Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

**Takings**

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

**Civil Justice Reform**

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Instead, the rule is likely to decrease litigation with Indian tribes and reduce unnecessary friction between the Department of Justice and the Commission.

**Paperwork Reduction Act**

This regulation does not require an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The Commission has analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

**List of Subjects in 25 CFR Part 502**

Gaming, Indian lands.

For the reasons set forth in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR Part 502 as follows:

## PART 502—DEFINITIONS OF THIS CHAPTER

**Authority:** 25 U.S.C. 2701 *et seq.*

1. Revise § 502.7 to read as follows:

### § 502.7 Electronic, computer or other technologic aid.

(a) Electronic, computer or other technologic aid means any machine or device, such as a computer, telephone, cable, television, screen, satellite, or bingo blower, that when used—

(1) Is not a game of chance but merely assists a player or the playing of a game;

(2) Is readily distinguishable from the playing of an electronic or electromechanical facsimile of a game of chance; and

(3) Is operated according to applicable Federal communications law.

(b) Other examples of an electronic, computer or other technologic aid may include, but are not limited to, equipment that allows communication between and among gaming sites, electronic cards (player stations) for participants in bingo games, and machines or devices that read and/or dispense pull-tabs.

2. Revise § 502.8 to read as follows:

### § 502.8 Electronic or electromechanical facsimile

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the fundamental characteristics of the game and that is not an electronic, computer or technologic aid to a Class II game.

3. Revise § 502.9 to read as follows:

### § 502.9 Games similar to bingo

Pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo means games played with a finite deal, and established prizes, that are preprinted and use paper or other tangible medium, such as, break open or scratch off tickets.

Dated: March 15, 2002.

**Elizabeth L. Homer,**

*Vice Chair.*

**Teresa E. Poust,**

*Commissioner.*

[FR Doc. 02–6806 Filed 3–21–02; 8:45 am]

BILLING CODE 7565–01–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

## 42 CFR Chapter IV

**[CMS–6012–NOI]**

**RIN 0938–AL13**

## Medicare Program; Establishment of Special Payment Provisions and Standards for Suppliers of Prosthetics and Certain Custom-Fabricated Orthotics; Intent to Form Negotiated Rulemaking Committee

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

**ACTION:** Notice of intent.

**SUMMARY:** We are statutorily mandated under section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) to establish a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act (FACA). The committee's purpose would be to negotiate the development of a rule regarding the special payment provisions and requirements set forth in section 427 of BIPA for suppliers of prosthetics and certain custom-fabricated orthotics. The committee would consist of representatives who are likely to be significantly affected by the proposed rule. The committee would be assisted by a neutral facilitator.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 22, 2002.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6012-NOI, P.O. Box 8013, Baltimore, MD 21244–8013.

Mail a separate copy of written comments to the following address: Kathryn Cox, Office of Financial Management, Mail Stop C3–02–16, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver your written comments (1 original and 3 copies) by courier to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior 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 commenters wishing to retain 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 could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–6012–NOI.

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

**FOR FURTHER INFORMATION CONTACT:** Kathryn Cox, (410)786–5954; Lynn Sylvester, (202) 606–9140 or Ira Lobel, (518) 431–0130.

**SUPPLEMENTARY INFORMATION:**

**Inspection of Public Comments**

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

**Background**

*I. Negotiated Rulemaking Act*

The Negotiated Rulemaking Act (Pub. L. 101–648, 5 U.S.C. 561–570) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Negotiated Rulemaking Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified and are willing to negotiate in good faith to reach a consensus on the proposed rule;
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed policy as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the committee is to reach consensus on the language or issues involved in a proposed rule. If consensus is reached, the committee will transmit a report to the agency containing a proposed rule. The agency may use the report as the basis of the agency's proposed rule. The process does not affect otherwise applicable procedural requirements of FACA, the Administrative Procedure Act, and other statutes.

*II. Subject and Scope of the Rule*

A. Need for the Rule

Section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, requires the Secretary of Health and Human Services to establish the following using negotiated rulemaking procedures:

- Standards for those who bill Medicare for prosthetics and certain custom-fabricated orthotics.
- A list of custom-fabricated orthotics that are subject to the supplier qualification set forth in section 427 of BIPA.

