

**SUMMARY:** This correcting amendment corrects a technical error in the amendatory instructions of the regulations text in the final rule entitled "Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)" published in the January 2, 2009 **Federal Register** (74 FR 166). In that final rule, we implemented section 1834(a)(16)(B) of the Social Security Act (the Act) requiring certain Medicare suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) to furnish CMS with a surety bond. In addition, in the January 2, 2009 final rule, we responded to public comments on the August 1, 2007 proposed rule (72 FR 42001). The effective date for the January 2, 2009 final rule was March 3, 2009.

**DATES: Effective Date:** This correcting amendment is effective March 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Frank Whelan, (410) 786-1302.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Summary of Error**

In FR Doc. E8-30802 issued on January 2, 2009 (74 FR 166), the final rule entitled "Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS), there was a technical error that is identified and corrected in this document. The error was the result of a conflicting amendatory instruction in the "Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009" final rule with comment period (73 FR 69726) that was effective January 1, 2009. The correction in this correcting amendment is effective on March 27, 2009.

On page 198 of the January 2, 2009 final rule, we made a technical error in the amendatory instruction for § 424.57. In the first amendatory instruction 2.D., the phrase "Redesignating paragraphs (d) and (e) as paragraphs (e) and (f)" should be corrected to read "Redesignating paragraphs (d) and (e) as paragraphs (e) and (g)."

**II. 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 notice 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 notice 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 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 findings and the reasons in the notice.

This action merely corrects a technical error in the January 2, 2009 final rule that was promulgated through notice and comment rulemaking. We are in no way changing the policy contained in that rule. For this reason, we find that both notice and comment and the 30-day delay in effective date for this action are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this action.

**List of Subjects in 42 CFR Part 424**

Emergency medical services, Health facilities, Health professions, Medicare.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

**PART 424—CONDITIONS FOR MEDICARE PAYMENT**

■ 1. The authority citation for part 424 is revised to read as follows:

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

**Subpart D—To Whom Payment Is Ordinarily Made**

**§ 424.57 [Amended]**

■ 2. Section 424.57 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (g).

**Authority:** Catalog of Federal Domestic Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: March 17, 2009.

**Ashley Files Flory,**

*Acting Executive Secretary to the Department.*  
[FR Doc. E9-6778 Filed 3-26-09; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 447 and 457**

[CMS-2244-F3]

RIN 0938-A047

**Medicaid Program; Premiums and Cost Sharing**

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

**ACTION:** Final rule; delay of effective date and reopening of comment period.

**SUMMARY:** This action temporarily delays the effective date of the November 25, 2008 final rule entitled, "Medicaid Program; Premiums and Cost Sharing" (73 FR 71828) until December 31, 2009. In addition, this action reopens the comment period on the policies set out in the November 25, 2008 final rule, and specifically solicits comments on the effect of certain provisions of the American Recovery and Reinvestment Act of 2009.

**DATES: Effective Date.** This action is effective March 26, 2009. The effective date of the rule amending 42 CFR parts 447 and 457 published in the November 25, 2008 **Federal Register** (73 FR 71828) is delayed until December 31, 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 April 27, 2009.

**ADDRESSES:** In commenting, please refer to file code CMS-2244-F3. 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 file code 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-2244-F3, P.O. Box 8010, Baltimore, MD 21244-8010.

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-2244-F3, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-8010.

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.

**FOR FURTHER INFORMATION CONTACT:** Christine Gerhardt, (410) 786-0693.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### A. Regulatory History

On November 25, 2008, we published a final rule entitled "Medicaid Program; Premiums and Cost Sharing" in the **Federal Register** to implement and interpret the provisions of sections 6041, 6042, and 6043 of the Deficit Reduction Act of 2005 (DRA), and section 405(a)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA) (73 FR 71828). The DRA was amended by the TRHCA which revised sections 6041, 6042, and 6043 of the DRA including limitations on cost sharing for individuals with family incomes at or below 100 percent of the Federal poverty line. These sections amended the Social Security Act (the Act) by adding a new section 1916A to provide State Medicaid agencies with increased flexibility to impose premium and cost sharing requirements on certain Medicaid recipients. The final rule allowed for flexibility to supplement the

existing authority States have to impose premiums and cost sharing under section 1916 of the Act. The DRA provisions also specifically address cost sharing for non-preferred drugs and non-emergency care furnished in a hospital emergency department. In addition, in the November 25, 2008 final rule, we responded to public comments on the February 22, 2008 proposed rule (73 FR 9727).

Subsequent to the publication of the November 25, 2008 final rule, in accordance with the memorandum of January 20, 2009 from the Assistant to the President and the Chief of Staff, entitled "Regulatory Review," we published a final rule in the **Federal Register** to temporarily delay for 60 days the effective date of the November 25, 2008 final rule entitled, "Medicaid Program; Premiums and Cost Sharing" (January 27, 2009, 74 FR 4888). The final rule also reopened the comment period on the policies set out in the November 25, 2008 final rule. We received 5 public comments in response to the January 27, 2009 final rule.

### B. New Legislation

The American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5, was enacted on February 17, 2009. Certain provisions of ARRA affect current regulations regarding premiums and cost sharing. Specifically, section 5006(a) of ARRA added section 1916(j) to the Social Security Act (the Act) to provide that effective December 31, 2009, the Medicaid program and the Children's Health Insurance Program (CHIP) are prohibited from imposing an enrollment fee, premium, or similar charge, or deduction, copayment, cost-sharing or similar charge on American Indians and Alaska Natives for services provided directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services for which payment may be made.

