

Categories. For part 61 NESHAPs, TDEC-APC requested to change the delegation mechanism from “case-by-case” to “adopt-by-reference.” For part 63 NESHAPs, TDEC-APC requested to change the delegation mechanism from “automatic” to “adopt-by-reference.”

With these NESHAPs and NESHAPs for Source Categories delegation mechanisms in place, once a new or revised NESHAP or NESHAP for Source Categories is promulgated by the EPA, delegation of authority from the EPA to the TDEC-APC will become effective on the date the NESHAP is adopted into State rules by TDEC-APC. No further State requests for delegation will be necessary. Likewise, no further **Federal Register** notifications will be published. EPA continues to retain authority to implement the Federal NESHAP and NESHAP for Source Categories directly and continues to retain concurrent enforcement authority. EPA is providing notice that it approved TDEC-APC’s request on February 26, 2024.

## II. Update to Delegation Methods

After a thorough review of the request, the Regional Administrator has determined that the laws, rules, and regulations for the State agency provide an adequate and effective procedure for implementation and enforcement of parts 61 and 63 NESHAPs. EPA, therefore, hereby notifies the public that it has approved the adopt-by-reference delegation mechanism for delegation of the part 61 NESHAP and part 63 NESHAPs for Source Categories. This approval became effective on February 26, 2024. A copy of EPA’s letter approving TDEC-APC’s request, with enclosures, is available at Docket ID No. EPA-R04-OAR-2024-0141 at <https://www.regulations.gov>.

**Authority:** This notification is issued under the authority of sections 101, 112(l), and 301 of the CAA, as amended (42 U.S.C. 7401, 7412, and 7601).

Date: June 13, 2024.

**Jeaneanne Gettle,**

*Acting Regional Administrator, Region 4.*

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**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 431, 438, 441, 447

[CMS-2442-CN]

RIN 0938-AU68

### Medicaid Program; Ensuring Access to Medicaid Services; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical and typographical errors in the final rule that appeared in the May 10, 2024 **Federal Register**, entitled “Medicaid Program; Ensuring Access to Medicaid Services (referred to hereafter as the “Access final rule”). The effective date of the Access final rule is July 9, 2024.

**DATES:** This correction is effective July 9, 2024.

#### FOR FURTHER INFORMATION CONTACT:

Karen Llanos, (410) 786-9071, for Medicaid Advisory Committee.

Jennifer Bowdoin, (410) 786-8551, for Home and Community-Based Services.

Jeremy Silanskis, (410) 786-1592, for Fee-for-Service Payment.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 2024-08363 of May 10, 2024 (89 FR 40542), there were technical errors that are identified and corrected in this correcting document. These corrections are applicable as if they had been included in the Access final rule, which is effective July 9, 2024. Accordingly, the corrections are effective July 9, 2024.

##### II. Summary of Errors

###### A. Summary of Errors in the Preamble

On page 40550, in Table 1: Provisions and Relevant Timing Information and Dates, we made errors listing the applicability dates and did not include all of the regulatory citations for the table rows that referenced the Medicaid Advisory Committee & Beneficiary Advisory Council § 431.12.

On pages 40556, 40557, and 40565, we made errors listing the applicability dates.

On page 40570, we made minor technical and typographical errors, including cross-references to regulatory citations and a preamble section.

On page 40577, we made typographical errors in regulatory citations.

On page 40578, we made a typographical error in a **Federal Register** reference.

On page 40580, we made a typographical error when discussing a modification to regulatory language.

On page 40586, we made a typographical error in a regulatory citation.

On page 40587, we made a typographical error when discussing a modification to regulatory language.

On page 40594, we erroneously included an incorrect statement related to formatting when discussing a modification to regulatory language.

On page 40596, we made a typographical error when discussing a modification to regulatory language.

On page 40599, we made typographical errors in references to a preamble section number and a regulatory citation.

On page 40611, we made typographical errors in a statutory citation and a regulatory citation.

