

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

### 42 CFR Part 411

[CMS-1810-IFC2]

RIN-0938-AK67

### Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II); Correcting Amendment

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

**ACTION:** Interim final rule with comment period; correcting amendment.

**SUMMARY:** In the March 26, 2004 issue of the *Federal Register* (69 FR 16054), we published an interim final rule with comment period that incorporated into regulations certain provisions of the physician self-referral prohibition in section 1877 of the Social Security Act. The effective date of that rule was July 26, 2004. This correcting amendment corrects a technical error identified in the March 26, 2004 interim final rule. Specifically, this rule reinstates the physician self-referral advisory opinion regulations, which were inadvertently deleted from Part 411 in the March 26, 2004 interim final rule.

**DATES:** This rule is effective July 26, 2004. To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 23, 2004.

**ADDRESSES:** In commenting, please refer to file code CMS-1810-IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/regulations/ecomments>. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By 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-1810-IFC2, P.O. Box 8011, Baltimore, MD 21244-8011.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *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 one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(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.)

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

We are only accepting comments on whether to reinstate the physician self-referral advisory opinion regulations, not on the substance of the regulations themselves.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Joanne Sinsheimer, (410) 786-4620.

#### SUPPLEMENTARY INFORMATION:

##### Need for Correction

This correction is necessary to reinstate the regulation text for § 411.370 through § 411.389 (regarding the physician self-referral advisory opinion process), which was inadvertently deleted from Part 411 in the March 26, 2004 interim final rule. We note that we are updating an incorrect address to be used in submitting advisory opinions.

##### Collection of Information

The requirements in § 411.370 through § 411.389 are subject to the Paperwork Reduction Act; however, these requirements are currently approved under OMB control #0938-0714 with a current expiration date of October 31, 2004. Note that the information collection package containing these approved requirements is currently at OMB awaiting re-approval.

##### Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* to provide a period for public

comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the rule issued.

We find it unnecessary, impracticable, and contrary to the public interest to offer an opportunity to comment on this rule before it becomes effective. This rule merely corrects the inadvertent removal of certain regulatory provisions regarding the physician self-referral advisory opinion process. The deleted advisory opinion regulations have been in effect since they were first published on January 9, 1998 in an interim final rule with comment period. We never proposed to remove or revise these regulations, and they were not the subject of the March 26, 2004 interim final rule. Nothing in the preamble to the March 26, 2004 interim final rule indicated any intent to remove or revise the advisory opinion regulations. In fact, the preamble referred several times to the existence of the advisory opinion process. But for the omission of an ellipsis at the end of the regulatory text for Part 411 at 69 FR 16142 of the March 26, 2004 interim final rule, these regulations would not have been removed. Reinstatement of these regulations does not impose any additional burden on the public. Delaying the effective date of this rule pending prior notice and an opportunity for public comment would be impracticable because it would create uncertainty as to the appropriate procedures and standards that the agency would apply in receiving and processing requests for advisory opinions. The absence of these regulations in the CFR could increase the burden on both the agency and the public. For these reasons, we find it unnecessary and impracticable to provide an opportunity to comment on the technical correction made by this rule. Moreover, it would be contrary to the public interest for us to require members of the public to draft and submit advisory opinion requests, and for us to issue advisory opinions, in the absence of any rules to guide the process. We believe that the comment period established by this interim final rule will protect the public's interest in this rulemaking. Therefore, we find good cause to waive the opportunity to receive public comments on this rule prior to its effective date.

## Retroactive Application

We ordinarily designate an interim final rule to be effective at least 30 days from the date of publication. Under 5 U.S.C. 553(d), a rule may have a retroactive effective date if the agency finds good cause and incorporates a statement of the finding and the reasons for it into the rule issued. Section 1871 of the Social Security Act, as amended by section 903(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), provides that a substantive change in regulations may be applied retroactively if the Secretary determines that "failure to apply the change retroactively would be contrary to the public interest."

