

§ 422.266 Beneficiary rebates.

(a) *Calculation of rebate.* (1) For 2006 through 2011, an MA organization must provide to the enrollee a monthly rebate equal to 75 percent of the average per capita savings (if any) described in § 422.264(b) for MA local plans and § 422.264(d) for MA regional plans.

(2) For 2012 and subsequent years, an MA organization must provide to the enrollee a monthly rebate equal to a specified percentage of the average per capita savings (if any) at § 422.264(b) for MA local plans and § 422.264(d) for MA regional plans. For 2012 and 2013, this percentage is based on a combination of the (a)(1) rule of 75 percent and the (a)(2)(ii) rules that set the percentage based on the plan's quality rating under a 5 star rating system, as determined by the Secretary under § 422.258(d)(7). For 2014 and subsequent years, this percentage is determined based only on the paragraph (a)(2)(ii) of this section.

(i) *Applicable rebate percentage for 2012 and 2013.* Subject to paragraphs (a)(2)(iii) and (iv) of this section, the transitional applicable rebate percentage is, for a year, the sum of two amounts as follows:

(A) *For 2012.* Two-thirds of the old proportion of 75 percent of the average per capita savings; and one-third of the new proportion assigned the plan under paragraph (a)(2)(ii) of this section, based on the quality rating specified in § 422.258(d)(7).

(B) *For 2013.* One-third of the old proportion of 75 percent of the average per capita savings; and two-thirds of the new proportion assigned the plan under paragraph (d)(2)(ii) of this section, based on the quality rating at § 422.258(d)(7).

(ii) *Final applicable rebate percentage.* For 2014 and subsequent years, and subject to paragraphs (a)(2)(iii) and (iv) of this section, the final applicable rebate percentage is as follows:

(A) In the case of a plan with a quality rating under such system of at least 4.5 stars, 70 percent of the average per capita savings;

(B) In the case of a plan with a quality rating under such system of at least 3.5 stars and less than 4.5 stars, 65 percent of the average per capita savings.

(C) In the case of a plan with a quality rating under such system of less than 3.5 stars, 50 percent of the average per capita savings.

(iii) *Treatment of low enrollment contracts.* For 2012, in the case of a plan described at § 422.258(d)(7)(iv), the plan must be treated as having a rating of 4.5 stars for the purpose of determining the beneficiary rebate amount.

(iv) *Treatment of new MA plans.* For 2012 or a subsequent year, a new MA plan defined at § 422.252 that meets the criteria specified by the Secretary for purposes of § 422.258(d)(7)(v) must be treated as a qualifying plan under § 422.258(d)(7)(i), except that plan must be treated as having a rating of 3.5 stars for purposes of determining the beneficiary rebate amount.

(b) *Form of rebate.* The rebate required under this paragraph must be provided by crediting the rebate amount to one or more of the following:

(1) *Supplemental health care benefits.* MA organizations may apply all or some portion of the rebate for a plan toward payment for non-drug supplemental health care benefits for enrollees as described in § 422.102, which may include the reduction of cost sharing for benefits under original Medicare and additional health care benefits that are not benefits under original Medicare. MA organizations also may apply all or some portion of the rebate for a plan toward payment for supplemental drug coverage described at § 423.104(f)(1)(ii), which may include reduction in cost sharing and coverage of drugs not covered under Part D. The rebate, or portion of rebate, applied toward supplemental benefits may only be applied to a mandatory supplemental benefit, and cannot be used to fund an optional supplemental benefit.

(2) *Payment of premium for prescription drug coverage.* MA organizations that offer a prescription drug benefit may credit some or all of the rebate toward reduction of the MA monthly prescription drug beneficiary premium.

(3) *Payment toward Part B premium.* MA organizations may credit some or all of the rebate toward reduction of

§ 422.270

the Medicare Part B premium (determined without regard to the application of subsections (b), (h), and (i) of section 1839 of the Act).

(c) *Disclosure relating to rebates.* MA organizations must disclose to CMS information on the amount of the rebate provided, as required at § 422.254(d). MA organizations must distinguish, for each MA plan, the amount of rebate applied to enhance original Medicare benefits from the amount of rebate applied to enhance Part D benefits. [70 FR 4725, Jan. 28, 2005, as amended at 76 FR 21567, Apr. 15, 2011]

§ 422.270 Incorrect collections of premiums and cost-sharing.

(a) *Definitions.* As used in this section—

(1) Amounts incorrectly collected—

(i) Means amounts that—

(A) Exceed the limits approved under § 422.262;

(B) In the case of an MA private fee-for-service plan, exceed the MA monthly basic beneficiary premium or the MA monthly supplemental premium submitted under § 422.262; and

(C) In the case of an MA MSA plan, exceed the MA monthly beneficiary supplemental premium submitted under § 422.262, or exceed permissible cost sharing amounts after the deductible has been met per § 422.103; and

(ii) Includes amounts collected from an enrollee who was believed to be entitled to Medicare benefits but was later found not to be entitled.

(2) *Other amounts due* are amounts due for services that were—

(i) Emergency, urgently needed services, or other services obtained outside the MA plan; or

(ii) Initially denied but, upon appeal, found to be services the enrollee was entitled to have furnished by the MA organization.

(b) *Basic commitments.* An MA organization must agree to refund all amounts incorrectly collected from its Medicare enrollees, or from others on behalf of the enrollees, and to pay any other amounts due the enrollees or others on their behalf.

(c) *Refund methods*—(1) *Lump-sum payment.* The MA organization must use lump-sum payments for the following:

(i) Amounts incorrectly collected that were not collected as premiums.

(ii) Other amounts due.

(iii) All amounts due if the MA organization is going out of business or terminating its MA contract for an MA plan(s).

(2) *Premium adjustment or lump-sum payment, or both.* If the amounts incorrectly collected were in the form of premiums, or included premiums as well as other charges, the MA organization may refund by adjustment of future premiums or by a combination of premium adjustment and lump-sum payments.

(3) *Refund when enrollee has died or cannot be located.* If an enrollee has died or cannot be located after reasonable effort, the MA organization must make the refund in accordance with State law.

(d) *Reduction by CMS.* If the MA organization does not make the refund required under this section by the end of the contract period following the contract period during which an amount was determined to be due to an enrollee, CMS will reduce the premium the MA organization is allowed to charge an MA plan enrollee by the amounts incorrectly collected or otherwise due. In addition, the MA organization would be subject to sanction under subpart O of this part for failure to refund amounts incorrectly collected from MA plan enrollees.

§ 422.272 Release of MA bid pricing data.

(a) *Terminology.* For purposes of this section, the term “MA bid pricing data” means the following information that MA organizations must submit for each MA plan bid for the annual bid submission:

(1) The pricing-related information described at § 422.254(a)(1); and

(2) The information required for MSA plans, described at § 422.254(e).

(b) *Release of MA bid pricing data.* Subject to paragraph (c) of this section and to the annual timing identified in paragraph (d) of this section, CMS will release to the public MA bid pricing data for MA plan bids accepted or approved by CMS for a contract year under § 422.256. The annual release will contain MA bid pricing data from the

42 CFR Ch. IV (10–1–23 Edition)