

comply with the requirements of section 1923(j) of the Social Security Act (the Act) related to auditing and reporting of disproportionate share hospital payments under State Medicaid programs. The effective date was January 19, 2009.

**DATES:** *Effective Date:* This correcting amendment is effective April 24, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Venesa Day, (410) 786-8281.  
Rory Howe, (410) 786-4878.  
Rob Weaver, (410) 786-5914.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. E8-30000 issued on December 19, 2008 (73 FR 77904), there was a technical error that is identified and corrected in this correcting amendment. The correction in this document is effective April 24, 2009.

**II. Summary of Error in the Regulations Text**

On page 77950 of the final rule, we made a technical error in the regulation text of § 447.299(c)(16). In this paragraph, the text provides a narrative description of how “total annual uncompensated care costs” are to be calculated from component data elements. The first sentence accurately names the component data elements and correctly describes the calculation. The last sentence attempts to condense the previous sentence by substituting references for component data elements as identified in previous paragraphs of § 447.299(c). However, the references are unintentionally incorrect.

The last sentence of the original final text indicates that the sum of paragraphs (c)(11) and (c)(15) should be subtracted from (c)(9), (c)(12), and (c)(13). This calculation would sum Medicaid uncompensated care costs and total uninsured inpatient and outpatient uncompensated care costs, then subtract this total from the sum of total Medicaid inpatient and outpatient payments, uninsured inpatient and outpatient revenue, and total applicable Section 1011 payments. This calculation is incorrect and could not be interpreted reasonably to result in “total annual uncompensated care costs”. Additionally, it erroneously contradicts section 1923(g) of the Social Security Act (the Act), § 447.299 and § 455 subpart D, and longstanding CMS policy.

The corrected text of the last sentence should read as follows: “This should equal the sum of paragraphs (c)(9), (c)(12), and (c)(13) subtracted from the sum of paragraphs (c)(10) and (c)(14) of this section.” This correction includes

the correct references necessary to calculate accurately “total uncompensated care costs” consistent with section 1923(g) of the Act, § 447.299 and § 455 Subpart D, and longstanding CMS policy.

**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 take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This action merely corrects a technical error in the December 19, 2008 final rule. We are not changing the policy contained in that rule, and further public comment is 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 447**

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, and Rural areas.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment to part 447:

**PART 447—PAYMENTS FOR SERVICES**

■ 1. The authority citation for part 447 continues to read as follows:

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

■ 2. Section 447.299 is amended by revising paragraph (c)(16) to read as follows:

**§ 447.299 Reporting Requirements**  
(c) \* \* \*

(16) *Total annual uncompensated care costs.* The total annual uncompensated care cost equals the total cost of care for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the hospital services they receive less the sum of regular Medicaid FFS rate payments, Medicaid managed care organization payments, supplemental/enhanced Medicaid payments, uninsured revenues, and Section 1011 payments for inpatient and outpatient hospital services. This should equal the sum of paragraphs (c)(9), (c)(12), and (c)(13) subtracted from the sum of paragraphs (c)(10) and (c)(14) of this section.

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

Dated: April 13, 2009.

**Ashley Files Flory,**

*Acting Executive Secretary to the Department.*

[FR Doc. E9-9232 Filed 4-23-09; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 0812311655-9645-03]

**RIN 0648-AX44**

**Pacific Halibut Fisheries; Catch Sharing Plan; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the text of a final rule published on March 19, 2009, that implemented annual management measures governing the Pacific halibut fishery. This final rule established season dates off of Alaska, Washington, Oregon and California. This action is necessary to correct errors in dates listed in the areas from Leadbetter Point, WA to Cape Falcon, OR and from Cape Falcon to Humbug Mountain, OR.

**DATES:** Effective April 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sarah Williams, 206-526-4646.

**SUPPLEMENTARY INFORMATION:** A final rule published March 19, 2009 (74 FR 11681), included annual management measures for managing the harvest of Pacific halibut (*Hippoglossus*

*stenolepis*) in the sport fishery in International Pacific Halibut Commission (IPHC) Regulatory Area 2A off of Washington, Oregon and California. This correcting amendment revises the season dates in the two areas from Leadbetter Point, WA to Cape Falcon, OR and from Cape Falcon to Humbug Mountain, OR.

#### Need for Correction

The final rule (74 FR 11681), Section 26, Sport Fishing for Halibut-Area 2A, describes dates and days of the week for sport fishing for halibut off Washington, Oregon, and California. Three of the dates published for the area from Leadbetter Point, WA to Cape Falcon, OR (section 8(d)) were inconsistent with the days of the week and several dates published for the area from Cape Falcon to Humbug Mountain, OR (section 8(e)) were inconsistent with the days of the week and one week later than the dates as adopted by the Pacific Fishery Management Council. On page 11693, in paragraph (8)(d)(i), the changes are as follows:

- (1) July 19 is corrected to July 18,
- (2) August 1 is corrected to August 7,
- (3) September 30 is corrected to September 27.

The corrected paragraph reads as follows:

The fishing season commences on May 1, and continues 3 days a week (Thursday through Saturday) until 11,014 lb (4.9 mt) are estimated to have been taken and the season is closed by the Commission or until July 18, whichever is earlier. The fishery will reopen on August 7 and continue 3 days a week (Friday through Sunday) until 4,720 lb (2.1 mt) have been taken and the season is closed by the Commission, or until September 27, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota

would be transferred to each state in proportion to its contribution.

On page 11694, three sets of dates were listed incorrectly in paragraph (8)(e)(i)(C). The corrections are as follows:

- (1) August 16–18 is corrected to August 14–16,
- (2) September 18–20 is corrected to September 11–13.

(3) August 23 is deleted as a day after which additional fishing will be evaluated.

The corrected paragraph reads as follows:

If sufficient unharvested catch remains, the third season (summer season), which is for the “all-depth” fishery, will be open on August 7, 8, 9, 21, 22, 23 and September 4, 5, 6, 18, 19, 20 and October 2, 3, 4, 16, 17, 18, 30, 31, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 165,681 lb (75.1 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 9. If after August 9, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open every Friday through Sunday, beginning August 14–16, and ending October 31. If after September 6, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 11–13, and ending October 31. After September 6, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce

on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Acting Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this action makes only minor changes to the dates of the fishery and does not alter the total number of days the fishery will be open. These corrections will not affect the results of analyses conducted to support management decisions in the halibut fishery nor change the total catch of halibut. In paragraph (8)(e)(i)(C) the correct dates were in the proposed rule, so this correction will clear up confusion that may be caused by the difference in dates between the proposed and final rules. In section (8)(d)(i), one of the dates had been correct in the proposed rule, and the other two were not. No change in operating practices in the fishery is required. For the same reasons, the Acting AA has determined that good cause exists to waive the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d).

This final rule complies with the Halibut Act and the Pacific Fishery Management Council’s authority to implement allocation measures for the management of the halibut fishery.

Dated: April 21, 2009.

**Samuel D. Rauch III,**

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

[FR Doc. E9–9446 Filed 4–23–09; 8:45 am]

**BILLING CODE 3510–22–S**