We believe that there is good cause to reinstate § 411.370 through § 411.389 retroactively and that failure to reinstate these regulations retroactively would be contrary to the public interest. We have issued two advisory opinions since July 26, 2004, and we are currently reviewing approximately 30 advisory opinion requests that were submitted under an MMA mandate related to an 18-month moratorium on physician referrals to specialty hospitals in which they have an ownership interest. We need to issue all advisory opinions related to the moratorium well before the moratorium expires in June 2005. We believe that it would be contrary to the public interest for us to require members of the public to draft and submit advisory opinion requests, and for us to issue advisory opinions, in the absence of any rules to guide the process and to increase its efficiency. In addition, retroactive reinstatement of the rules removes any uncertainty regarding whether appropriate procedures and standards were followed with respect to advisory opinions issued after July 26, 2004.

## List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments:

## PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

## Subpart J—Financial Relationships Between Physicians and Entities Furnishing Designated Health Services

■ 2. In Subpart J, § 411.370 is added to read as follows.

### § 411.370 Advisory opinions relating to physician referrals.

(a) *Period during which CMS will accept requests.* The provisions of § 411.370 through § 411.389 apply to requests for advisory opinions that are submitted to CMS after November 3, 1997, and before August 21, 2000, and to any requests submitted during any other time period during which CMS is required by law to issue the advisory opinions described in this subpart.

(b) *Matters that qualify for advisory opinions and who may request one.* Any individual or entity may request a written advisory opinion from CMS concerning whether a physician's referral relating to designated health services (other than clinical laboratory services) is prohibited under section 1877 of the Act. In the advisory opinion, CMS determines whether a business arrangement described by the parties to that arrangement appears to constitute a "financial relationship" (as defined in section 1877(a)(2) of the Act) that could potentially restrict a physician's referrals, and whether the arrangement or the designated health services at issue appear to qualify for any of the exceptions to the referral prohibition described in section 1877 of the Act.

(1) The request must involve an existing arrangement or one into which the requestor, in good faith, specifically plans to enter. The planned arrangement may be contingent upon the party or parties receiving a favorable advisory opinion. CMS does not consider, for purposes of an advisory opinion, requests that present a general question of interpretation, pose a hypothetical situation, or involve the activities of third parties.

(2) The requestor must be a party to the existing or proposed arrangement.

(c) *Matters not subject to advisory opinions.* CMS does not address through the advisory opinion process—

(1) Whether the fair market value was, or will be, paid or received for any goods, services, or property; and

(2) Whether an individual is a *bona fide* employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

(d) *Facts subject to advisory opinions.* CMS considers requests for advisory opinions that involve applying specific facts to the subject matter described in paragraph (b) of this section. Requestors must include in the advisory opinion

request a complete description of the arrangement that the requestor is undertaking, or plans to undertake, as described in § 411.372.

(e) *Requests that will not be accepted.* CMS does not accept an advisory opinion request or issue an advisory opinion if—

(1) The request is not related to a named individual or entity;

(2) CMS is aware that the same, or substantially the same, course of action is under investigation, or is or has been the subject of a proceeding involving the Department of Health and Human Services or another governmental agency; or

(3) CMS believes that it cannot make an informed opinion or could only make an informed opinion after extensive investigation, clinical study, testing, or collateral inquiry.

(f) *Effects of an advisory opinion on other Governmental authority.* Nothing in this part limits the investigatory or prosecutorial authority of the OIG, the Department of Justice, or any other agency of the Government. In addition, in connection with any request for an advisory opinion, CMS, the OIG, or the Department of Justice may conduct whatever independent investigation it believes appropriate.

■ 3. Sections 411.372 and 411.373 are added to subpart J to read as follows.

### § 411.372 Procedure for submitting a request.

(a) *Format for a request.* A party or parties must submit a request for an advisory opinion to CMS in writing, including an original request and 2 copies. The request must be addressed to: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Office of Financial Management, Division of Premium Billing and Collections, Mail Stop C3-09-27, Attention: Advisory Opinions, 7500 Security Boulevard, Baltimore, MD 21244-1850.

