

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, 423, 455, and 460

[CMS-4201-F2]

RIN 0938-AU96

#### Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly; Correcting Amendment

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects a technical error that appeared in the final rule published in the **Federal Register** on April 12, 2023 titled “Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly.”

**DATES:** This correction is effective August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Kristy Nishimoto, (206) 615-2367.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 2023-07115 of April 12, 2023 (88 FR 22120), the final rule titled “Medicare and Medicaid Programs; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly”, there was a technical error that is identified and corrected in this correcting amendment.

##### II. Summary of Errors in the Regulations Text

On page 22328 in § 422.62, we erroneously retained a proposed amendatory instruction that removed and reserved existing § 422.62(b)(18). To correct this error, we are restoring the language of § 422.62(b)(18).

##### III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a

notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment on a proposed rule. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (the Act) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act, also provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting amendment does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting amendment corrects technical errors in the regulatory text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the information in the final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date

requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the regulatory text correction in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized.

Specifically, the regulation at § 422.62(b)(18) was adopted in the final rule titled “Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program,” which appeared in the June 2, 2020 **Federal Register** (85 FR 33902). A proposal to amend § 422.62(b)(18) was included in the proposed rule (with the same title as the subject final being corrected) that appeared in the December 27, 2022 **Federal Register** (87 FR 79710). However, the proposed changes to § 422.62(b)(18) have not been finalized and we have indicated that the changes will be addressed in a subsequent rulemaking document as appropriate (88 FR 22120). We note that no rulemaking has finalized removal of § 422.62(b)(18). This final rule correcting document is intended solely to ensure that the final rule and the text at 42 CFR 422.62(b)(18) accurately reflect policies and regulatory changes that have been adopted through rulemaking. Furthermore, such notice and comment procedures would be contrary to the public interest because it is in the public’s interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

##### List of Subjects in 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 422:

##### PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

**Authority:** 42 U.S.C. 1302 and 1395hh.

■ 2. Section 422.62 is amended by revising paragraph (b)(18) to read as follows:

**§ 422.62 Election of coverage under an MA plan.**

\* \* \* \* \*

(b) \* \* \*

(18) Individuals affected by an emergency or major disaster declared by a Federal, state or local government entity are eligible for a SEP to make a MA enrollment or disenrollment election. The SEP starts as of the date the declaration is made, the incident start date or, if different, the start date identified in the declaration, whichever is earlier, and ends 2 full calendar months following the end date identified in the declaration or, if different, the date the end of the incident is announced, whichever is later. The individual is eligible for this SEP provided the individual—

(i) (A) Resides, or resided at the start of the SEP eligibility period described in this paragraph (b)(18), in an area for which a federal, state or local government entity has declared an emergency or major disaster; or

(B) Does not reside in an affected area but relies on help making healthcare decisions from one or more individuals who reside in an affected area; and

(ii) Was eligible for another election period at the time of the SEP eligibility period described in this paragraph (b)(18); and

(iii) Did not make an election during that other election period due to the emergency or major disaster.

\* \* \* \* \*

**Elizabeth J. Gramling,**

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

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**BILLING CODE 4120–01–P**

**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 620**

**RIN 3145–AA–64**

**NSF Federal Cyber Scholarship-for-Service Program (CyberCorps® SFS)**

**AGENCY:** National Science Foundation (NSF).

**ACTION:** Final rule.

**SUMMARY:** The rule establishes repayment standards for CyberCorps® SFS scholarship recipients who fail to fulfill program requirements, and the process for requesting deferral or discharge of their service or repayment obligation, in whole or part. The rule

also requires that, during the period that they are performing their service obligation under the program, scholarship recipients must provide annual documentation of their service employment and their current contact information.

**DATES:** This rule is effective August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Victor Piotrowski, Lead Program Director, CyberCorps SFS, NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314, (703) 292–5141, [vp Piotrow@nsf.gov](mailto:vp Piotrow@nsf.gov).