On page 40614, we made a typographical error in a statutory citation.

On page 40615, we erroneously included the incorrect **Federal Register** citation.

On page 40616, we made minor technical errors in discussing a modification to regulatory language, including inadvertently omitting a regulatory citation.

On page 40619, we erroneously omitted a word in a policy statement.

On pages 40624, 40627, 40633, and 40640, we made typographical errors in regulatory citations.

On page 40643, we made a typographical error in a summary of regulatory language we finalized.

On page 40646, we made a typographical error in a regulatory citation.

On page 40650, we made a typographical error in a reference to a preamble section.

On pages 40653, 40660, and 40661, we made typographical errors in regulatory citations.

On page 40662, we erroneously omitted a word and made a typographical error in a regulatory citation.

On page 40671, we made typographical and minor technical errors when discussing regulatory language we finalized.

On page 40673, we made typographical errors in regulatory citations.

On page 40675, we made typographical errors in a regulatory

citation and in references to preamble sections.

On page 40727, we erroneously omitted words when discussing publication requirements.

On page 40858, in the table titled “TABLE 48: Accounting Table,” we inadvertently included incorrect summary figures in the table.

*B. Summary of Errors in the Regulation Text*

On page 40862, in the regulation text for § 431.12(d)(1), we listed incorrect applicability dates.

On page 40863, in amendatory instruction 5, we inadvertently noted the changes to § 438.72 incorrectly.

On page 40869, in the regulation text for § 441.312(c)(3)(iv), we made a typographical error.

On page 40869, in the regulation text for § 441.312(g), we made a typographical error in a cross-reference.

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

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the 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. In addition, section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a substantive rule. Sections 553(b)(B) and 553(d)(3) of the

APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. Similarly, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where good cause is found and the agency includes in the rule a statement of the finding and the reasons for it. In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements.

This document corrects technical errors in the Access final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were proposed, subject to notice and comment procedures, and adopted in the Access final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment 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 Access final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

**IV. Correction of Errors**

In FR Doc. 2024–08363 of May 10, 2024 (89 FR 40542), make the following corrections:

*A. Correction of Errors in the Preamble*

1. On page 40550, Table 1: Provisions and Relevant Timing Information and Dates, under Medicaid Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) § 431.12, the second column, rows 1 through 3, which read:

Regulation Section(s) in Title 42 of the CFR	Applicability Dates**
Medicaid Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) § 431.12	<i>Establishment of MAC and BAC:</i> 1 year after the effective date of the final rule.
	<i>BAC crossover on MAC:</i> For the period from the effective date of the final rule through 1 year after the effective date, 10 percent; for the period from year 1 plus one day through year 2 after the effective date of the final rule, 20 percent; and thereafter, 25 percent of committee members must be from the BAC
	<i>Annual report:</i> States have 2 years from the effective date of the final rule to finalize the first annual report. After the report has been finalized, States will have 30 days to post the annual report.

is corrected to read:

Regulation Section(s) in Title 42 of the CFR	Applicability Dates**
Medicaid Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) § 431.12	§ 431.12 <i>MAC &amp; BAC</i> : Except as noted in paragraphs (d)(1) and (i)(3), the requirements in paragraphs (a) through (j) are applicable 1 year after the effective date of the final rule.
	§ 431.12 (d)(1) <i>BAC crossover on MAC</i> : For the period from 1 year after the effective date of the final rule through 2 years after the effective date of the final rule, 10 percent; for the period from 2 years plus one day after the effective date of the final rule through 3 years after the effective date of the final rule, 20 percent; and thereafter, 25 percent of committee members must be from the BAC
	§ 431.12 (i)(3) <i>Annual report</i> : States have 2 years from the effective date of the final rule to finalize the first annual report. After the report has been finalized, States will have 30 days to post the annual report.

