

pending, or denied) claims up to the allowed balance provided by CMS to the sponsor.

(d) Payment transactions will be audited by the Secretary or his agent.

(e) Federal funding in excess of the amount of the balance included in CMS's system is not permitted.

### Subpart I—Transparency Reports and Reporting of Physician Ownership or Investment Interests

SOURCE: 78 FR 9521, Feb. 8, 2013, unless otherwise noted.

#### § 403.900 Purpose and scope.

The regulations in this subpart implement section 1128G of the Act. These regulations apply to applicable manufacturers and applicable group purchasing organizations and describe the requirements and procedures for applicable manufacturers to report payments or other transfers of value provided to covered recipients, as well as for applicable manufacturers and applicable group purchasing organizations to report ownership or investment interests held by physicians or immediate family members of physicians in such entities.

#### § 403.902 Definitions.

For purposes of this subpart, the following definitions apply:

*Applicable group purchasing organization* means an entity that:

- (1) Operates in the United States; and
- (2) Purchases, arranges for or negotiates the purchase of a covered drug, device, biological, or medical supply for a group of individuals or entities, but not solely for use by the entity itself.

*Applicable manufacturer* means an entity that is operating in the United States and that falls within one of the following categories:

- (1) An entity that is engaged in the production, preparation, propagation, compounding, or conversion of a covered drug, device, biological, or medical supply, but not if such covered drug, device, biological or medical supply is solely for use by or within the entity itself or by the entity's own pa-

tients. This definition does not include distributors or wholesalers (including, but not limited to, repackagers, re-labelers, and kit assemblers) that do not hold title to any covered drug, device, biological or medical supply.

(2) An entity under common ownership with an entity in paragraph (1) of this definition, which provides assistance or support to such entity with respect to the production, preparation, propagation, compounding, conversion, marketing, promotion, sale, or distribution of a covered drug, device, biological or medical supply.

*Assistance and support* means providing a service or services that are necessary or integral to the production, preparation, propagation, compounding, conversion, marketing, promotion, sale, or distribution of a covered drug, device, biological or medical supply.

*Charitable contribution* includes, but is not limited to, any payment or transfer of value made to an organization with tax-exempt status under the Internal Revenue Code of 1986, which is not provided in exchange for any goods, items or services.

*Charity care* means services provided by a covered recipient specifically for a patient who is unable to pay for such services or for whom payment would be a significant hardship, where the covered recipient neither receives, nor expects to receive, payment because of the patient's inability to pay.

*Clinical investigation* means any experiment involving one or more human subjects, or materials derived from human subjects, in which a drug, device, biological or medical supply is administered, dispensed or used.

*Common ownership* refers to circumstances where the same individual, individuals, entity, or entities directly or indirectly own 5 percent or more total ownership of two entities. This includes, but is not limited to, parent corporations, direct and indirect subsidiaries, and brother or sister corporations.

*Covered device* means any device for which payment is available under Title XVIII of the Act or under a State plan under Title XIX or XXI of the Act (or a waiver of such plan), either separately (such as through a fee schedule)

or as part of a bundled payment (for example, under the hospital inpatient prospective payment system or the hospital outpatient prospective payment system) and which is of the type that, by law, requires premarket approval by or premarket notification to the Food and Drug Administration (FDA).

*Covered drug, device, biological, or medical supply* means any drug, device, biological, or medical supply for which payment is available under Title XVIII of the Act or under a State plan under Title XIX or XXI of the Act (or a waiver of such plan), either separately (such as through a fee schedule or formulary) or as part of a bundled payment (for example, under the hospital inpatient prospective payment system or the hospital outpatient prospective payment system) and which is of the type that in the case of a—

- (1) Drug or biological, by law, requires a prescription to be dispensed; or
- (2) Device (including a medical supply that is a device), by law, requires premarket approval by or premarket notification to the FDA.

*Covered recipient* means— (1) Any physician, except for a physician who is a bona fide employee of the applicable manufacturer that is reporting the payment; or

- (2) A teaching hospital, which is any institution that received a payment under 1886(d)(5)(B), 1886(h), or 1886(s) of the Act during the last calendar year for which such information is available.

*Employee* means an individual who is considered to be “employed by” or an “employee” of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

*Immediate family member* means any of the following:

- (1) Spouse.
- (2) Natural or adoptive parent, child, or sibling.
- (3) Stepparent, stepchild, stepbrother, or stepsister.

- (4) Father-, mother-, daughter-, son-, brother-, or sister-in-law.

