DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1561–IFC2]

RIN 0938–AP59

Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)

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

ACTION: Delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' this action temporarily delays for 60 days the effective date of the final rule entitled ''Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)'' published in the January 16, 2009 **Federal Register** (74 FR 2873). The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by this rule. In addition, this action solicits additional comments on the delay of the effective date.

DATES: *Effective Date.* The effective date of the rule amending 42 CFR part 414 published in the January 16, 2009 **Federal Register** (74 FR 2873) is delayed 60 days until April 18, 2009.

Comment Period. To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 23, 2009.

ADDRESSES: In commenting, please refer to file code CMS–1561–IFC2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular 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–1561–IFC2, P.O. Box 8020, Baltimore, MD 21244–8020.

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

3. *By express or overnight mail.* You may send 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–1561–IFC2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8020.

4. *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 either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(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.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

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

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also 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 Boulevard, 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 1–800–743–3951.

FOR FURTHER INFORMATION CONTACT: Sabrina Teferi, (410) 786–6884. Barry Brook, (410) 786–5889.

SUPPLEMENTARY INFORMATION:

I. Background

On January 16, 2009, we published an interim final rule with comment period entitled ''Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)'' in the **Federal Register** that implements certain provisions of section 154 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) related to the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) Competitive Acquisition Program. Specifically, the January 16, 2009 interim final rule with comment: implements certain MIPPA provisions that delay implementation of Round 1 of the competitive bidding program; requires CMS to conduct a second Round 1 competition (the ''Round 1 rebid'') in 2009; and mandates certain changes for both the Round 1 rebid and subsequent rounds of the program, including a process for providing feedback to suppliers regarding missing financial documentation and requiring contractors to disclose to CMS information regarding subcontracting relationships.

In addition, in the February 10, 2009 **Federal Register**, we published a notice with comment entitled, ''Medicare Program; Changes to the Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) by Certain Provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)'', (74 FR 6557). That notice solicited public comments on the contemplated 60-day delay in the effective date of the January 16, 2009 interim final rule with comment.

II. Provisions of This Action

This action delays the effective date of the January 16, 2009 interim final rule with comment period. The effective date of the January 16, 2009 interim final

rule with comment period, which would have been February 17, 2009, is now April 18, 2009. The 60-day delay in the effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by the rule. We are also seeking additional comments on this action to delay the effective date.

III. Response to Comments

In response to the February 10, 2009 notice with comment period, we received approximately 550 public comments in favor of delaying the effective date of the January 16, 2009 interim final rule with comment period. The following discussion includes a summary of the public comments that we received and our response to those comments.

Comment: Virtually all comments were in favor of delaying the effective date of the January 16, 2009 interim final rule with comment period. Commenters offered various reasons for supporting the delay. For example, some commenters believe that CMS should spend additional time evaluating the overall impact and structure of the DMEPOS competitive bidding program, determining improvements that need to be made to the processes used to implement the program, and/or considering additional public comment. In addition, other commenters offered comments on the DMEPOS competitive bidding program that were beyond the scope of the proposed 60-day effective date delay or were on DMEPOS topics unrelated to the DMEPOS competitive bidding program.

Response: We appreciate the commenters' concerns. We have decided to proceed with the delay to allow Department officials the opportunity for further review of the issues of law and policy raised by the rule. We note that the original comment period on the rule remains unchanged; the public has until March 17, 2009 to submit comments on the substantive policy issues discussed in the rule. We will address such comments in future rulemaking. We also thank commenters for sharing concerns about issues that were outside the scope of the notice; as these comments were not pertinent to the delay, we will not address the specific issues in this response.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

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 such as this take effect, in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in the effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary or contrary to the public interest to follow the notice and comment procedure or to comply with the 30-day delay in the effective date, and incorporates a statement of the finding and the reasons in the rule.

This action delays the effective date of the January 16, 2009 interim final rule with comment period. A delay in effective date is necessary to give Department officials the opportunity for further review of the issues of law and policies raised by the rule before the interim final rule with comment period becomes effective. Moreover, we believe it would be contrary to the public interest for the January 16, 2009 interim final rule with comment period to become effective until we are certain that all public comments are reviewed. To do otherwise, could potentially result in uncertainty and confusion as to the finality of the interim final rule with comment period. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this action are unnecessary and contrary to the public interest. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this rule.

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

Dated: February 13, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: February 13, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–3491 Filed 2–13–09; 4:15 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MB Docket No. 09–17; FCC 09–9]

Implementation of the DTV Delay Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes the first step to implement the DTV Delay Act by; extending the dates in analog television licenses and digital television construction permits to reflect the statutory change of the nationwide DTV transition date from February 17, 2009 to June 12, 2009; and; delegating authority to the Media Bureau to rule on the filings stations made in connection with their requests for restoration of the partial waiver permitting them to terminate analog service on February 17, 2009.

DATES: Effective February 13, 2009.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Evan Baranoff, *Evan.Baranoff@fcc.gov*, of the Media Bureau, Policy Division, at (202) 418–7142.

SUPPLEMENTARY INFORMATION: This is a summary of document FCC 09–9, adopted and released on February 13, 2009. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, S.W., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Report and Order and *Sua Sponte* Order on Reconsideration

I. Introduction

1. In this Report and Order, the first in response to the Congressional extension of the digital television (DTV) transition period, we extend the analog license terms and adjust the construction permits for the full power television stations subject to the DTV Delay Act that was enacted into law on February 11, 2009. (*See* DTV Delay Act, Public Law 111–4, 123 Stat. 112 (2009). On February 11, 2009, the DTV Delay Act was signed by the President and enacted into law. The DTV Delay Act was passed by the United States Senate on January 29, 2009 and passed by the United States House of Representatives on February 4, 2009. The Commission