2. On page 40556, second column, first full paragraph, lines 17 through 28, the sentence that reads:

“Instead of the 25 percent minimum threshold coming into effect right away, we are revising this final rule to provide in § 431.12(d)(1) that, for the period from July 9, 2024 through July 9, 2025, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2025 through July 9, 2026 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

is corrected to read:

“Instead of the 25 percent minimum threshold coming into effect right away, we are revising this final rule to provide in § 431.12(d)(1) that, for the period from July 9, 2025 through July 9, 2026, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2026 through July 9, 2027, 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

3. On page 40557, first column, second bullet in the second full paragraph, lines 1 through 13, the sentences that read:

“Replacing the language at § 431.12 (d)(1) to clarify the timeframe for States to reach 25 percent of MAC members coming from the BAC. The new sentence will now read, “For the period from July 9, 2024 through July 9, 2025, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2025 through July 10, 2026 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

are corrected to read:

“Replacing the language at § 431.12 (d)(1) to clarify the timeframe for States to reach 25 percent of MAC members

coming from the BAC. The new sentence will now read, “For the period from July 9, 2025 through July 9, 2026, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2026 through July 10, 2027, 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

4. On page 40565, second column, first full paragraph, lines 9 through 18, the sentences that read:

“The finalized provision at § 431.12(d)(1) will require that, for the period from July 9, 2024 through July 9, 2025, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2025 through July 9, 2026, 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

are corrected to read:

“The finalized provision at § 431.12(d)(1) will require that, for the period from July 9, 2025 through July 9, 2026, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2026 through July 9, 2027, 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

5. On page 40570,

a. Second column, second full paragraph, lines 8 through 22, the sentences that read:

“This statement was published in error, and we did not intend to propose this specific regulation text include reference to § 438.208(c). We note that § 438.208(c)(3)(v) already requires that managed care plans comply with § 441.301(c)(3), generally, so we believe that referencing § 438.208(c) is not necessary. We also note that § 438.208(c)(3)(ii) requires compliance with the other person-centered planning

requirements at § 441.301(c)(1) and (2). Thus, also referring to § 438.208(c) would be unnecessary.”

are corrected to read:

“This statement was published in error, and we did not intend to propose to add requirements at § 441.301(c)(3) to this specific regulation text at § 438.208(c). We note that § 438.208(c)(3)(v) already requires that managed care plans comply with § 441.301(c)(3), generally, so we believe that adding the requirements at § 441.301(c)(3) to § 438.208(c) is not necessary. We also note that § 438.208(c)(3)(ii) requires compliance with the other person-centered planning requirements at § 441.301(c)(1) and (2). Thus, also adding the requirements at § 441.301(c)(3) to § 438.208(c) would be unnecessary.”

b. In the third column, second full paragraph, line 17, the section reference that reads, “II.B.11” is corrected to read, “II.B.10”.

6. On page 40577, second column, first full and non-bulleted paragraph,

a. Line 16, the regulatory citation that reads “§ 441.301(c)(4)(ii)” is corrected to read “§ 441.301(c)(4)(iii)”.

b. Line 27, the regulatory citation that reads “(v)(B)” is corrected to “(vi)(B)”.

7. On page 40578, third column, first partial paragraph, lines 3 through 4, the **Federal Register** reference that reads “(88 FR 28080)” is corrected to “(88 FR 27976).”

8. On page 40580, third column, third full paragraph, lines 1 through 6, the paragraph that reads “We are finalizing § 441.301(c)(7)(iii)(B)(1) with a modification to correct an erroneous reference to subchapter in the regulatory language and replace subchapter with paragraph (c)(7)” is corrected to read “We are finalizing § 441.301(c)(7)(iii)(B)(1) with a modification to correct an erroneous reference to subsection in the regulatory

language and replace subsection with paragraph (c)(7).”.

9. On page 40586, first column, first partial paragraph, line 17, the regulatory citation that reads

“§ 441.301(c)(7)(iii)(C)(3)(ii)” is corrected to read

“§ 441.301(c)(7)(iii)(C)(3)(iii)”.

