

(ii) The full identification of the compendium that is the subject of the request, including name, publisher, edition if applicable, date of publication, and any other information needed for the accurate and precise identification of the specific compendium.

(iii) A complete written copy of the compendium that is the subject of the request.

(iv) The specific action that is requested of CMS.

(v) Materials that the requestor must submit for CMS review in support of the requested action.

(vi) A single compendium as its subject.

(d) CMS may at its discretion combine and consider multiple requests that refer to the same compendium.

(e) For the purposes of this section, publication by CMS may be accomplished by posting on the CMS Web site.

[72 FR 66404, Nov. 27, 2007, as amended at 74 FR 62013, Nov. 25, 2009]

**§ 414.940 Refund for certain discarded single-dose container or single-use package drugs.**

(a) *Provision of information to manufacturers*—(1) *In general.* For each calendar quarter beginning on or after January 1, 2023, CMS reports to each manufacturer (as defined in § 414.802) of a refundable single-dose container or single-use package drug the following for the calendar quarter:

(i) Information on the total number of billing units of the billing and payment code of such drug, if any, that were discarded during such quarter, as determined by the JW modifier (or any successor modifier that includes the same data).

(ii) The refund amount that the manufacturer is liable for pursuant to paragraph (a)(3) of this section.

(iii) For purposes of this section, the term billing unit means the identifiable quantity associated with a billing and payment code, as established by CMS.

(2) *Exclusion of units of packaged drugs.* The total number of billing units of the billing and payment code of a refundable single-dose container or single-use package drug of a manufacturer furnished during a calendar quarter for

purposes of paragraph (a)(1) of this section, and the determination of the estimated total allowed charges for the drug in the quarter for purposes of paragraph (c)(2) of this section, shall not include such units that are packaged into the payment amount for an item or service and are not separately payable.

(3) *Reports.* Reports are sent once annually.

(b) *Manufacturer requirement.* For each calendar quarter beginning on or after January 1, 2023, the manufacturer of a refundable single-dose container or single-use package drug shall, for such drug, pay a refund that is equal to the amount determined in accordance with paragraph (c) of this section for such drug for such quarter.

(1) Refund amounts that the manufacturer is liable for pursuant to this paragraph are paid in 12-month intervals, in a manner specified by CMS.

(2) In the case that a disputed report results in a refund amount due, refund amounts that the manufacturer is liable for pursuant to this paragraph shall be paid no later than 30 days following the resolution of the dispute.

(3) Amounts paid as refunds pursuant to this paragraph shall be deposited into the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Act.

(c) *Refund amount.* The amount of the refund specified in this paragraph is, with respect to a refundable single-dose container or single-use package drug of a manufacturer assigned to a billing and payment code for a calendar quarter beginning on or after January 1, 2023, an amount equal to the estimated amount (if any) by which—

(1) The product of:

(i) The total number of units of the billing and payment code for such drug that were discarded during such quarter; and

(ii) The amount of payment determined for such drug or biological under section 1847A(b)(1)(B) or (C) of the Act, as applicable, for such quarter.

(2) Exceeds an amount equal to the applicable percentage of the estimated total allowed charges for such drug for the quarter.

(3) For purposes of paragraph (c)(1)(ii) of this section, the term “applicable percentage” means 10 percent except where an increased applicable percentage is applied in paragraph (d) of this section.

(d) *Treatment of drugs that have unique circumstances.* For purposes of paragraph (c)(1)(ii) of this section, the term “applicable percentage” means

(1) 35 percent for drugs that are reconstituted with a hydrogel and have variable dosing based on patient-specific characteristics

(2) [Reserved]

(e) *Dispute resolution.* Each manufacturer has an opportunity to dispute information in the report described in paragraph (a) of this section by submitting an error report as described in this paragraph.

(1) *Error report information.* To assert that there have been one or more errors in the report, a manufacturer must submit a dispute with each asserted error and provide the following information—

(i) Manufacturer name and address;

(ii) The name, telephone number, and email address of one or more employees or representatives of the manufacturer.

(iii) For a mathematical calculation error, the specific calculation element(s) that the manufacturer disputes and its proposed corrected calculation;

(iv) For any other asserted error, an explanation of the nature of the error, how the error affects the refund calculation, an explanation of why the manufacturer believes that an error occurred, the proposed correction to the error, and an explanation of why CMS should use the proposed corrected data.

(2) *Form, manner, and timing of submission.* Each manufacturer asserting an error must submit its error report(s), in the form and manner specified by CMS, within 30-days after the issuance of the report.

(f) *Enforcement.* (1) *Manufacturer audits.* Each manufacturer of a refundable single-dose container or single-use package drug that is required to provide a refund under this section shall be subject to periodic audit with respect to such drug and such refunds.

(2) *Civil money penalty.* The Secretary shall impose a civil money penalty on

a manufacturer of a refundable single-dose container or single-use package drug who has failed to comply with the requirement under paragraph (b) of this section for such drug for a calendar quarter in an amount equal to the sum of—

(i) The amount that the manufacturer would have paid under such paragraph with respect to such drug for such quarter; and

(ii) 25 percent of such amount.

[87 FR 70226, Nov. 18, 2022, as amended at 88 FR 15920, Mar. 15, 2023]

### Subpart L—Supplying and Dispensing Fees

#### §414.1000 Purpose.

This subpart implements section 1842(o)(2) and section 1842(o)(6) of the Act, as added by section 303(e)(2) of the MMA, by specifying a supplying fee for drugs and biologicals covered under Part B of Title XVIII of the Act that are described in sections 1861(s)(2)(J), 1861(s)(2)(Q), and 1861(s)(2)(T) of the Act.

[69 FR 66425, Nov. 15, 2004]

#### §414.1001 Basis of payment.

(a) *Supplying fees.* Beginning in CY 2006—

(1) A supplying fee of \$24 is paid to a pharmacy for the first prescription of drugs and biologicals described in sections 1861(s)(2)(J), 1861(s)(2)(Q), and 1861(s)(2)(T) of the Act, that the pharmacy provided to a beneficiary during a 30-day period.

(2) A supplying fee of \$16 is paid to a pharmacy for each prescription following the first prescription (as specified in paragraph (a)(1) of this section) of drugs and biologicals described in sections 1861(s)(2)(J), 1861(s)(2)(Q), and 1861(s)(2)(T) of the Act, that the pharmacy provided to a beneficiary during a 30-day period.

(3) A separate supplying fee is paid to a pharmacy for each prescription of drugs and biologicals described in sections 1861(s)(2)(J), 1861(s)(2)(Q), and 1861(s)(2)(T) of the Act.

(b) *Supplying fees following transplant.* Beginning CY 2006—(1) A supplying fee of \$50 is paid to pharmacy for the initial supplied prescription of drugs and