B. Subject and Scope of the Rule

Section 1834(h) of the Social Security Act (the Act) provides for payment of ''orthotics and prosthetics,'' that are described in section 1861(s)(9) of the Act and in our regulations (see 42 CFR 414.202). Orthotics are leg, arm, back, and neck braces. Prosthetics are defined as artificial legs, arms, and eyes, including replacements if required because of a change in the beneficiary's physical condition.

Prosthetics and orthotics which are mainly covered under Medicare Part B, must be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve a malformed body member. Historically, there has been no Medicare requirement that a supplier of prosthetics or orthotics be certified or meet educational requirements other than what a State may require. Presently, fewer than 10 States have licensing requirements for suppliers of prosthetics and orthotics.

In an OIG report, ''Medicare Orthotics,'' by Inspector General June Gibbs Brown, October 1997 (0EI–02–95–00380), the OIG recommended that we take action to improve Medicare billing for orthotics. Specifically, they recommended that we require standards for suppliers of custom-molded and custom-fabricated orthotics.

According to the Congress' mandate under section 427 of BIPA, Medicare will cover prosthetics and certain custom-fabricated orthotics only if furnished by a ''qualified practitioner'' and fabricated by a ''qualified practitioner'' or ''qualified supplier.'' A ''qualified practitioner'' is defined as—

- A physician, a qualified physical or occupational therapist, and a State-licensed orthotist or prosthetist; or
- In States that do not issue those licenses, a trained individual who is either: (1) Certified by either the American Board of Certification in Orthotics and Prosthetics, Inc. (ABC) or the Board for Orthotist/Prosthetist Certification (BOC), or (2) who is credentialed by a program that the Secretary determines, in conjunction with appropriate experts, has sufficient training and education standards.

A ''qualified supplier'' is defined as any entity that is accredited by—

- ABC or BOC; or
- A program that the Secretary determines has equivalent accreditation and approval standards.

We are required to use a negotiated rulemaking procedure to establish (1) a list of prosthetics and custom-fabricated orthotics subject to this provision, and (2) criteria for acceptable accreditation and credentialing programs for qualified practitioners and suppliers.

C. Issues and Questions To Be Resolved

We anticipate discussion on the issues outlined below. We invite public comment on other issues not identified that would be within the scope of the rule.

1. What/who will be covered by the rule?
   a. Custom-fabricated orthotics.
   b. Practitioners (who does that include?).
   c. The definition of a ''positive model'' as set forth in the statute.
   d. Interface among practitioners, facilities, and manufacturers.
2. How will practitioners obtain certification and/or credentialing?
   a. Provisions for grandfathering.
   b. Education and experience requirements.
   c. Provisions for loss of certification.
   d. State requirements.
   e. Should there be different certifications for practitioners, manufacturers, and facilities?
   f. Rural areas.
3. Who will certify?
   a. States.
   b. Professional organizations.
   c. Other (for example, educational institutions).
4. Management of the program
   a. CMS's role.
   b. Interface among CMS, the certifying bodies, and the State licensing

boards.

With regard to matters outside the scope of the rule, we do not plan to negotiate the process or procedures for updating the list of codes for custom-fabricated orthotics subject to the rule.

*III. Affected Interests and Potential Participants*

The convener interviewed numerous organizations to identify potential participants whose interests would be affected by the proposed rule. The description of those organizations, together with the convener's finding can be viewed at *www.hcfa.gov/medicare/enrollment/CONVRPT.htm.* The convener has proposed and we agree to accept the following organizations as negotiation participants. We believe these organizations represent an appropriate mix of interests and backgrounds:

- ABC.
- BOC.
- National Community Pharmacy (NCP).
- National Commission of Orthotic and Prosthetic Education (NCOPE).
- American Academy of Orthotists and Prosthetists.
- National Association for the Advancement of Orthotists and Prosthetists (NAAOP).
- American Physical Therapy Association (APTA).
- American Orthotic and Prosthetic Association (AOPA).
- National Orthotic Manufacturers Association (NOMA).
- International Association of Orthotics and Prosthetics (IAOP).
- Hanger Prosthetics.
- Point Health Centers.
- Coalition of Illinois and Florida certification boards.
- Coalition of State associations representing orthotists and prothetists.
- Paralyzed Veterans of America (PVA).
- National Association for Long Term Care (NALTC).