10. On page 40587, third column, last paragraph, lines 3 through 7, the sentence that reads “We are finalizing § 441.301(c)(7)(iii)(B)(1) with a modification to correct an erroneous reference to subchapter by replacing subchapter with paragraph (c)(7).” is corrected to read “We are finalizing § 441.301(c)(7)(iii)(B)(1) with a modification to correct an erroneous reference to subsection by replacing subsection with paragraph (c)(7).”.

11. On page 40594, first column, last paragraph, line 16, the sentence that reads “(New text in bolded font.)” is deleted.

12. On page 40596, in the third column, third full bulleted paragraph, lines 1 through 5, that reads “We are finalizing § 441.301(c)(7)(iii)(B)(1) with a modification to correct an erroneous reference to subchapter by replacing subchapter with paragraph (c)(7).” is corrected to read “We are finalizing § 441.301(c)(7)(iii)(B)(1) with a modification to correct an erroneous reference to subsection by replacing subsection with paragraph (c)(7).”.

13. On page 40599,

a. First column, second paragraph, line 38, the section reference that reads “II.B.3.i” is corrected to read “II.B.3.j.”.

b. Third column, last paragraph, line 9, the regulatory citation that reads “§ 441.703(a)” is corrected to read “§ 441.303(a)”.

14. On page 40611,

a. First column, first partial paragraph, lines 13 through 14, the statutory citation that reads “section 1902(a)(3)(A)” is corrected to read “section 1902(a)(30)(A)”.

b. Second column, heading b. that reads “b. Minimum Performance Requirement and Flexibilities (§ 441.302(k)(2), (3), (4), (5), and (6))” is corrected to read “b. Minimum Performance Requirement and Flexibilities (§ 441.302(k)(2), (3), (4), (5), (6), and (7)).”

15. On page 40614, third column, first full paragraph, the last line that reads “section 2402(a)(iii)(B)” is corrected to read “section 2402(a)(3)(B)(iii)”.

16. On page 40615, first column, last full paragraph, line 2, the **Federal Register** citation that reads “(88 FR 27982)” is corrected to read “(88 FR 27982 through 27984)”.

17. On page 40616, third column, second paragraph, lines 2 through 9, the sentence that reads:

“As discussed in greater detail later in this section, we are modifying the policy we proposed at § 441.302(k)(3) to establish certain exceptions from the minimum performance level, and to establish a 6- year effective date, rather than the 4 years we had proposed.” is corrected to read:

“As discussed in greater detail later in this section, we are modifying the policy we proposed, at § 441.302(k)(3), to establish certain exceptions from the minimum performance level, and, at § 441.302(k)(8), to establish a that States must comply beginning 6 years after the effective date of this rule, rather than the 4 years we had proposed at § 441.302(k)(4).”.

18. On page 40619, first column, first full paragraph, line 34 through the end of the paragraph, the sentence that reads:

“We note that we expect that most providers would be subject to a hardship exemption on a temporary basis, and that States would still need to collect and report data as required in § 441.302(k)(2) and § 441.311(e) for providers with hardship exemptions.” is corrected to read:

“We note that we expect that most exempted providers would be subject to a hardship exemption on a temporary basis, and that States would still need to collect and report data as required in § 441.302(k)(2) and § 441.311(e) for providers with hardship exemptions.”

19. On page 40624, first column, second full paragraph, line 17, the regulatory citation that reads “§ 441.302(k)(3)(iii)” is corrected to read “§ 441.302(k)(1)(iii)”.

20. On page 40627, third column, fourth full paragraph, line 14, the regulatory citation that reads “§ 441.302(k)(1)(i)(A)” is corrected to read “§ 441.302(k)(1)(ii)(A)”.

21. On page 40633, first column, last paragraph, line 5, the regulatory citation that reads “§ 441.311” is corrected to read “§ 441.311(e)”.

