

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 402

Office of the Secretary

45 CFR Part 102

[CMS-6061-RCN]

RIN 0938-AT86

Medicare Secondary Payer and Certain Civil Money Penalties; Extension of Timeline for Publication of Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Extension of timeline.

SUMMARY: This document announces the 1-year extension of the timeline for publication of the final rule. Section 1871(a)(3)(A) of the Social Security Act (the Act) requires us to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation. Section 1871(a)(3)(B) of the Act allows us to extend the timeline for publication of the final rule by publishing a **Federal Register** document which includes a brief explanation of the justification for the variation in the timeline.

DATES: As of February 22, 2023, the timeline for the publication of the final rule to finalize the provisions of the proposed rule published on February 18, 2020 (85 FR 8793), is extended until February 18, 2024.

ADDRESSES: This is not a solicitation for comment. The February 18, 2020 proposed rule is available at <https://www.federalregister.gov/d/2020-02085>.

FOR FURTHER INFORMATION CONTACT: Jacqueline Cipa, (410) 786-3259.

SUPPLEMENTARY INFORMATION: In the February 18, 2020 **Federal Register** (85 FR 8793), we published a proposed rule titled “Medicare Secondary Payer and Certain Civil Money Penalties” that specified how and when CMS would calculate and impose civil money penalties (CMPs) when group health plan (GHP) and non-group health plan (NGHP) responsible reporting entities (RREs) fail to meet their Medicare Secondary Payer (MSP) reporting obligations, as required under sections 1862(b)(7) and 1862(b)(8) of the Social Security Act (the Act). This document announces an extension of the timeline for publication of the final rule.

Section 1871(a)(3)(A) of the Act requires us to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation.

Section 1871(a)(3)(B) of the Act allows the regular timeline for publishing Medicare final regulations to vary based on the complexity of the regulation, number and scope of comments received, and other related factors. The initial targeted timeline for a rule cannot exceed 3 years from the date of publishing the proposed regulation, absent exceptional circumstances. For the February 18, 2020 proposed rule, the timeline established by the Secretary provided a targeted publication date of February 18, 2023. The Secretary may extend the initial targeted publication date of the final regulation if the Secretary provides public notice, including a brief explanation of the justification for the variation, no later than the regulation’s previously established proposed publication date.

Consistent with the aforementioned statutory provision, we are providing a brief explanation of the agency’s circumstances that have led us to vary

the timeline for publishing the final rule. These are exceptional circumstances, although the Act does not require exceptional circumstances for such extensions. (For more detailed information, see footnote number 24 in the February 1, 2023 **Federal Register** document (88 FR 6648)). We are not able to meet the initial targeted 3-year timeline for publication due to delays related to the need for additional, time-consuming data analysis resulting from public inquiry. It was not possible to conclude this data analysis on the initial, targeted timeline for the proposed rule because public listening sessions raised additional concerns that CMS believed were important to properly and thoroughly research prior to publishing the final rule. We have decided that it is critical to conduct additional analysis about the economic impact of the rule. We are preparing additional data analysis and predictive modeling to better understand the economic impact of the proposed rule across different insurer types. This data analysis is designed to review the actual current reporting and model potential penalties that would be imposed were the final rule in place. Along with delays resulting from the agency’s focus on the COVID-19 public health emergency, we determined that additional time is needed to address the complex policy and operational issues that were raised. We are extending the publication deadline so as to provide the most accurate, complete, and robust data possible to confirm the intent and economic impact of the final rule.

This document extends the timeline for publication of the final rule for one year until February 18, 2024.

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

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