

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Parts 401 and 405**

[CMS-4064-RCN]

RIN 0938-AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures; Continuation of Effectiveness and Extension of Timeline for Publication of Final Rule**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Interim final rule; continuation of effectiveness and extension of timeline for publication of final rule.

SUMMARY: This notice announces the continuation of effectiveness of a Medicare interim final and the extension of the timeline for publication of the final rule. This notice is issued in accordance with section 1871(a)(3)(C) of the Social Security Act (the Act), which allows an interim final rule to remain in effect after the expiration of the timeline specified in section 1871(a)(3)(B) of the Act if prior to the expiration of the timeline, the Secretary publishes in the **Federal Register** a notice of continuation and explains the exceptional circumstances justifying the extension of the timeline for publishing a final rule.

DATES: *Effective Date:* February 29, 2008.**FOR FURTHER INFORMATION CONTACT:** David Danek, (617) 565-2682, or Arrah Tabe-Bedward, (410) 786-7129.**SUPPLEMENTARY INFORMATION:****I. Background**

Section 1871(a)(3)(A) of the Social Security Act (the Act) requires the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to establish and publish a regular timeline for the publication of a final rule based on the previous publication of a proposed rule or an interim final rule. In accordance with section 1871(a)(3)(B) of the Act, such regular timeline may vary among different regulations, based on the complexity of the rule, the number and scope of the comments received, and other relevant factors. The timeline for publishing the final regulation; however, cannot exceed 3 years from the date of publication of the proposed or interim final rule, unless there are exceptional circumstances. After consultation with the Director of OMB,

we published a notice in the **Federal Register** on December 30, 2004 (69 FR 78442) establishing a general 3-year timeline for finalizing a Medicare proposed and an interim final rule.

Section 1871(a)(3)(C) of the Act states that a Medicare interim final rule shall not continue in effect if the final rule is not published before the expiration of the regular timeline, unless the Secretary publishes at the end of the regular timeline a notice of continuation that includes an explanation of why the regular timeline was not met. Upon publication of such a notice, the timeline for publishing the final rule is extended for 1 year.

II. Notice of Continuation

Section 521 of the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Benefits Improvement and Protection Act of 2000 (BIPA), amended section 1869 of the Act to provide for significant changes to the Medicare claims appeal procedures. On November 15, 2002, we published in the **Federal Register** a proposed rule (67 FR 69312) consistent with Section 521 of BIPA. An interim final rule with comment implementing the BIPA provisions as well as further changes to the claim appeals procedures enacted in Title IX of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) appeared in the **Federal Register** in March 2005 (70 FR 11420). Under the previously established regular timeline for publication of a final rule, we must publish a final rule responding to public comments on the interim final rule with comment period no later than March 1, 2008.

This notice announces an extension of the timeline for publication of the final rule and the continuation of effectiveness of the interim final rule with comment period. We are not able to meet the 3-year timeline for publication of the final rule due to the complexity of the rule and the need to ensure coordination with other government agencies. Specifically, the development of the final rule requires collaboration among other HHS agencies (that is, the Office of Medicare Hearings and Appeals (OMHA), and the Departmental Appeals Board (DAB), as well as extensive involvement from the HHS Office of the General Counsel). Although OMHA was not in existence when the interim final rule with comment period was published, OMHA is now a key component of the Medicare claims appeal process. We note that extensive coordination is needed to ensure that there is a mutual understanding of these provisions

among all three affected administrative agencies. In addition, the development of the final rule requires significant coordination with other HHS policy related regulations (that is, the Provider Reimbursement Determinations and Appeals final rule and the Medicare Prescription Drug Appeals Process proposed rule (Part D proposed rule,)) which are currently under development.

We believe that an extension of the publication timeline is necessary and appropriate to ensure that we are able to address all of the issues raised in response to the interim final.

Therefore, this notice extends the timeline for publication of the final rule until March 1, 2009. In accordance with section 1871(a)(3)(C) of the Act, interim final rule shall remain in effect through March 1, 2009 (unless the final rule is published and becomes effective before March 1, 2009).

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

Dated: February 25, 2008.

Ann Agnew,*Executive Secretary to the Department.*

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 488**

[CMS-2278-IFC4]

RIN 0938-AP22

Revisit User Fee Program for Medicare Survey and Certification Activities**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements the continuation of the revisit user fee program for Medicare Survey and Certification activities, in accordance with the statutory authority in the Continuing Appropriations Resolution entitled, "Making further continuing appropriations for the fiscal year 2008, and for all other purposes," Public Law 110-149 ("Continuing Resolution") signed into law on December 21, 2007. On September 19, 2007, we published a final rule that established a system of revisit user fees applicable to health