22. On page 40640, second column, second full paragraph, line 2, the regulatory citation that reads “§ 441.301(c)(3)(ii)” is corrected to read “§ 441.311(b)(3)”.

23. On page 40643, second column, third full paragraph, lines 1 through 5, the sentence that reads “After consideration of public comments received, we are finalizing the HCBS Quality Measure Set reporting requirements at § 441.311(c) with modifications.” is corrected to read “After consideration of public

comments received, we are finalizing the HCBS Quality Measure Set reporting requirements at § 441.311(c) with no modifications.”.

24. On page 40646, first column, last paragraph, line 6, the regulatory citation that reads “§ 441.331(d)(1)” is corrected to read “§ 441.311(d)(1)”.

25. On page 40650, second column, last paragraph, line 2, the section reference that reads “II.B.7.e.” is corrected to read “II.B.7.f.”.

26. On page 40653,

a. First column, last paragraph, line 10, the regulatory citation that reads “§ 411.302(k)” is corrected to read “§ 441.302(k)”.

b. First column, last paragraph, line 11, the regulatory citation that reads “§ 411.311(e)(2)” is corrected to read “§ 441.311(e)(2)”.

c. First column, last paragraph, line 14, the regulatory citation that reads “§ 411.302(k)(3)” is corrected to read “§ 441.302(k)(3)”.

d. Second column, first partial paragraph, line 3, the regulatory citation that reads “§ 411.302(k)” is corrected to read “§ 441.302(k)”.

e. Second column, first partial paragraph, line 6, the regulatory citation that reads “§ 411.311(e)(2)” is corrected to read “§ 441.311(e)(2)”.

f. Second column, first partial paragraph, line 10, the regulatory citation that reads “§ 411.302(k)(3)” is corrected to read “§ 441.302(k)(3)”.

g. Second column, first partial paragraph, line 11, the regulatory citation that reads “§ 411.302(k)(3)” is corrected to read “§ 441.302(k)(3)”.

h. Second column, first full paragraph, line 4, the regulatory citation that reads “§ 411.311(e)(2)” is corrected to read “§ 441.311(e)(2)”.

27. On page 40660, third column, heading f. at the bottom of the page, the regulatory citation that reads “441.745(a)(1)(iii)” is corrected to read “441.745(a)(1)(vii)”.

28. On page 40661, first column, first partial paragraph, line 16, the regulatory citation that reads “§ 441.302(a)(6)” is corrected to read “§ 441.311”.

29. On page 40662, third column, first bulleted paragraph, the paragraph that reads:

“We are finalizing the HCBS Quality Measure Set reporting requirements at § 441.311(c) with modifications. At § 441.311(c), we are finalizing a date of 4 years, rather than 3 years, for States to comply with the HCBS Quality Measure Set reporting requirements at § 441.311(c).”

is corrected to read:

“We are finalizing the HCBS Quality Measure Set reporting requirements at

§ 441.311(c) with no modifications. At § 441.311(f)(2), we are finalizing a date of 4 years, rather than 3 years, for States to comply with the HCBS Quality Measure Set reporting requirements at § 441.311(c).”

30. On page 40671,

a. First column, first full paragraph, lines 2 through 11, the sentence that reads:

“As noted previously, we are finalizing § 441.312(c)(1) and (2) with modifications to indicate that we will identify, and update no more frequently than every other year, beginning no later than December 31, 2026, the quality measures to be included in the HCBS Quality Measure Set as defined in paragraph (b) of this section.”

is corrected to read:

“As noted previously, we are finalizing § 441.312(c)(1) and (2) with modifications to indicate that: we will identify, and update no more frequently than every other year, beginning no later than December 31, 2026, the quality measures to be included in the HCBS Quality Measure Set as defined in paragraph (b) of this section; and we will make technical updates and

corrections to the HCBS Quality Measure Set annually as appropriate.”.

b. First column, second full paragraph, lines 1 through 3, the sentence that reads “We will make technical updates and corrections to the HCBS Quality Measure Set annually as appropriate.” is deleted.

c. Third column, second full (and second bulleted) paragraph, the sentence that reads “We are finalizing the definition of attribution rules and Home and Community-Based Services Quality Measure Set at § 441.312(b)(1) with a minor formatting change.” is corrected to read “We are finalizing the definitions of attribution rules and Home and Community-Based Services Quality Measure Set at § 441.312(b)(1) and (2), respectively, with minor modifications.”.