(b) *Information CMS requires with all submissions.* The request must include the following:

(1) The name, address, telephone number, and Taxpayer Identification Number of the requestor.

(2) The names and addresses, to the extent known, of all other actual and potential parties to the arrangement that is the subject of the request.

(3) The name, title, address, and daytime telephone number of a contact person who will be available to discuss the request with CMS on behalf of the requestor.

(4) A complete and specific description of all relevant information bearing on the arrangement, including—

(i) A complete description of the arrangement that the requestor is undertaking, or plans to undertake, including: the purpose of the arrangement; the nature of each party's (including each entity's) contribution to the arrangement; the direct or indirect relationships between the parties, with an emphasis on the relationships between physicians involved in the arrangement (or their immediate family members who are involved) and any entities that provide designated health services; the types of services for which a physician wishes to refer, and whether the referrals will involve Medicare or Medicaid patients;

(ii) Complete copies of all relevant documents or relevant portions of documents that affect or could affect the arrangement, such as personal services or employment contracts, leases, deeds, pension or insurance plans, financial statements, or stock certificates (or, if these relevant documents do not yet exist, a complete description, to the best of the requestor's knowledge, of what these documents are likely to contain);

(iii) Detailed statements of all collateral or oral understandings, if any; and

(iv) Descriptions of any other arrangements or relationships that could affect CMS's analysis.

(5) Complete information on the identity of all entities involved either directly or indirectly in the arrangement, including their names, addresses, legal form, ownership structure, nature of the business (products and services) and, if relevant, their Medicare and Medicaid provider numbers. The requestor must also include a brief description of any other entities that could affect the outcome of the opinion, including those with which the requestor, the other parties, or the immediate family members of involved physicians, have any financial relationships (either direct or indirect, and as defined in section 1877(a)(2) of the Act and § 411.351), or in which any of the parties holds an ownership or control interest as defined in section 1124(a)(3) of the Act.

(6) A discussion of the specific issues or questions the requestor would like CMS to address including, if possible, a description of why the requestor believes the referral prohibition in section 1877 of the Act might or might not be triggered by the arrangement and which, if any, exceptions to the prohibition the requestor believes might apply. The requestor should attempt to designate which facts are relevant to each issue or question raised in the request and should cite the provisions

of law under which each issue or question arises.

(7) An indication of whether the parties involved in the request have also asked for or are planning to ask for an advisory opinion on the arrangement in question from the OIG under section 1128D(b) of the Act (42 U.S.C. 1320a-7d(b)) and whether the arrangement is or is not, to the best of the requestor's knowledge, the subject of an investigation.

(8) The certification(s) described in § 411.373. The certification(s) must be signed by—

(i) The requestor, if the requestor is an individual;

(ii) The chief executive officer, or comparable officer, of the requestor, if the requestor is a corporation;

(iii) The managing partner of the requestor, if the requestor is a partnership; or

(iv) A managing member, if the requestor is a limited liability company.

(9) A check or money order payable to CMS in the amount described in § 411.375(a).

(c) *Additional information CMS might require.* If the request does not contain all of the information required by paragraph (b) of this section, or, if either before or after accepting the request, CMS believes it needs more information in order to render an advisory opinion, it may request whatever additional information or documents it deems necessary. Additional information must be provided in writing, signed by the same person who signed the initial request (or by an individual in a comparable position), and be certified as described in § 411.373.

#### **§ 411.373 Certification.**

(a) Every request must include the following signed certification: "With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 and with knowledge that this request for an advisory opinion is being submitted to the Department of Health and Human Services, I certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of my knowledge and belief."

(b) If the advisory opinion relates to a proposed arrangement, in addition to the certification required by paragraph (a) of this section, the following certification must be included and signed by the requestor: "The arrangement described in this request for an advisory opinion is one into which [the requestor], in good faith, plans to enter." This statement may be made contingent on a favorable advisory

opinion, in which case the requestor should add one of the following phrases to the certification:

(1) "if CMS issues a favorable advisory opinion."

