

(ii) Submission following material change. The attestation must be provided no later than 90 days before the implementation of a material change to the drug coverage of the sponsor's retiree prescription drug plan. For purposes of this clause, the term "material change" means the addition of a benefit option that does not impact the actuarial value of the retiree prescription drug coverage under the sponsor's plan such that it no longer meets the standards set forth in paragraph (d)(1)(i) or (ii) of this section.

(7) Notice of failure to continue to satisfy the actuarial equivalence standards. A sponsor must notify CMS, in a form and manner specified by CMS, no later than 90 days before the implementation of a change to the drug coverage that impacts the actuarial value of the retiree prescription drug coverage under the sponsor's plan such that it no longer meets the standards set forth in paragraph (d)(1)(i) or (ii) of this section.

(e) *Disclosure of creditable prescription drug coverage status.* The sponsor must disclose to all of its retirees and their spouses and dependents eligible to participate in its plan who are Part D eligible individuals whether the coverage is creditable prescription drug coverage under § 423.56 in accordance with the notification requirements under that section.

(f) *Access to records for audit.* The sponsor (and where applicable, its designee) must meet the requirements of § 423.888(d). Failure to comply with § 423.888(d) may result in nonpayment or recoupment of all or part of a subsidy payment.

[70 FR 4525, Jan. 28, 2005, as amended at 73 FR 20508, Apr. 15, 2008; 76 FR 21576, Apr. 15, 2011]

**§ 423.886 Retiree drug subsidy amounts.**

(a) *Amount of subsidy payment.* (1) For each qualifying covered retiree enrolled with the sponsor of a qualified retiree prescription drug plan in a plan year, the sponsor receives a subsidy payment in the amount of 28 percent of the allowable retiree costs (as defined in § 423.882) in the plan year for such retiree attributable to gross retiree costs between the cost threshold and the

cost limit as defined in paragraph (b) of this section. The subsidy payment is calculated by first determining gross retiree costs between the cost threshold and cost limit, and then determining allowable retiree costs attributable to the gross retiree costs. For this purpose and where otherwise relevant in this subpart, plan year is the calendar, policy, or fiscal year on which the records of a plan are kept.

(2) *Transition provision.* For a qualified retiree prescription drug plan that has a plan year which begins in calendar year 2005 and ends in calendar year 2006, the subsidy for the plan year must be determined in the following manner. Claims incurred in all months of the plan year (including claims incurred in 2005) are taken into account in determining which claims fall within the cost threshold and cost limit for the plan year. The subsidy amount is determined based only on costs incurred on and after January 1, 2006.

(b) *Cost threshold and cost limit.* The following cost threshold and cost limits apply—

(1) Subject to paragraph (b)(3) of this section, the cost threshold under this section is equal to \$250 for plan years that end in 2006.

(2) Subject to paragraph (b)(3) of this section, the cost limit under this section is equal to \$5,000 for plan years that end in 2006.

(3) The cost threshold and cost limit specified in paragraphs (b)(1) and (b)(2) of this section, for plan years that end in years after 2006, are adjusted in the same manner as the annual Part D deductible and the annual Part D out-of-pocket threshold are adjusted annually under § 423.104(d)(1)(ii) and (d)(5)(iii)(B), respectively.

**§ 423.888 Payment methods, including provision of necessary information.**

(a) *Basis.* The provisions of § 423.301 through § 423.343, including requirements to provide information necessary to ensure accurate subsidy payments, govern payment under § 423.886 except to the extent the provisions in this section specify otherwise.

(b) *General payment rules.* Payment under § 423.886 is conditioned on provision of accurate information. The information must be submitted, in a