31. On page 40673, first column,

a. Third full paragraph, line 11, the regulatory citation that reads “§ 441.33” is corrected to read “§ 441.313”.

b. Fourth full paragraph, lines 6 and 8, the regulatory citation that reads “§ 441.311” is corrected to “§ 441.313” in both instances.

32. On page 40675,

a. First column, first full paragraph, line 7, the regulatory citation that reads

“§ 441.313(c)” is corrected to read “§ 441.313(c)”.

b. Third column, last full paragraph, lines 1 through 3, the phrase that reads “As discussed earlier in sections II.B.1., II.B.4., II.B.5., II.B.7., and II.J. of this rule” is corrected to read “As discussed earlier in sections II.B.1., II.B.3., II.B.5., II.B.7., and II.B.9. of this rule”.

33. On page 40727, second column, second paragraph, lines 1 through 6, the sentence that reads:

“The State agency is required to publish a hyperlink where the comparative, as well as the payment rate disclosure and payment rate transparency publication, on the State Medicaid agency’s website.”

is corrected to read:

“The State agency is required to publish a hyperlink to where the comparative payment rate analysis, as well as the payment rate disclosure and payment rate transparency publication, is located on the State Medicaid agency’s website.”

34. On page 40858, in the middle of the page, TABLE 48: Accounting Table, is corrected to read as follows:

**TABLE 48: Accounting Table**

Category	Estimates	Units		
		Year Dollar	Discount Rate	Period Covered
<b>Costs to States</b>				
Annualized Monetized (\$million/year)	31.96	2023	7%	2024 – 2028
	30.88	2023	3%	2024 – 2028
<b>Costs to Beneficiaries</b>				
Annualized Monetized (\$million/year)	0.39	2023	7%	2024 – 2028
	0.39	2023	3%	2024 – 2028
<b>Costs to Providers</b>				
Annualized Monetized (\$million/year)	60.80	2023	7%	2024 – 2028
	58.94	2023	3%	2024 – 2028
<b>Costs to Managed Care Plans</b>				
Annualized Monetized (\$million/year)	2.89	2023	7%	2024 – 2028
	2.79	2023	3%	2024 – 2028
<b>Costs to Federal Government</b>				
Annualized Monetized (\$million/year)	31.96	2023	7%	2024 – 2028
	30.88	2023	3%	2024 – 2028

*B. Corrections of Errors in the Regulation Text*

**§ 431.12 [Corrected]**

■ 1. On page 40862, first column, fourth full paragraph, the regulation text for § 431.12(d)(1) that reads:

“(1) For the period from July 9, 2024 through July 9, 2025, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2025

through July 9, 2026, 20 percent of MAC members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

is corrected to read:

“(1) For the period from July 9, 2025 through July 9, 2026, 10 percent of the MAC members must come from the BAC; for the period from July 10, 2026 through July 9, 2027, 20 percent of MAC

members must come from the BAC; and thereafter, 25 percent of MAC members must come from the BAC.”

