the risk of the Part D eligible individuals who enroll in Part D plans.

(2) Considerations. In establishing the methodology under paragraph (b)(1) of this section, CMS takes into account the similar methodologies used under §422.308(c) of this chapter to adjust payments to MA organizations for benefits under the original Medicare fee-for-service program option.

(3) Data collection. In order to carry out this paragraph, CMS requires—

(i) PDP sponsors to submit data regarding drug claims that can be linked at the individual level to Part A and Part B data in a form and manner similar to the process provided under §422.310 of this chapter and other information as CMS determines necessary; and

(ii) MA organizations that offer MA-PD plans to submit data regarding drug claims that can be linked at the individual level to other data that the organizations are required to submit to CMS in a form and manner similar to the process provided under §422.310 of this chapter and other information as CMS determines necessary.

(4) Publication. At the time of publication of risk adjustment factors under §422.312(a)(1)(ii) of this chapter, CMS publishes the risk adjusters established under this paragraph of this section for the upcoming calendar year.

(c) Reinsurance payment amount—(1) General rule. The reinsurance payment amount for a Part D eligible individual enrolled in a Part D plan for a coverage year is an amount equal to 80 percent of the allowable reinsurance costs attributable to that portion of gross covered prescription drug costs incurred in the coverage year after the individual has incurred true out-of-pocket costs that exceed the annual out-of-pocket threshold specified in §423.104(d)(3)(iii).

(2) Payment method. Payments under this section are based on a method that CMS determines.

(i) Interim payments. CMS establishes a payment method by which interim payments of amounts under this section are made during a year based on the low-income cost-sharing assumptions submitted with plan bids under §423.265(d)(2)(iv) of this part and negotiated and approved under §423.272 of this part, or by an alternative method that CMS determines.

(ii) Final payments. CMS reconciles the interim payments to actual incurred low-income cost-sharing costs as provided in §423.343(d).

(70 FR 4525, Jan. 28, 2005, as amended at 74 FR 1545, Jan. 12, 2009)

§423.336 Risk-sharing arrangements.

(a) Portion of total payments to a Part D sponsor subject to risk—(1) Adjusted allowable risk corridor costs. For purposes of this paragraph, the term adjusted allowable risk corridor costs means—

(i) The allowable risk corridor costs for the Part D plan for the coverage year, reduced by—

(ii) The sum of—
(A) The total reinsurance payments made under §423.329(c) to the Part D sponsor of the Part D plan for the year; and

(B) The total non-premium subsidy payments made under §423.782 to the Part D sponsor of the Part D plan for the coverage year.

(2) Establishment of risk corridors. (i) Risk corridors. For each year, CMS establishes a risk corridor for each Part D plan. The risk corridor for a plan for a coverage year is equal to a range as follows:

(A) First threshold lower limit. The first threshold lower limit of the corridor is equal to—

(1) The target amount for the plan; minus

(2) An amount equal to the first threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(A) of this section) of the target amount.

(B) Second threshold lower limit. The second threshold lower limit of the corridor is equal to—

(1) The target amount for the plan; minus

(2) An amount equal to the second threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(B) of this section) of the target amount.

(C) First threshold upper limit. The first threshold upper limit of the corridor is equal to the sum of—

(1) The target amount; and

(2) An amount equal to the first threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(A) of this section) of the target amount.

(D) Second threshold upper limit. The second threshold upper limit of the corridor is equal to the sum of—

(1) The target amount; and

(2) An amount equal to the second threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(B) of this section) of the target amount.

(ii) First and second threshold risk percentage defined. (A) First threshold risk percentage. Subject to paragraph (a)(2)(iii) of this section, the first threshold risk percentage is for—

(1) 2006 and 2007, 2.5 percent; and

(2) 2008 through 2011, 5 percent; and

(3) 2012 and subsequent years, a percentage CMS establishes, but in no case less than 5 percent.

(B) Second threshold risk percentage. Subject to paragraph (a)(2)(iii) of this section, the second threshold risk percentage is for—

(1) 2006 and 2007, 5.0 percent; and

(2) 2008 through 2011, 10 percent.

(3) 2012 and subsequent years, a percentage CMS establishes that is greater than the percent established for the year under paragraph (a)(2)(ii)(A) of this section, but in no case less than 10 percent.

(iii) Reduction of risk percentage to ensure two Plans in an area. In accordance with §423.265(e), a PDP sponsor may submit a bid that requests a decrease in the applicable first or second threshold risk percentages or an increase in the percents applied under paragraph (b) of this section. Only a PDP sponsor may request a reduction of risk under this paragraph. An MA organization offering an MA-PD plan, a PACE program offering qualified prescription drug coverage, and a cost-based HMO or CMP offering qualified prescription drug coverage may not request a reduction of risk under this paragraph.

(b) Payment adjustments—(1) No adjustment if adjusted allowable risk corridor costs within risk corridor. If the adjusted allowable risk corridor costs for the Part D plan for the coverage year are at least equal to the first threshold lower limit of the risk corridor (specified in paragraph (a)(2)(ii)(A) of this section) but not greater than the first threshold upper limit of the risk corridor (specified in paragraph (a)(2)(ii)(A) of this section) for the Part D plan for the coverage year, CMS makes no payment adjustment.

(b) Payment adjustments—(2) Increase in payment if adjusted allowable risk corridor costs above upper limit of risk corridor—(i) Costs between first and second threshold upper limits. If the adjusted allowable risk corridor costs for the Part D plan for the year are greater than the first threshold
Centers for Medicare & Medicaid Services, HHS § 423.336

upper limit, but not greater than the second threshold upper limit, of the risk corridor for the Part D plan for the year, CMS increases the total of the payments made to the Part D sponsor offering the Part D plan for the year under this section by an amount equal to 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions described in paragraph (b)(2)(iii) of this section are met for the year) of the difference between the adjusted allowable risk corridor costs and the first threshold upper limit of the risk corridor.

