

Funds for purposes of this section, means any payment that a Part D sponsor has received that is based on data submitted by the Part D sponsor to CMS for payment purposes, including data submitted under § 423.329(b)(3), § 423.336(c)(1), § 423.343, and data provided for purposes of supporting allowable costs as defined in § 423.308 which includes data submitted to CMS regarding direct or indirect remuneration.

Overpayment means funds that a Part D sponsor has received or retained under title XVIII of the Act to which the Part D sponsor, after applicable reconciliation, is not entitled under such title.

(b) *General rule.* If a Part D sponsor has identified that it has received an overpayment, the Part D sponsor must report and return that overpayment in the form and manner set forth in this section.

(c) *Identified overpayment.* The Part D sponsor has identified an overpayment when the Part D sponsor has determined, or should have determined through the exercise of reasonable diligence, that the Part D sponsor has received an overpayment.

(d) *Reporting and returning of an overpayment.* A Part D sponsor must report and return any overpayment it received no later than 60 days after the date on which it identified it received an overpayment.

(1) *Reporting.* A Part D sponsor must notify CMS of the amount and reason for the overpayment, using the notification process determined by CMS.

(2) *Returning.* A Part D sponsor must return identified overpayments in a manner specified by CMS.

(e) *Enforcement.* Any overpayment retained by a Part D sponsor is an obligation under 31 U.S.C. 3729(b)(3) if not reported and returned in accordance with paragraph (d) of this section.

(f) *Look-back period.* A Part D sponsor must report and return any overpayment identified within the 6 most recent completed payment years.

[79 FR 29963, May 23, 2014]

Subpart H [Reserved]

Subpart I—Organization Compliance with State Law and Preemption by Federal Law

§ 423.401 General requirements for PDP sponsors.

(a) *General requirements.* Each PDP sponsor of a prescription drug plan must meet the following requirements:

(1) *Licensure.* Except in cases where there is a waiver as specified at § 423.410 or § 423.415, the sponsor is organized and licensed under State law as a risk bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a prescription drug plan. If not otherwise licensed, the sponsor obtains certification from the State that the organization meets a level of financial solvency and other standards as the State may require for it to operate as a PDP sponsor.

(2) *Assumption of financial risk for unsubsidized coverage.* The PDP sponsor assumes financial risk on a prospective basis for benefits that it offers under a prescription drug plan and that is not covered under section 1860D–15(b) of the Act.

(b) *Reinsurance permitted.* The PDP sponsor may obtain insurance or make other arrangements for the cost of coverage provided to any enrollee to the extent that the sponsor is at risk for providing the coverage.

(c) *Solvency for unlicensed sponsors.* In the case of a PDP sponsor that is not described in § 423.401(a)(1) and for which a waiver is approved under § 423.410 or § 423.415, the sponsor must meet the requirements in § 423.420.

§ 423.410 Waiver of certain requirements to expand choice.

(a) *Authorizing waiver.* In the case of an entity that seeks to offer a prescription drug plan in a State, CMS waives the licensure requirement at § 423.401(a)(1), which requires that the entity be licensed in that State if CMS determines, based on the application and other evidence presented, that any of the grounds for approval of the application described in paragraphs (b), (c), or (d) of this section are met.

(b) *Grounds for approval of waivers.* Subject to the waiver requirements specified in § 423.410(e), waivers may be

granted under any of the following conditions:

(1) *Failure to act on licensure application on a timely basis.* The State failed to complete action on the licensing application within 90 days of the date that the State received a substantially complete application.

(2) *Denial of application based on discriminatory treatment.* The State denied the license application on either of the following bases—

(i) The State imposed material requirements, procedures, or standards (other than solvency requirements) not generally applied by the State to other entities engaged in a substantially similar business; or

(ii) The State required, as a condition of licensure, that the organization offer any product or plan other than a prescription drug plan.

(3) *Denial of application based on application of solvency requirements.* The State denied the licensure application, in whole or in part, on the basis of the PDP sponsor's failure to meet solvency requirements and

(i) The solvency requirements are different from the solvency standards CMS establishes in accordance with § 423.420; or

(ii) CMS determines that the State imposed, as a condition of licensing, any documentation or information requirements relating to solvency that are different from the standards CMS establishes in accordance with § 423.420.

(4) *Grounds other than those required by Federal Law.* The application by a State of any grounds other than those required under Federal law.

(c) *Waiver when licensing process not in effect.* The grounds for approval specified in paragraph (b)(1) of this section are deemed met if CMS determines that the State does not have a licensing process in effect for PDP sponsors.

(d) *Special waiver for plan years beginning before January 1, 2008.* For plan years beginning before January 1, 2008, if the State has a prescription drug plan or PDP sponsor licensing process in effect, CMS grants a waiver upon a demonstration that an applicant to become a PDP sponsor has submitted a substantially completed application for licensure to the State.

