

Subpart ZZ—[Amended]

■ 34. Section 52.2630 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.2630 Prevention of significant deterioration of air quality.

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(b) Regulation for preventing significant deterioration of air quality. The Wyoming plan, as submitted, does not apply to certain sources in the State. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the State implementation plan for the State of Wyoming and are applicable to the following proposed major stationary sources or major modifications:

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Subpart AAA—[Amended]

■ 35. Section 52.2676 is amended by revising paragraph (b) to read as follows:

§ 52.2676 Significant deterioration of air quality.

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(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Guam.

Subpart BBB—[Amended]

■ 36. Section 52.2729 is amended by revising paragraph (b) to read as follows:

§ 52.2729 Significant deterioration of air quality.

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(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Puerto Rico.

Subpart CCC—[Amended]

■ 37. Section 52.2779 is amended by revising paragraph (b) to read as follows:

§ 52.2779 Significant deterioration of air quality.

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(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the Virgin Islands.

Subpart DDD—[Amended]

■ 38. Section 52.2827 is amended by revising paragraph (b) to read as follows:

§ 52.2827 Significant deterioration of air quality.

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(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for American Samoa.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 411**

[CMS–1809–F4]

RIN 0938–AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

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

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until July 7, 2004, the effective date of the last sentence of 42 CFR 411.354(d)(1). This section was promulgated in the final rule entitled “Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,” published in the **Federal Register** on January 4, 2001. A 1-year delay of the effective date of the last sentence in this section was published in the **Federal Register** on December 3, 2001. A 6-month delay, until July 7, 2003, was published in the **Federal Register** on November 22, 2002. An additional 6-month delay, until January 7, 2004, was published on April 25, 2003. This further extension of the delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is “set in advance” as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective January 7, 2004, will not become effective until July 7, 2004. We expect that the definition of “set in advance” will be addressed definitively before July 7, 2004 in a final rule with

comment period, entitled “Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships” (Phase II).

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed to July 7, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: <http://www.access.gpo.gov/nara/index.html>.

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site: <http://cms.hhs.gov/medlearn/refphys.asp>.

I. Background

The final rule, entitled “Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,” published in the **Federal Register** on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be “set in advance.” Section 411.354(d)(1) of the final rule defines the term “set in advance.”

The last sentence of § 411.354(d)(1) reads: “Percentage compensation arrangements do not constitute compensation that is ‘set in advance’ in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser.” Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the