(2) "if CMS and the OIG issue favorable advisory opinions."

■ 4. Section 411.375 is added to subpart J to read as follows.

#### **§ 411.375 Fees for the cost of advisory opinions.**

(a) *Initial payment.* Parties must include with each request for an advisory opinion submitted through December 31, 1998, a check or money order payable to CMS for \$250. For requests submitted after this date, parties must include a check or money order in this amount, unless CMS has revised the amount of the initial fee in a program issuance, in which case, the requestor must include the revised amount. This initial payment is nonrefundable.

(b) *How costs are calculated.* Before issuing the advisory opinion, CMS calculates the costs the Department has incurred in responding to the request. The calculation includes the costs of salaries, benefits, and overhead for analysts, attorneys, and others who have worked on the request, as well as administrative and supervisory support for these individuals.

(c) *Agreement to pay all costs.* (1) By submitting the request for an advisory opinion, the requestor agrees, except as indicated in paragraph (c)(3) of this section, to pay all costs the Department incurs in responding to the request for an advisory opinion.

(2) In its request for an advisory opinion, the requestor may designate a triggering dollar amount. If CMS estimates that the costs of processing the advisory opinion request have reached or are likely to exceed the designated triggering dollar amount, CMS notifies the requestor.

(3) If CMS notifies the requestor that the actual or estimated cost of processing the request has reached or is likely to exceed the triggering dollar amount, CMS stops processing the request until the requestor makes a written request for CMS to continue. If CMS is delayed in processing the request for an advisory opinion because of this procedure, the time within which CMS must issue an advisory opinion is suspended until the requestor asks CMS to continue working on the request.

(4) If the requestor chooses not to pay for CMS to complete an advisory opinion, or withdraws the request, the requestor is still obligated to pay for all costs CMS has identified as costs it

incurred in processing the request for an advisory opinion, up to that point.

(5) If the costs CMS has incurred in responding to the request are greater than the amount the requestor has paid, CMS, before issuing the advisory opinion, notifies the requestor of any additional amount that is due. CMS does not issue an advisory opinion until the requestor has paid the full amount that is owed. Once the requestor has paid CMS the total amount due for the costs of processing the request, CMS issues the advisory opinion. The time period CMS has for issuing advisory opinions is suspended from the time CMS notifies the requestor of the amount owed until the time CMS receives full payment.

(d) *Fees for outside experts.* (1) In addition to the fees identified in this section, the requestor also must pay any required fees for expert opinions, if any, from outside sources, as described in § 411.377.

(2) The time period for issuing an advisory opinion is suspended from the time that CMS notifies the requestor that it needs an outside expert opinion until the time CMS receives that opinion.

■ 5. Sections 411.377 through 411.380 are added to subpart J to read as follows.

**§ 411.377 Expert opinions from outside sources.**

(a) CMS may request expert advice from qualified sources if CMS believes that the advice is necessary to respond to a request for an advisory opinion. For example, CMS may require the use of accountants or business experts to assess the structure of a complex business arrangement or to ascertain a physician's or immediate family member's financial relationship with entities that provide designated health services.

(b) If CMS determines that it needs to obtain expert advice in order to issue a requested advisory opinion, CMS notifies the requestor of that fact and provides the identity of the appropriate expert and an estimate of the costs of the expert advice. As indicated in § 411.375(d), the requestor must pay the estimated cost of the expert advice.

(c) Once CMS has received payment for the estimated cost of the expert advice, CMS arranges for the expert to provide a prompt review of the issue or issues in question. CMS considers any additional expenses for the expert advice, beyond the estimated amount, as part of the costs CMS has incurred in responding to the request, and the responsibility of the requestor, as described in § 411.375(c).

**§ 411.378 Withdrawing a request.**

The party requesting an advisory opinion may withdraw the request before CMS issues a formal advisory opinion. This party must submit the withdrawal in writing to the same address as the request, as indicated in § 411.372(a). Even if the party withdraws the request, the party must pay the costs the Department has expended in processing the request, as discussed in § 411.375. CMS reserves the right to keep any request for an advisory opinion and any accompanying documents and information, and to use them for any governmental purposes permitted by law.

