

commenters, this compensation methodology is frequently used by hospitals, physician group practices, academic medical centers, and medical foundations. Several commenters pointed out that this aspect of the final rule, which is applicable to academic medical centers and medical foundations (among others), is inconsistent with the compensation methods permitted under the statute for many physician group practices and employed physicians (that is, neither section 1877(h)(4)(B)(i) of the Act nor section 1877(e)(2) of the Act contains the "set in advance" requirement). We understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154), an additional 6-month delay in the effective date on November 22, 2002 (67 FR 70322), and a further 6-month delay on April 25, 2003 (68 FR 20347) in order to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies.

## II. Provisions of this Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this provision, we are further postponing, for an additional 6 months, until July 7, 2004, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on January 7, 2004. In the meantime, compensation that is required to be "set in advance" for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and "volume and value" requirements.)

## III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b). We find that seeking public comment on this action would be impracticable and unnecessary. We believe public comment is unnecessary because we are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation. In addition, given the imminence of the January 7, 2004 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by January 7, 2004 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 29, 2003.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: October 27, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–31469 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 02–60, FCC 03–288]

### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition for reconsideration.

**SUMMARY:** In this document, the Commission modifies its rules to improve the effectiveness of the rural health care support mechanism, which provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. Because participation in the rural health care support mechanism has not met the Commission's initial projections, the Commission amends its rules to improve the program, increase participation by rural health care providers, and ensure that the benefits of the program continue to be distributed in a fair and equitable manner. In addition, the Commission denies Mobile Satellite Ventures Subsidiary's petition for reconsideration of the *1997 Universal Service Order*.

**DATES:** Effective February 23, 2004 except for §§ 54.609(a)(2), 54.609(A)(3)(ii), and 54.621(a) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lipp, Attorney, (202) 418–7400 or Regina Brown, Attorney, (202) 418–7400, Wireline Competition Bureau, Telecommunications Access Policy Division.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order and Order on Reconsideration*, in WC Docket No. 02–60 released On November 17, 2003. The full text of this document is available for