

**§ 447.512**

(2) A manufacturer must retain records beyond the ten-year period if both of the following circumstances exist:

(i) The records are the subject of an audit or of a government investigation related to pricing data that are used in AMP, best price, customary prompt pay discounts, or nominal prices of which the manufacturer is aware.

(ii) The audit findings or investigation related to the AMP, best price, customary prompt pay discounts, or nominal price have not been resolved.

(g) *Data reporting format.* All product and pricing data, whether submitted on a quarterly or monthly basis, must be submitted to CMS in an electronic format.

[72 FR 39239, July 17, 2007, as amended at 75 FR 69597, Nov. 15, 2010]

**§ 447.512 Drugs: Aggregate upper limits of payment.**

(a) [Reserved]

(b) *Other drugs.* The agency payments for brand name drugs certified in accordance with paragraph (c) of this section and drugs other than multiple source drugs for which a specific limit has been established must not exceed, in the aggregate, payments levels that the agency has determined by applying the lower of the—

(1) EAC plus reasonable dispensing fees established by the agency; or

(2) Providers' usual and customary charges to the general public.

(c) *Certification of brand name drugs.*

(1) The upper limit for payment for multiple source drugs for which a specific limit has been established does not apply if a physician certifies in his or her own handwriting (or by an electronic alternative means approved by the Secretary) that a specific brand is medically necessary for a particular beneficiary.

(2) The agency must decide what certification form and procedure are used.

(3) A check-off box on a form is not acceptable but a notation like "brand necessary" is allowable.

(4) The agency may allow providers to keep the certification forms if the forms will be available for inspection by the agency or HHS.

[72 FR 39239, July 17, 2007, as amended at 75 FR 69597, Nov. 15, 2010]

**42 CFR Ch. IV (10–1–14 Edition)**

**§ 447.514 [Reserved]**

**§ 447.516 Upper limits for drugs furnished as part of services.**

The upper limits for payment for prescribed drugs in this subpart also apply to payment for drugs provided as part of skilled nursing facility services and intermediate care facility services and under prepaid capitation arrangements.

**§ 447.518 State plan requirements, findings and assurances.**

(a) *State plan.* The State plan must describe comprehensively the agency's payment methodology for prescription drugs.

(b) *Findings and assurances.* Upon proposing significant State plan changes in payments for prescription drugs, and at least annually for multiple source drugs and triennially for all other drugs, the agency must make the following findings and assurances:

(1) *Findings.* The agency must make the following separate and distinct findings:

(i) In the aggregate, its Medicaid expenditures for multiple source drugs are in accordance with the established upper limits.

(ii) In the aggregate, its Medicaid expenditures for all other drugs are in accordance with § 447.512 of this subpart.

(2) *Assurances.* The agency must make assurances satisfactory to CMS that the requirements set forth in § 447.512 of this subpart concerning upper limits and in paragraph (b)(1) of this section concerning agency findings are met.

(c) *Recordkeeping.* The agency must maintain and make available to CMS, upon request, data, mathematical or statistical computations, comparisons, and any other pertinent records to support its findings and assurances.

[72 FR 39239, July 17, 2007, as amended at 75 FR 69597, Nov. 15, 2010]

**§ 447.520 FFP: Conditions relating to physician-administered drugs.**

(a) No FFP is available for physician-administered drugs for which a State has not required the submission of claims using codes that identify the drugs sufficiently for the State to bill a manufacturer for rebates.