### Subpart ZZ—[Amended]

■ 34. Section 52.2630 is amended by revising paragraph (b) introductory text to read as follows:

**§ 52.2630 Prevention of significant deterioration of air quality.**

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The Wyoming plan, as submitted, does not apply to certain sources in the State. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the State implementation plan for the State of Wyoming and are applicable to the following proposed major stationary sources or major modifications:

* * * * *

### Subpart AAA—[Amended]

■ 35. Section 52.2676 is amended by revising paragraph (b) to read as follows:

**§ 52.2676 Significant deterioration of air quality.**

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Guam.

### Subpart BBB—[Amended]

■ 36. Section 52.2729 is amended by revising paragraph (b) to read as follows:

**§ 52.2729 Significant deterioration of air quality.**

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Puerto Rico.

### Subpart CCC—[Amended]

■ 37. Section 52.2779 is amended by revising paragraph (b) to read as follows:

**§ 52.2779 Significant deterioration of air quality.**

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the Virgin Islands.

### Subpart DDD—[Amended]

■ 38. Section 52.2827 is amended by revising paragraph (b) to read as follows:

**§ 52.2827 Significant deterioration of air quality.**

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for American Samoa.

[FR Doc. 03–31586 Filed 12–23–03; 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–F4]**

**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, 2004, the effective date of the last sentence of 42 CFR 411.354(d)(1). This section 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. A 1-year delay of the effective date of the last sentence in this section was published in the **Federal Register** on December 3, 2001. A 6-month delay, until July 7, 2003, was published in the **Federal Register** on November 22, 2002. An additional 6-month delay, until January 7, 2004, was published on April 25, 2003. This further extension of the 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 7, 2004, will not become effective until July 7, 2004. We expect that the definition of ''set in advance'' will be addressed definitively before July 7, 2004 in a final rule with comment period, entitled ''Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships'' (Phase II).

**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 to July 7, 2004.

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

**SUPPLEMENTARY INFORMATION:** 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), an additional 6-month delay in the effective date on November 22, 2002 (67 FR 70322), and a further 6-month delay on April 25, 2003 (68 FR 20347) in order to reconsider the definition of compensation that is ''set in advance'' as it relates to percentage compensation methodologies.

## II. 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, 2004, 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 7, 2004. 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.)

## III. 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 exception in 5 U.S.C. 553(b). We find that seeking public comment on this action would be impracticable and unnecessary. We believe public comment is unnecessary because 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 7, 2004 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 7, 2004 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 29, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: October 27, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–31469 Filed 12–23–03; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 02–60, FCC 03–288]**

### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition for reconsideration.

**SUMMARY:** In this document, the Commission modifies its rules to improve the effectiveness of the rural health care support mechanism, which provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. Because participation in the rural health care support mechanism has not met the Commission's initial projections, the Commission amends its rules to improve the program, increase participation by rural health care providers, and ensure that the benefits of the program continue to be distributed in a fair and equitable manner. In addition, the Commission denies Mobile Satellite Ventures Subsidiary's petition for reconsideration of the *1997 Universal Service Order.*

**DATES:** Effective February 23, 2004 except for §§ 54.609(a)(2), 54.609(A)(3)(ii), and 54.621(a) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lipp, Attorney, (202) 418–7400 or Regina Brown, Attorney, (202) 418–7400, Wireline Competition Bureau, Telecommunications Access Policy Division.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order and Order on Reconsideration*, in WC Docket No. 02–60 released On November 17, 2003. The full text of this document is available for