**§ 438.72 [Corrected]**

■ 2. On page 40863, second column, amendment 5, the instruction and accompanying regulation text that reads:

■ “5. Section 438.72 is added to subpart B to read as follows:

**§ 438.72 Additional requirements for long-term services and supports.**

(a) [Reserved]

(b) *Services authorized under section 1915(c) waivers and section 1915(i), (j), and (k) State plan authorities.* The State must comply with the requirements at §§ 441.301(c)(1) through (3), 441.302(a)(6), 441.302(k), 441.311, and 441.313 for services authorized under section 1915(c) waivers and section 1915(i), (j), and (k) State plan authorities.”

is corrected to read:

■ “5. Section 438.72 is amended by adding paragraph (b) to read as follows:

**§ 438.72 Additional requirements for long-term services and supports.**

\* \* \* \* \*

(b) *Services authorized under section 1915(c) waivers and section 1915(i), (j), and (k) State plan authorities.* The State must comply with the requirements at §§ 441.301(c)(1) through (3), 441.302(a)(6), 441.302(k), 441.311, and 441.313 for services authorized under section 1915(c) waivers and section 1915(i), (j), and (k) State plan authorities.”

**§ 441.312 [Corrected]**

■ 3. On page 40869,

■ a. First column, sixth paragraph, the regulation text for § 441.312(c)(3)(iv) that reads:

“(iv) Ensure that all measures included in the Home and Community-Based Quality Measure Set reflect an evidenced-based process including testing, validation, and consensus among interested parties; are meaningful for States; and are feasible for State-level, program-level, or provider-level reporting as appropriate.”

is corrected to:

“(iv) Ensure that all measures included in the Home and Community-Based Quality Measure Set reflect an evidence-based process including testing, validation, and consensus among interested parties; are meaningful for States; and are feasible for State-level, program-level, or provider-level reporting as appropriate.”

■ b. Third column, first full paragraph, the regulation text for § 441.312(g) that reads:

“(g) *Consultation with interested parties.* For purposes of paragraph (c)(2) of this section, the Secretary must consult with interested parties as described in this paragraph to include the following:”

is corrected to:

“(g) *Consultation with interested parties.* For purposes of paragraph (c)(3) of this section, the Secretary must

consult with interested parties as described in this paragraph to include the following:”

**Elizabeth J. Gramling,**

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

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 236**

[Docket DARS-2024-0019]

RIN 0750-AM16

**Defense Federal Acquisition Regulation Supplement: Architect and Engineering Service Fees (DFARS Case 2024-D019)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2024 that increases the statutory fee limit for architect and engineering services.

**DATES:** Effective August 26, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Snyder, telephone 703-945-5341.

**SUPPLEMENTARY INFORMATION:****I. Background**

This final rule revises the DFARS to implement section 2881 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118-31). Section 2881 increases the statutory fee limitation at 10 U.S.C. 7540, 8612, and 9540 from six to 10 percent that may be earned by contractors providing certain architect and engineering services under contracts with the Departments of the Army, Navy, and Air Force.

At DFARS 236.606-70, Statutory fee limitation, DoD increased the statutory fee that contractors may earn under contracts for architect-engineer services for the preparation of designs, plans, drawings, and specifications. The fee is increased to 10 percent of the project's estimated construction cost. Minor editorial revisions are made to the text of section 236.606-70 to comply with drafting conventions.

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule addresses internal operating procedures of the Government.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services**

This final rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

**IV. Expected Impact of the Rule**

Architects and engineers are limited in the amount they can charge the Departments of the Army, Navy, and Air Force for producing and delivering designs, plans, drawings, and specifications. The limitation is a percentage of the architect and engineer's estimate of the construction costs for the project. The limitation is specified at 10 U.S.C. 7540, 8612, and 9540; the limitation has been 6 percent of the estimated construction costs. Section 2881 of the National Defense Authorization Act for Fiscal Year 2024 increases the percentage at 10 U.S.C. 7540, 8612, and 9540 to 10 percent of the estimated construction costs. This updated statutory limit only applies to requirements of the Departments of the Army, Navy, and Air Force; it does not apply to the rest of DoD or to civilian agencies.

Currently, DoD contracting officers evaluate architect and engineering proposals in accordance with FAR 36.602 and DFARS 236.602. Army,