking and were previously adopted by us. As a result, this notice is intended to ensure that the CY 2009 HHPPS Update Notice accurately reflects the policies adopted after public comment. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the update notice or delaying the effective date of these changes is unnecessary and contrary to the public interest.

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

Dated: December 16, 2008.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E8–30453 Filed 12–19–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1411–N]

Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classification Groups

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice solicits nominations of five new members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). There will be five vacancies on the Panel as of August 16, 2009.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services (CMS), concerning the clinical integrity of the APC groups and their associated weights.

The Secretary rechartered the Panel in 2008 for a 2-year period effective through November 21, 2010.

DATES: *Submission of Nominations:* We will consider nominations if they are received no later than 5 p.m. (e.s.t.), March 13, 2009.

ADDRESSES: You may mail or hand deliver nominations for membership to: Centers for Medicare and Medicaid Services; Attn: Shirl Ackerman-Ross, Designated Federal Official (DFO), Advisory Panel on APC Groups; Center for Medicare Management, Hospital & Ambulatory Policy Group, Division of Outpatient Care; 7500 Security Boulevard, Mail Stop C4–05–17; Baltimore, MD 21244–1850.

Web Site: For additional information on the APC Panel and updates to the Panel's activities, we refer readers to view our Web site at: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*. (Use control + click the mouse in order to access the previous URL.) (Note: There is an underscore after FACA/05_; there is no space.)

Advisory Committee's Information Lines: You may also refer to the CMS Federal Advisory Committee Hotlines at 1–877–449–5659 (toll-free) or 410–786–9379 (local) for additional information.

Further Information Contact: Persons wishing to nominate individuals to serve on the Panel or to obtain further information may also contact Shirl Ackerman-Ross, the DFO, at *CMS APCPanel@cms.hhs.gov*, or call (410) 786–4474. (Note: There is no underscore in this e-mail address; there is a space between CMS and APCPanel.), or call 410–786–4474.

News Media: Representatives should contact the CMS Press Office at 202–690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert outside advisory Panel regarding the clinical integrity of the APC groups and relative payment weights that are components of the Medicare hospital Outpatient Prospective Payment System (OPPS).

The Charter requires that the Panel meet up to three times annually. CMS considers the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the next calendar year.

The Panel may consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. (For purposes of the Panel, consultants or independent contractors are not considered to be full-time employees in these organizations.)

The current Panel members are as follows: (The asterisk [*] indicates the Panel members whose terms end on August 16, 2009.)

- E. L. Hambrick, M.D., J.D., Chair, a CMS Medical Officer
- Gloryanne Bryant, B.S., RHIA, RHIT, CCS*
- Kathleen M. Graham, R.N., MSHA, CPHQ
- Patrick A. Grusenmeyer, Sc.D., FACHE
- Judith T. Kelly, B.S.H.A., RHIT, RHIA, CCS
- Michael D. Mills, Ph.D.
- Thomas M. Munger, M.D., FACC*
- Agatha L. Nolen, D.Ph., M.S.
- Randall A. Oyer, M.D.
- Beverly Khnie Philip, M.D.
- Russ Ranallo, M.S., B.S.
- James V. Rawson, M.D.*
- Michael A. Ross, M.D., FACEP
- Patricia Spencer-Cisek, M.S., APRN-BC, AOCN®
- Kim Allen Williams, M.D., FACC, FABC*
- Robert M. Zwolak, M.D., Ph.D., FACS*

Panel members serve without compensation, according to an advance written agreement; however, for the

meetings, CMS reimburses travel, meals, lodging, and related expenses in accordance with standard Government travel regulations.

CMS has a special interest in attempting to ensure, while taking into account the nominee pool, that the Panel is diverse in all respects of the following: Geography; rural or urban practice; race, ethnicity, sex, and disability; medical or technical specialty; and type of hospital, hospital health system, or other Medicare provider subject to the OPPS.

Based upon either self-nominations or nominations submitted by providers or interested organizations, the Secretary, or his designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership under the guidelines of the Federal Advisory Committee Act.

II. Criteria for Nominees

The Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel shall consist of up to 15 members who are representatives of providers. Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. All members must have technical expertise to enable them to participate fully in the Panel's work. The expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently have full-time employment in his or her area of expertise. Members of the Panel serve overlapping terms up to 4 years, based on the needs of the Panel and contingent upon the rechartering of the Panel.

Any interested person or organization may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include the following:

- Letter of Nomination;
- Curriculum Vita of the nominee; and
- Written statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.

III. Copies of the Charter

To obtain a copy of the Panel's Charter, submit a written request to the DFO at the address provided in the **ADDRESSES** section or by e-mail at *CMS APCPanel@cms.hhs.gov*, or call 410–786–4474.

Copies of the Charter are also available on the Internet at the following: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program).

Dated: December 11, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–30454 Filed 12–19–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2283–N]

RIN 0938–AP20

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Permit-Holding Laboratories in the State of New York

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

ACTION: Notice.

SUMMARY: This notice announces that CMS has granted exemption from CLIA requirements to laboratories located within the State of New York that possess a valid permit under Article Five of Title V of the Public Health Law of the State of New York and its implementing regulations at 10 N.Y. Comp. Codes R. & Regs., Title V, Part 58.

DATES: *Effective Date:* The exemption granted by this notice is effective, unless revoked, for 6 years from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Val Coppola (410) 786–3531.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Law

Section 353 of the Public Health Service Act (the Act), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. 263a) generally requires any laboratory that performs tests on human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or assessment of the health of human beings to possess a certificate to perform that category of tests issued by the Secretary of the Department of Health and Human Services (HHS). Under sections 1861(s) of the Social Security Act, the Medicare program will only pay for laboratory services if the laboratory meets the certification requirements under section 353 of the Public Health Service Act. Section 1902(a)(9)(C) of the Social Security Act requires that State Medicaid plans pay only for laboratory services furnished by laboratories in compliance with section 353 of the Act. Subject to specified exceptions, laboratories therefore must have a current and valid CLIA certificate to be eligible for payment from the Medicare or Medicaid programs. Regulations implementing section 353 of the Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in States that enact legal requirements that are equal to or more stringent than CLIA's statutory and regulatory requirements.

Section 353(p) of the Act is implemented in subpart E of regulations at 42 CFR part 493. Sections 493.551 and 493.553 provide that we may exempt from CLIA requirements, for a period not to exceed 6 years, State licensed or approved laboratories in a State if the State licensure program meets specified conditions. Section 493.559 provides that we will publish a notice in the **Federal Register** when we grant approval to an approved State laboratory licensure program. It also provides that the notice will include the following:

- The basis for granting the exemption.
- A description of how the laboratory requirements are equal to or more stringent than those of CLIA.
- The term of approval, not to exceed 6 years.

B. New York State Law

This title is generally applicable to all clinical laboratories operating within the state of New York except those operated by the Federal Government and those operated by a licensed