(e) *Waiver requirements.* The following rules apply to waiver applications or waivers granted under this section.

(1) *Treatment of waiver.* The waiver applies only to that State, is effective for 36 months, and cannot be renewed.

(2) *Prompt action on application.* CMS grants or denies a waiver application under this section within 60 days after CMS determines that a substantially complete waiver application is received by CMS.

(3) *A State that does not have a PDP sponsor.* In the case of a State that does not have a PDP sponsor licensing process, the 36 month limitation on the waiver discussed in paragraph (e)(1) of this section does not apply, and the waiver may continue in effect for a given State as long as CMS determines that the State does not have a PDP sponsor licensing process in effect, and the PDP sponsor meets the solvency standards of § 423.420(a).

[70 FR 4525, Jan. 28, 2005, as amended at 73 FR 20506, Apr. 15, 2008]

§ 423.415 Temporary waivers for entities seeking to offer a prescription drug plan in more than one State in a region.

(a) *General rule.* Subject to paragraphs (b) and (c) of this section, if an applicant seeking to become a PDP sponsor wishes to operate in more than one State in a region, and is licensed as a risk bearing entity in at least one State in the region, then the applicant may receive a temporary regional plan waiver for the States in which it is not licensed.

(b) *Filing of application.* The applicant must demonstrate to the satisfaction of CMS that it filed the necessary licensure applications with each State in the region for which it does not already have State licensure, except that no application is necessary if CMS determines that the State does not have a licensing process for potential PDP sponsors.

(c) *Processing of application for temporary waiver.* The Secretary determines the time period appropriate for the timely processing of the application for temporary waiver.

(d) *Time limit for temporary waiver.* The temporary waiver expires at the end of time period that the Secretary

determines is appropriate for timely processing of the application by the State or States, but in no case is a waiver extend beyond the end of the calendar year.

§ 423.420 Solvency standards for non-licensed entities.

(a) *Establishment and publication.* CMS establishes and publishes reasonable financial solvency and capital adequacy standards for entities specified in paragraph (b) of this section.

(b) *Compliance with standards.* A PDP sponsor that is not licensed by a State and for which a waiver application is approved by CMS under § 423.410 or § 423.415 must maintain reasonable financial solvency and capital adequacy in accordance with the standards established by CMS under paragraph (a) of this section.

§ 423.425 Licensure does not substitute for or constitute certification.

The fact that a Part D sponsor is State licensed or has a waiver application approved under § 423.410 or § 423.415 does not deem the sponsor to meet other requirements imposed under this part for a Part D sponsor.

§ 423.440 Prohibition of State imposition of premium taxes; relation to State laws.

(a) *Federal preemption of State law.* The standards established under this part supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) for Part D plans offered by Part D plan sponsors.

(b) *State premium taxes prohibited—(1) Basic rule.* No premium tax, fee, or other similar assessment may be imposed by any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, the Mariana Islands or any of their political subdivisions or other governmental authorities for any payment CMS makes on behalf of Part D plan or enrollees under this part (including the direct subsidy, reinsurance payments, and risk corridor payments); or for any payment made to Part D plans by a beneficiary or by a third party on behalf of a beneficiary.

(2) *Construction.* Nothing in this section may be construed to exempt any Part D plan sponsor from taxes, fees, or other monetary assessments related to the net income or profit that accrues to, or is realized by, the organization from business conducted under this part, if that tax, fee, or payment is applicable to a broad range of business activity.

Subpart J—Coordination of Part D Plans With Other Prescription Drug Coverage

§ 423.452 Scope.

This section sets forth the application of Part D rules to Part C plans; establishes waivers for MA-PD plans, employer-sponsored group prescription drug plans, cost plans, and PACE organizations; and establishes requirements for coordination of benefits with State Pharmaceutical Assistance Programs and other providers of prescription drug coverage.

§ 423.454 Definitions.

For purposes of this part, the following definitions apply—

Employer-sponsored group prescription drug plan means, prescription drug coverage offered to retirees who are Part D eligible individuals under employment-based retiree health coverage. For purposes of this subpart, employment-based retiree health coverage is such coverage (as defined in § 423.882) provided through a Medicare Part D plan, or for which a plan sponsor could qualify for payments under subpart R of this part.

State Pharmaceutical Assistance Program (SPAP) means a State program that meets the requirements described under § 423.464(e)(1).

[70 FR 4525, Jan. 28, 2005, as amended at 77 FR 1882, Jan. 12, 2012]

§ 423.458 Application of Part D rules to certain Part D plans on and after January 1, 2006.

(a) *Relationship to Part C.* Except as otherwise provided in this part, the requirements of this part apply to prescription drug coverage provided by