Corrections and Correcting Amendment (81 FR 62903–62905) that the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10) amended section 1848(a)(7)(A) of the Social Security Act (the Act) to sunset the meaningful use payment adjustment for eligible professionals (EPs) at the end of calendar year (CY) 2018 and added section 1848(q) of the Act requiring the establishment of a Merit-based Incentive Payment System (MIPS), which would incorporate certain existing provisions and processes related to meaningful use. However, on the following pages, we made erroneous statements concerning a meaningful use payment adjustment for EPs under section 1848(a)(7)(A) of the Act in 2019:

Note: In our response to a public comment on the EHR reporting period for a payment adjustment year for EPs, we erroneously added a phrase stating that the 90-day EHR reporting period in 2017 for Stage 3 would also apply for the purposes of avoiding the payment adjustment in 2019.

We are correcting this technical error by removing and reserving paragraph (1)(ii)(C)(2) to correct this error. On page 62905, in § 495.4, we incorrectly established an EHR reporting period for a payment adjustment year for Medicaid EPs at the end of CY 2017 and applies to avoid a payment adjustment in CY 2019.

We specified in the October 16, 2015 final rule (80 FR 62903–62905) that the meaningful use payment adjustment for EPs in 2017, the EHR reporting period for a payment adjustment year for Medicaid EPs, we erroneously added a phrase stating that the 90-day EHR reporting period in 2017 for Stage 3 would also apply for the purposes of avoiding the payment adjustment in 2019.

We are correcting this technical error by revising the language to ensure that the regulations text for the eligible hospital or CAH measure is consistent with the regulations text for the EP measure.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, 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. 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. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(ii) of 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 provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. 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 rulemaking that would be subject to these requirements. This correcting...
amendment corrects technical and typographic errors in the preamble and regulation text included in the 2015 EHR Incentive Programs final rule with comment period. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were adopted subject to notice and comment procedures in the final rule with comment period. As a result, the corrections made through this correcting amendment are intended to ensure that the 2015 EHR Incentive Programs final rule with comment period accurately reflects the policies adopted in that rule. In addition, even if this were a rulemaking 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 corrections in this document into the final rule with comment period or delaying the effective date would be contrary to the public interest because it is in the public’s interest for EPs, eligible hospitals, and critical access hospitals to be advised, in a timely manner, of the meaningful use criteria and EHR reporting periods that they must meet in order to qualify for Medicare and Medicaid electronic health record incentive payments and avoid payment reductions under Medicare, and to ensure that the final rule with comment period accurately reflects our policies as of the date they take effect and are applicable. Furthermore, such procedures would be unnecessary due to the changes in the law made by the MACRA, under which the meaningful use payment adjustment for EPs under section 1848(a)(7)(A) of the Act will sunset at the end of CY 2018. The statements identified above in the preamble and the regulations text concerning a payment adjustment in 2019 are moot as a result of those changes in the law. In addition, such procedures would be unnecessary, as we are not altering our policies; rather, we are simply implementing correctly the policies that we previously contained in this document are intended solely to ensure that the 2015 EHR Incentive Programs final rule with comment period accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2015–25595 of October 16, 2015 (80 FR 62762), we are making the following corrections:

1. On page 62905, first column, first partial paragraph, lines 7 through 10, the phrase “the payment adjustment in 2019 for returning participants and for the payment adjustment in 2018 for new participants” is corrected to read “the payment adjustment in 2018 for new participants”.

2. On page 62906, in TABLE 18—EHR REPORTING PERIODS AND RELATED PAYMENT ADJUSTMENT YEARS FOR EPs, the entry for 2017 is corrected to read as follows:

| EP new participants (including those demonstrating Stage 3 under Medicare or Medicaid). | Any continuous 90-day period in CY 2017. | Yes, if EP successfully attests by October 1, 2017. | N/A. |
| EP returning participants | N/A | N/A | N/A. |

3. On page 62920, TABLE 21—BURDEN ESTIMATES STAGE 3, third column, third full paragraph (Measure 2), lines 8 and 10, the phrase “an electronic summary of care document from a source other than the provider’s EHR system.” is corrected to read “an electronic summary of care document.”.

List of Subjects in 42 CFR Part 495

Administrative practice and procedure, Electronic health records, Health facilities, Health professions, Health maintenance organizations (HMO), Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

As noted in section II.B. of this correcting amendment, the Centers for Medicare & Medicaid Services is making the following correcting amendments to 42 CFR part 495:

PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM

1. The authority citation for part 495 continues to read as follows:

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

§ 495.4 [Amended]

2. In § 495.4, paragraph (1)(i)(C)(2) of the definition of “EHR reporting period for a payment adjustment year” is removed and reserved.

§ 495.24 [Amended]

3. In § 495.24, paragraph (d)(7)(ii)(B)(2) is amended by removing the phrase “an electronic summary of care document from a source other than the provider’s EHR system.” and adding in its place the phrase “an electronic summary of care document.”.


Madhura Valverde,

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

[FR Doc. 2016–12853 Filed 5–31–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1631–F3]

RIN 0938–AS40

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2016; Corrections

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule with comment period published in the November 16, 2015 Federal Register (80 FR 70886 through 71386) entitled “Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and