**§ 411.379 When CMS accepts a request.**

(a) Upon receiving a request for an advisory opinion, CMS promptly makes an initial determination of whether the request includes all of the information it will need to process the request.

(b) Within 15 working days of receiving the request, CMS—

(1) Formally accepts the request for an advisory opinion;

(2) Notifies the requestor about the additional information it needs; or

(3) Declines to formally accept the request.

(c) If the requestor provides the additional information CMS has requested, or otherwise resubmits the request, CMS processes the resubmission in accordance with paragraphs (a) and (b) of this section as if it were an initial request for an advisory opinion.

(d) Upon accepting the request, CMS notifies the requestor by regular U.S. mail of the date that CMS formally accepted the request.

(e) The 90-day period that CMS has to issue an advisory opinion set forth in § 411.380(c) does not begin until CMS has formally accepted the request for an advisory opinion.

**§ 411.380 When CMS issues a formal advisory opinion.**

(a) CMS considers an advisory opinion to be issued once it has received payment and once the opinion has been dated, numbered, and signed by an authorized CMS official.

(b) An advisory opinion contains a description of the material facts known to CMS that relate to the arrangement that is the subject of the advisory opinion, and states CMS's opinion about the subject matter of the request based on those facts. If necessary, CMS includes in the advisory opinion material facts that could be considered confidential information or trade secrets within the meaning of 18 U.S.C. 1095.

(c)(1) CMS issues an advisory opinion, in accordance with the provisions of this part, within 90 days after it has formally accepted the request for an advisory opinion, or, for requests that CMS determines, in its discretion, involve complex legal issues or highly complicated fact patterns, within a reasonable time period.

(2) If the 90th day falls on a Saturday, Sunday, or Federal holiday, the time period ends at the close of the first business day following the weekend or holiday;

(3) The 90-day period is suspended from the time CMS—

(i) Notifies the requestor that the costs have reached or are likely to exceed the triggering amount as described in § 411.375(c)(2) until CMS receives written notice from the requestor to continue processing the request;

(ii) Requests additional information from the requestor until CMS receives the additional information;

(iii) Notifies the requestor of the full amount due until CMS receives payment of this amount; and

(iv) Notifies the requestor of the need for expert advice until CMS receives the expert advice.

(d) After CMS has notified the requestor of the full amount owed and has received full payment of that amount, CMS issues the advisory opinion and promptly mails it to the requestor by regular first class U.S. mail.

■ 6. Section 411.382 is added to subpart J to read as follows.

**§ 411.382 CMS's right to rescind advisory opinions.**

Any advice CMS gives in an opinion does not prejudice its right to reconsider the questions involved in the opinion and, if it determines that it is in the public interest, to rescind or revoke the opinion. CMS provides notice to the requestor of its decision to rescind or revoke the opinion so that the requestor and the parties involved in the requestor's arrangement may discontinue any course of action they have taken in accordance with the advisory opinion. CMS does not proceed against the requestor with respect to any action the requestor and the involved parties have taken in good faith reliance upon CMS's advice under this part, provided—

(a) The requestor presented to CMS a full, complete and accurate description of all the relevant facts; and

(b) The parties promptly discontinue the action upon receiving notice that CMS had rescinded or revoked its approval, or discontinue the action within a reasonable "wind down" period, as determined by CMS.

■ 7. Section 411.384 is added to subpart J to read as follows.

**§ 411.384 Disclosing advisory opinions and supporting information.**

(a) Advisory opinions that CMS issues and releases in accordance with the procedures set forth in this subpart are available to the public.

(b) Promptly after CMS issues an advisory opinion and releases it to the requestor, CMS makes available a copy of the advisory opinion for public inspection during its normal hours of operation and on the DHHS/CMS Web site.