- (5) Grandparent or grandchild.

- (6) Spouse of a grandparent or grandchild.

*Indirect payments or other transfers of value* refer to payments or other transfers of value made by an applicable manufacturer (or an applicable group purchasing organization) to a covered recipient (or a physician owner or investor) through a third party, where the applicable manufacturer (or applicable group purchasing organization) requires, instructs, directs, or otherwise causes the third party to provide the payment or transfer of value, in whole or in part, to a covered recipient(s) (or a physician owner or investor).

*Know, knowing, or knowingly*—(1) Means that a person, with respect to information—

- (i) Has actual knowledge of the information;
  - (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
  - (iii) Acts in reckless disregard of the truth or falsity of the information; and
- (2) Requires no proof of a specific intent to defraud.

*NPPES* stands for the National Plan & Provider Enumeration System.

*Operating in the United States* means that an entity—

- (1) Has a physical location within the United States or in a territory, possession, or commonwealth of the United States; or
- (2) Otherwise conducts activities within the United States or in a territory, possession, or commonwealth of the United States, either directly or through a legally-authorized agent.

*Ownership or investment interest*—(1) Includes, but is not limited to the following:

- (i) Stock, stock option(s) (other than those received as compensation, until they are exercised).
- (ii) Partnership share(s);
- (iii) Limited liability company membership(s).
- (iv) Loans, bonds, or other financial instruments that are secured with an entity’s property or revenue or a portion of that property or revenue.

(2) May be direct or indirect and through debt, equity or other means.

(3) *Exceptions.* The following are not ownership or investment interests for the purposes of this section:

(i) An ownership or investment interest in a publicly traded security or mutual fund, as described in section 1877(c) of the Act.

(ii) An interest in an applicable manufacturer or applicable group purchasing organization that arises from a retirement plan offered by the applicable manufacturer or applicable group purchasing organization to the physician (or a member of his or her immediate family) through the physician's (or immediate family member's) employment with that applicable manufacturer or applicable group purchasing organization.

(iii) Stock options and convertible securities received as compensation, until the stock options are exercised or the convertible securities are converted to equity.

(iv) An unsecured loan subordinated to a credit facility.

(v) An ownership or investment interest if an applicable manufacturer or applicable group purchasing organization did not know, as defined in this section, about such ownership or investment interest.

*Payment or other transfer of value* means a transfer of anything of value.

*Physician* has the same meaning given that term in section 1861(r) of the Act.

*Related to a covered drug, device, biological, or medical supply* means that a payment or other transfer of value is made in reference to or in connection with one or more covered drugs, devices, biologicals, or medical supplies.

*Research* includes a systematic investigation designed to develop or contribute to generalizable knowledge relating broadly to public health, including behavioral and social-sciences research. This term encompasses basic and applied research and product development.

*Third party* means another individual or entity, regardless of whether such individual or entity is operating in the United States.

**§ 403.904 Reports of payments or other transfers of value to covered recipients.**

(a) *General rule.* (1) Direct and indirect payments or other transfers of value provided by an applicable manufacturer to a covered recipient during the preceding calendar year, and direct and indirect payments or other transfers of value provided to a third party at the request of or designated by the applicable manufacturer on behalf of a covered recipient during the preceding calendar year, must be reported by the applicable manufacturer to CMS on an annual basis.

(2) For CY 2013, only payments or other transfers of value made on or after August 1, 2013 must be reported to CMS.

(b) *Limitations.* Certain limitations on reporting apply in the following circumstances:

(1) Applicable manufacturers for whom total (gross) revenues from covered drugs, devices, biologicals, or medical supplies constituted less than 10 percent of total (gross) revenue during the fiscal year preceding the reporting year are only required to report payments or other transfers of value that are related to one or more covered drugs, devices, biologicals or medical supplies.

(2) Applicable manufacturers under paragraph (2) of the definition in § 403.902 are only required to report payments or other transfers of value that are related to a covered drug, device, biological, or medical supply for which they provided assistance or support to an applicable manufacturer under paragraph (1) of the definition.

(3) Applicable manufacturers under either paragraph (1) or (2) of the definition in § 403.902 that have separate operating divisions that do not manufacture any covered drugs, devices, biologicals, or medical supplies (for example, animal health divisions) are only required to report payments to covered recipients related to the activities of these separate divisions if those payments or other transfers of value are related to a covered drug, device, biological, or medical supply. This includes reporting of payments or other transfers of value that are related to covered drugs, devices,