**SUPPLEMENTARY INFORMATION:** On July 15, 2022, NSF published proposed regulations for its CyberCorps® Scholarship for Service (SFS) program, pursuant to the Cybersecurity Enhancement Act of 2014 (Pub. L. 113–274, sec. 302, 15 U.S.C. 7442), as amended. *See* 87 FR 42431 (proposing new 45 CFR part 620). The goal of the program, which is led and managed by NSF in coordination with the U.S. Office of Personnel Management (OPM) and Department of Homeland Security (DHS), is to recruit and train the next generation of information technology professionals, industrial control system security professionals, and security managers to meet the needs of the cybersecurity mission for Federal, State, local, and tribal governments.<sup>1</sup>

Under the program, NSF makes grant awards to qualified institutions of higher education to provide scholarships to students pursuing degrees or specialized program certifications in the cybersecurity field and cybersecurity-related aspects of other related fields as appropriate, including artificial intelligence, quantum computing and aerospace, covering the student's tuition and fees for not more than three years, plus stipend.<sup>2</sup> In return, scholarship recipients must agree that, after receiving their degree, they will work for a period equal to the length of their

<sup>1</sup> *See* 15 U.S.C. 7442(a).

<sup>2</sup> *See id.* at 7442(b) (as amended by the CHIPS and Science Act, Public Law 117–167, sec. 10316 (2022)), (c). The program is also intended to provide summer internship opportunities or other meaningful temporary appointments in the Federal information technology and cybersecurity workforce, to prioritize the placement of scholarship recipients fulfilling their post-award employment obligation with executive agencies and other cybersecurity positions, and to provides award to promote cybersecurity education, such as awards for summer cybersecurity camps or teacher training, in each of the 50 states at the kindergarten through grade 12 level. *Id.* at 7442(b)(2), (4). A detailed summary of the program's activities and achievements can be found in the statement of basis and purpose (preamble) accompanying the proposed rule.

scholarship in the cybersecurity mission of a Federal executive agency or other qualifying entity (*i.e.*, Congress, interstate agency, State, local, or tribal government or affiliated critical infrastructure non-profit, or as a cybersecurity educator in a qualified institution of higher education that provides SFS scholarships to students).<sup>3</sup> Recipients must also agree to provide OPM (in coordination with NSF) and their qualified institution of higher education with “annual verifiable documentation of post-award employment” and “up-to-date contact information” while they are completing their service obligation.<sup>4</sup>

Scholarship recipients who fail to fulfill their service or reporting obligations, or other scholarship conditions required by the Cybersecurity Enhancement Act, become liable to the United States for repayment of the scholarship.<sup>5</sup> In these cases, the Act provides that the recipient's institution shall be responsible for: (1) determining the repayment amount, based on how much of the post-award employment obligation the recipient has completed, if any; (2) notifying the recipient, OPM, and NSF; and (3) collecting repayment within a time period determined by the Director of NSF.<sup>6</sup> The Act provides that such amounts “shall . . . be repaid” by the scholarship recipient “or[,]” if not repaid, the repayment obligation “shall be treated” as a Federal Direct

<sup>3</sup> *Id.* at 7442(d) (post-award employment obligation). The program is required to “prioritize the placement of scholarship recipients fulfilling the post-award employment obligation . . . to ensure that—(A) not less than 70 percent of such recipients are placed in an executive agency . . . ; (B) not more than 10 percent of such recipients are placed as educators in the field of cybersecurity at qualified institutions of higher education that provide scholarships under this section; and (C) not more than 20 percent of such recipients are placed” in other qualifying cybersecurity positions. *See* 15 U.S.C. 7442(b)(3).

<sup>4</sup> *Id.* at 7442(g)(1); *see also id.* at 7442(h) (requiring that SFS institutions monitor their scholarship recipients' compliance with this service obligation, and also provide NSF and OPM with documentation of such service until it is completed).

<sup>5</sup> *See id.* at 7442(g)(2) (imposing liability on a scholarship recipient who “(A) fails to maintain an acceptable level of academic standing at the applicable institution of higher education, as determined by the Director of the National Science Foundation; (B) is dismissed from the applicable institution of higher education for disciplinary reasons; (C) withdraws from the eligible degree program before completing the program; (D) declares that the individual does not intend to fulfill the post-award employment obligation under this section; (E) fails to maintain or fulfill any of the post-graduation or post-award obligations or requirements of the individual; or (F) fails to fulfill the requirements of paragraph (1) (*i.e.*, annual verifiable documentation of post-award employment and up-to-date contact information).”).

<sup>6</sup> *Id.* at 7442(i), (k).