(c) Any predecisional document, or part of such predecisional document, that is prepared by CMS, the Department of Justice, or any other Department or agency of the United States in connection with an advisory opinion request under the procedures set forth in this part is exempt from disclosure under 5 U.S.C. 552, and will not be made publicly available.

(d) Documents submitted by the requestor to CMS in connection with a request for an advisory opinion are available to the public to the extent they are required to be made available by 5 U.S.C. 552, through procedures set forth in 45 CFR part 5.

(e) Nothing in this section limits CMS's obligation, under applicable laws, to publicly disclose the identity of the requesting party or parties, and the nature of the action CMS has taken in response to the request.

■ 8. Sections 411.386 through 411.389 are added to subpart J to read as follows.

**§ 411.386 CMS's advisory opinions as exclusive.**

The procedures described in this subpart constitute the only method by which any individuals or entities can obtain a binding advisory opinion on the subject of a physician's referrals, as described in § 411.370. CMS has not and does not issue a binding advisory opinion on the subject matter in § 411.370, in either oral or written form, except through written opinions it issues in accordance with this subpart.

**§ 411.387 Parties affected by advisory opinions.**

An advisory opinion issued by CMS does not apply in any way to any individual or entity that does not join in the request for the opinion. Individuals or entities other than the requestor(s) may not rely on an advisory opinion.

**§ 411.388 When advisory opinions are not admissible evidence.**

The failure of a party to seek or to receive an advisory opinion may not be introduced into evidence to prove that

the party either intended or did not intend to violate the provisions of sections 1128, 1128A or 1128B of the Act.

**§ 411.389 Range of the advisory opinion.**

(a) An advisory opinion states only CMS's opinion regarding the subject matter of the request. If the subject of an advisory opinion is an arrangement that must be approved by or is regulated by any other agency, CMS's advisory opinion cannot be read to indicate CMS's views on the legal or factual issues that may be raised before that agency.

(b) An advisory opinion that CMS issues under this part does not bind or obligate any agency other than the Department. It does not affect the requestor's, or anyone else's, obligations to any other agency, or under any statutory or regulatory provision other than that which is the specific subject matter of the advisory opinion.

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

Dated: September 15, 2004.

**Ann Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 04–21206 Filed 9–23–04; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[OMD Docket No. 02–339; FCC 04–72]

#### Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule, which was published in the *Federal Register* at 69 FR 27843 on May 17, 2004. The final rule related to the Debt Collection Improvement Act of 1996 (DCIA).

**DATES:** Effective on October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Regina W. Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at [Regina.Dorsey@fcc.gov](mailto:Regina.Dorsey@fcc.gov), or Laurence H. Schecker, Office of General Counsel, Administrative Law Division, at 1–202–418–1720, or by e-mail at [Laurence.Schecker@fcc.gov](mailto:Laurence.Schecker@fcc.gov).

**SUPPLEMENTARY INFORMATION:** In FR Doc 04–10661, in the *Federal Register* of Monday, May 17, 2004, the following corrections are made.

**§ 1.1116 [Corrected]**

■ 1. On page 27847, in the third column, in § 1.1116, the reference to “§ 1.1109(b)” is corrected to read “§ 1.1109(d)”.

■ 2. On page 27850, in the third column, § 1.1910 is corrected to read as follows:

**§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.**

(a)(1) An application (including a petition for reconsideration or any application for review of a fee determination) or request for authorization subject to the FCC Registration Number (FRN) requirement set forth in subpart W of this chapter will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P).

(2) Fee payments, delinquent debt, and debarment will be examined based on the entity's taxpayer identifying number (TIN), supplied when the entity acquired or was assigned an FRN. See 47 CFR 1.8002(b)(1).

(b)(1) Applications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G.

(2) Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (*see* § 1.1901(j)), unless otherwise provided for in this regulation, *e.g.*, 47 CFR 1.1928 (employee petition for a hearing). The entity will be informed that action will be withheld on the application until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and/or that the application may be dismissed. See the provisions of §§ 1.1108, 1.1109, 1.1116 and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717.