

(C) Electronically when communicating with a beneficiary through email, online chat, or other electronic messaging platform.

(ii) When applicable, disclose to the beneficiary that he or she is being transferred to a licensed agent who can enroll him or her into a new plan.

[86 FR 6129, Jan. 19, 2021, as amended at 87 FR 27901, May 9, 2022; 88 FR 22342, Apr. 12, 2023]

**§ 423.2276 Employer group retiree marketing.**

Part D sponsors may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the Part D sponsor, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

**Subpart W—Medicare Coverage Gap Discount Program**

SOURCE: 77 FR 22172, Apr. 12, 2012, unless otherwise noted.

**§ 423.2300 Scope.**

This subpart implements provisions included in sections 1860D–14A and 1860D–43 of the Act. This subpart sets forth requirements regarding the following:

- (a) Condition for coverage of applicable drugs under Part D.
- (b) The Medicare Coverage Gap Discount Program Agreement.
- (c) Coverage gap discount payment processes for Part D sponsors.
- (d) Provision of applicable discounts on applicable drugs for applicable beneficiaries.
- (e) Manufacturer audit and dispute resolution processes.
- (f) Resolution of beneficiary disputes involving coverage gap discounts.
- (g) Compliance monitoring and civil money penalties.
- (h) The termination of the Discount Program Agreement.

**§ 423.2305 Definitions.**

As used in this subpart, unless otherwise specified—

*Applicable discount* means 50 percent or, with respect to a plan year after

plan year 2018, 70 percent of the portion of the negotiated price (as defined in this section) of the applicable drug of a manufacturer that falls within the coverage gap and that remains after such negotiated price is reduced by any supplemental benefits that are available.

*Applicable number of calendar days* means, with respect to claims for reimbursement submitted electronically, 14 days, and otherwise, 30 days.

*Date of dispensing* means the date of service.

*Labeler code* means the first segment of the Food and Drug Administration national drug code (NDC) that identifies a particular manufacturer.

*Manufacturer* means any entity which is engaged in the production, preparation, propagation, compounding, conversion or processing of prescription drug products, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. For purposes of the Discount Program, such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law, but includes entities otherwise engaged in repackaging or changing the container, wrapper, or labeling of any applicable drug product in furtherance of the distribution of the applicable drug from the original place of manufacture to the person who makes the final delivery or sale to the ultimate consumer or user.

*Medicare Coverage Gap Discount Program* (or Discount Program) means the Medicare coverage gap discount program established under section 1860D–14A of the Act.

*Medicare Coverage Gap Discount Program Agreement* (or Discount Program Agreement) means the agreement described in section 1860D–14A(b) of the Act.

*Medicare Part D discount information* means the information sent from CMS or the TPA to the manufacturer along with each quarterly invoice that is derived from applicable data elements available on prescription drug events as determined by CMS.

*National Drug Code* (NDC) means the unique identifying prescription drug product number that is listed with the