We invite comment on this list of negotiation participants. The intent in establishing the negotiating committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represent all interests associated with the rule to be negotiated.

Groups or individuals who wish to apply for a seat on the committee should respond to this notice within 30 days of its publication. They should provide detailed information regarding the following:

- A description of the interest they represent.
- Evidence that they are authorized to represent parties related to the interests they propose to represent.
- A written commitment that they will actively participate in good faith in the development of the regulation.
- Reasons why the proposed committee could not adequately represent their interest.

*IV. Schedule for the Negotiation*

We have set a deadline of 6 months beginning with the date of the first meeting for the committee to complete work on the proposed rule. We intend to terminate the activities of the committee if it does not appear likely to reach consensus on a schedule that is consistent with our rulemaking needs.

The first and second meeting dates and times will be published in the **Federal Register**. The purpose of the first meeting will be to discuss in detail how the negotiations will proceed and how the committee will function. The committee will agree to ground rules for committee operation, determine how best to address the principal issues, and, if time permits, begin to address those issues.

We expect that by the second meeting, the committee can complete action on any procedural matters outstanding from the organizational meeting and either begin or continue to address the issues.

*V. Formation of the Negotiating Committee*

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee is established only after both consultations with the General Services Administration and receipt of a charter. We have prepared a charter and initiated the requisite consultation process. Only upon successful completion of this process and the receipt of the approved charter will we form the committee and begin negotiations.

B. Participants

The number of participants on the committee is estimated to be 16 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, we must be satisfied that the committee as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the negotiating committee, we will determine, in consultation with the facilitator, whether that individual or representative should be added to the committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule; and
- Is already adequately represented in the negotiating committee.

D. Establishing the Committee

After reviewing any comments on this notice and any requests for representation, we will take the final steps to form the committee.

*VI. Negotiation Procedures*

When the committee is formed, the following procedures and guidelines will apply, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to—

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may be best accomplished by selection of senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoint of their organizations. This applies to us, and we are designating Hugh H. Hill III, M.D., J.D., Medical Officer, Program Integrity Group, Office of Financial Management.

C. Administrative Support

We will supply logistical, administrative, and management

support. If it is deemed necessary and appropriate, we will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the committee. We will announce committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for committee meetings, which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the committee defines the term otherwise. We expect the participants to fashion the committee's working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

If the committee is unable to reach consensus, we will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, we and the remaining committee members will evaluate whether the committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record.

I. Other Information

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

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

Dated: January 9, 2002.

**Thomas A. Scully,**

*Administrator, Center for Medicare and Medicaid Services.*

Dated: February 22, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–6952 Filed 3–21–02; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket No. 02–10; FCC 02–18]**

### Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** This document solicits comments on the authorization of satellite earth stations on board vessels (ESVs). The item contemplates that authorizing ESVs on a more clearly-defined basis, through the adoption of specific rules governing their use, may benefit potential users and service providers by creating regulatory certainty. Some ESVs are already in operation: the International Bureau (Bureau) and the Office of Engineering Technology (OET) (jointly, the Bureaus) have granted two companies waivers to operate ESVs and have granted one company Special Temporary Authorities (STAs) with conditions. However, there are existing terrestrial fixed users in some of the bands identified for ESV operations. Consequently, the Commission solicits comment on potential methods for licensing of ESVs that would help ensure that ESV operations would not cause harmful interference to, nor limit the growth of, terrestrial fixed services operating in the same band.

**DATES:** Submit comments on or before April 19, 2002; reply comments due on or before May 3, 2002.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Breck Blalock, International Bureau, (202) 418–8191 or Trey Hanbury, International Bureau (202) 418–0766.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Inquiry,* IB Docket No. 02–10, adopted January 23, 2002 and released February 4, 2002. The full text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

**Synopsis**

1. In this Notice of Inquiry (NOI) the Commission seeks comment on the appropriateness of and potential methods for authorizing ESVs within its existing regulatory scheme. Such an authorization would take the place of the current system of extending or creating *ad hoc* special temporary authorities (STAs)—and allow ESV operation while protecting existing fixed service (FS) operations. The Commission seeks comment on all aspects of potential licensing, including whether and how such licensing should go forward, and how interference to