(ii) Costs above second threshold upper limits. If the adjusted allowable risk corridor costs for the Part D plan for the year are greater than the second threshold upper limit of the risk corridor for the Part D plan for the year, CMS increases the total of the payments made to the Part D sponsor offering the Part D plan for the year under this section by an amount equal to the sum of—

(A) 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions specified in paragraph (b)(2)(iii) of this section are met for the year) of the difference between the second threshold upper limit and the first threshold upper limit; and

(B) 80 percent of the difference between the adjusted allowable risk corridor costs and the second threshold upper limit of the risk corridor.

(iii) Conditions for application of higher percentage for 2006 and 2007. The conditions specified in this paragraph are met for 2006 or 2007 if CMS determines for the year that—

(A) At least 60 percent of Part D plans to which this paragraph applies have adjusted allowable risk corridor costs for the Part D plan for the year that are more than the first threshold upper limit of the risk corridor for the Part D plan for the year; and

(B) Such plans represent at least 60 percent of Part D eligible individuals enrolled in any Part D plan.

(3) Reduction in payment if adjusted allowable risk corridor costs below lower limit of risk corridor—(i) Costs between first and second threshold lower limits. If the adjusted allowable risk corridor costs for the Part D plan for the coverage year are less than the first threshold lower limit, but not less than the second threshold lower limit, of the risk corridor for the Part D plan for the coverage year, CMS reduces the total of the payments made to the Part D plan for the coverage year under this section by an amount (or otherwise recovers from the Part D sponsor an amount) equal to 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit of the risk corridor and the adjusted allowable risk corridor costs.

(ii) Costs below second threshold lower limit. If the adjusted allowable risk corridor costs for the Part D plan for the coverage year are less than the second threshold lower limit of the risk corridor for the Part D plan for the coverage year, CMS reduces the total of the payments made to the Part D sponsor for the coverage year under this section by an amount (or otherwise recovers from the Part D sponsor an amount) equal to the sum of—

(A) 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit and the second threshold lower limit; and

(B) 80 percent of the difference between the second threshold upper limit of the risk corridor and the adjusted allowable risk corridor costs.

(c) Payment methods. CMS makes payments after a coverage year after obtaining all of the cost data information in paragraph (c)(1) of this section necessary to determine the amount of payment. CMS will not make payments under this section if the Part D sponsor fails to provide the cost data information that CMS requires.

(1) Submission of cost data. Within 6 months of the end of a coverage year, the Part D sponsor must provide the information that CMS requires.

(2) Lump sum and adjusted monthly payments. CMS at its discretion makes either lump-sum payments or adjusts monthly payments in the following payment year based on the relationship of the plan’s adjusted allowable risk corridor costs to the predetermined risk corridor thresholds in the coverage year, as determined under this section.

(d) No effect on monthly premium. No adjustment in payments made by reason of this section may affect the
monthly beneficiary premium for qualified prescription drug coverage.

§ 423.343 Retroactive adjustments and reconciliations.

(a) Application of enrollee adjustment. The provisions of § 422.308(f) of this chapter apply to payments to Part D sponsors under this section in the same manner as they apply to payments to MA organizations under section 1853(a) of the Act.

(b) Health status. CMS makes adjustments to payments made under § 423.329(a)(1) to account for updated health status risk adjustment data as provided under § 422.310(g)(2) of this chapter. CMS may recover payments associated with health status adjustments if the Part D sponsor fails to provide the information described in § 423.329(b)(3).

(c) Reinsurance. CMS makes final payment for reinsurance after a coverage year after obtaining all of the information necessary to determine the amount of payment.

(1) Submission of cost data. Within 6 months of the end of a coverage year, the Part D sponsor must provide the information that CMS requires.

(2) Payments. CMS at its discretion either makes lump-sum payments or adjusts monthly payments throughout the remainder of the payment year following the coverage year based on the difference between interim low-income cost-sharing subsidy payments and total low-income cost-sharing subsidy costs eligible for subsidy under § 423.782 submitted by the plan for the coverage year. CMS may recover payments made through a lump sum recovery or by adjusting monthly payments throughout the remainder of the coverage year if interim low-income cost-sharing subsidy payments exceed the amount payable under § 423.782 or if the Part D sponsor does not provide the data in paragraph (d)(1) of this section. In the event adequate data is not provided for risk corridor costs, CMS assumes that the Part D plan’s adjusted allowable risk corridor costs are 50 percent of the target amount.

§ 423.346 Reopening.

(a) CMS may reopen and revise an initial or reconsidered final payment determination (including a determination on the final amount of direct subsidy described in § 423.329(a)(1), final reinsurance payments described in § 423.329(c), the final amount of the low income subsidy described in § 423.329(d), or final risk corridor payments as described in § 423.336)—

(1) For any reason, within 12 months from the date of the notice of the final determination to the Part D sponsor

(2) After that 12-month period, but within 4 years after the date of the notice of the initial or reconsidered determination to the Part D sponsor, upon establishment of good cause for reopening; or

(3) At any time, in instances of fraud or similar fault of the Part D sponsor or any subcontractor of the Part D sponsor.

(b) For purposes of this section, CMS will find good cause if—

(1) New and material evidence that was not readily available at the time the final determination was made is furnished;

(2) A clerical error in the computation of payments was made; or

(3) The evidence that was considered in making the determination clearly...