## II. Provisions of the Final Rule

This action delays the effective date of the November 25, 2008 final rule. The effective date of that rule, which would have been March 27, 2009, is now December 31, 2009. Upon review and consideration of the new provisions of ARRA and the public comments we received during the reopened comment period, we believe that it may be necessary to revise a substantial portion of the November 25, 2008 final rule. Therefore, to inform future rulemaking on this issue, we are delaying the effective date a second time to give the public an additional opportunity to

submit additional comments on the policy set forth in the November 25, 2008 final rule as well as the provisions of ARRA, discussed above. We anticipate that this time period will allow sufficient time for CMS to consider such comments and develop appropriate revisions to the delayed rule.

## 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 notice 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 notice 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 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 notice.

This final rule delays the effective date of the final rule that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies that were finalized in the final rule. Delay in the effective date and reopening of the comment period is necessary to ensure that the final rule fully takes into account public comments, and conforms to recently enacted legislation, before the rule becomes effective. We do not believe that there will be any adverse impact or effect on the public from this delay in the effective date. Moreover, it would not be in the public interest for the underlying rule to go into effect, or to have uncertainty about whether it is in effect, when the underlying rule does not conform to statutory requirements. In addition, it is not in the public interest to put into effect a rule that we intend to revise in a reasonable time frame after fully taking into account public comment. For the reasons stated above, we find that both notice and comment procedures and the 30-day delay in effective date for this final rule 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 final rule.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 20, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: March 24, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

[FR Doc. E9-6907 Filed 3-24-09; 4:15 pm]

BILLING CODE 4120-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090311306-9309-01]

RIN 0648-XN88

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2009 Scup and Black Sea Bass Specifications; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** On January 2, 2009, NMFS published in the *Federal Register* a final rule containing final specifications for the 2009 scup and black sea bass fisheries. On six occasions in the preamble text of that rule, the English system of measurement in pounds for various iterations of the scup and black sea bass specifications were incorrectly converted into metric system of measurement equivalents. This document corrects those values to insure that the metric values are consistent with the 2009 specifications.

**DATES:** Effective March 27, 2009, through December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:** The final rule, including final quota specifications (i.e., commercial quota and recreational harvest limit) for the 2009 summer flounder, scup, and black sea bass fisheries was published in the *Federal Register* on January 2, 2009 (74 FR 29). On page 32, in the first column, the proposed scup Total Allowable Catch (TAC) is listed as 5,339 metric tons (mt), the TAC implemented by the final rule in the second column is listed as 5,796 mt, and the Total Allowable Landings

(TAL) is listed as 4,170 mt. In the third column, the commercial quota is listed at 3,123 mt, and the recreational harvest limit is listed as 965 mt.

The corrected values for these scup specification values are as follows: The 2009 proposed TAC is 5,307 mt, the final rule TAC is 7,049 mt, the final rule TAL is 5,071 mt, the commercial quota is 3,798 mt, and the recreational harvest limit is 1,173 mt.

The black sea bass commercial quota in the first column of page 35 is listed as 1,043 mt. The corrected value for the commercial quota is 495 mt.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be contrary to the public interest. As explained above, this rule corrects various metric values for the 2009 scup TAC, TAL, commercial quota, and recreational harvest limit and black sea bass commercial quota that had already been published in the *Federal Register*. In the final specifications rule published January 2, 2009 (74 FR 29), the various quota iterations were correctly listed in the English system of measurement. These values were inadvertently converted to the metric system utilizing the incorrect conversion factor and thus, the metric values listed in the final specifications rule are not correct or equal to the English system values. To delay this correction notice would cause confusion over the aforementioned available 2009 scup and black sea bass harvest levels because of the disparity between the English system of measurement, in pounds, and the metric expression of those same values, in metric tons that were incorrectly converted in the original specifications that published January 2, 2009 (74 FR 29). Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the reasons given above. Delaying the rule for 30 days may negatively impact fishermen accustomed to referring to the metric system of measurement because the values for the aforementioned harvest levels were incorrectly converted from the English system of measurement in the final specifications. The immediate publication of the correct information will rectify any confusion on the matter of what the metric expression of the 2009 scup and black sea bass harvest levels should be.

Because prior notice and opportunity for public comment are not required for

this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule is exempt from review under Executive Order 12866.

#### Correction

Accordingly, the final rule FR Doc. E8-31236, published on January 2, 2009 (74 FR 29), is corrected as follows:

##### 1. On page 32:

a. In the first column, in the last paragraph, in the seventh line, "(5, 339-mt) scup Total Allowable Catch" is corrected to read "(5,307-mt) , scup Total Allowable Catch" and in the second column, in the last paragraph, in the second line, "(5,796-mt) scup TAC" is corrected to read "(7,049 -mt) scup TAC", and in the third line, "(4,170-mt) scup TAL." is corrected to read "(5,071-mt) scup TAL".

b. In the third column, in the seventh line, "commercial quota of 8,373,848 lb (3,123 mt) is corrected to read "commercial quota of 8,373,848 lb (3,798 mt) and in the eighth and ninth lines, "recreational harvest limit of 2,585,952 lb (965 mt)." is corrected to read "recreational harvest limit of 2,585,952 lb (1,173 mt)."

2. On page 35, in the first column, in the fourth line, "(1,048-mt) black sea bass TAL." is corrected to read "(495-mt) black sea bass TAL."

Dated: March 23, 2009

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E9-6898 Filed 3-26-09; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 080103016-9316-02]

RIN 0648-AW40

#### Fisheries of the Exclusive Economic Zone Off Alaska; Revise Maximum Retainable Amounts of Groundfish Using Arrowtooth Flounder as a Basis Species in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a regulation to revise the maximum retainable amounts