

(2) The manufacturer must provide the TPA with 60 days notice of the reasonable basis for the audit and a description of the information required for the audit.

(3) The manufacturer must have the right to audit a statistically significant sample of data and information held by the TPA that were used to determine applicable discounts for applicable drugs having NDCs with the manufacturer's FDA-assigned labeler code(s). Such data and information will be made available on-site, and with the exception of work papers, such information cannot be removed from the audit site.

(4) The auditor for the manufacturer may release only an opinion of the audit results and is prohibited from releasing other information obtained from the audit, including work papers, to its client, employer, or any other party.

(b) *Manufacturer audits.* (1) A manufacturer is subject to periodic audit by CMS no more often than annually, directly or through third parties, as specified in this section.

(2) CMS provides the manufacturer with 60 days notice of the audit and a description of the information required for the audit.

(3) CMS has the right to audit appropriate data, including data related to a manufacturer's FDA-assigned labeler codes, NDC last lot expiration dates, utilization, and pricing information relied on by the manufacturer to dispute quarterly invoices, and any other data CMS determines are necessary to carry out the Discount Program.

(c) *Dispute resolution.* (1) Manufacturers may dispute applicable discounts invoiced to the manufacturer on quarterly invoices by providing notice of the dispute to the TPA in a manner specified by CMS within 60 days of receipt of the information that is the subject of the dispute.

(2) Such notice must be accompanied by supporting evidence that is material, specific, and related to the dispute in a manner specified by CMS.

(3) The manufacturer must not withhold any invoiced discount payments pending dispute resolution with the sole exception of invoiced amounts for applicable drugs that do not have label-

er codes provided by the manufacturer to CMS in accordance with § 423.2315(b)(4). If payment is withheld in accordance with this paragraph, the manufacturer must notify the TPA and applicable Part D sponsors within 38 days of receipt of the applicable invoice that payment is being withheld for this reason.

(4) If the manufacturer receives an unfavorable determination from the TPA, or the dispute is not resolved within 60 calendar days of the TPA's receipt of the notice of dispute, the manufacturer may request review by the independent review entity contracted by CMS within—

(i) Thirty calendar days of the unfavorable determination; or

(ii) Ninety calendar days after the TPA's receipt of the notice of dispute if dispute is not resolved within 60 days, whichever is earlier.

(5) The independent review entity must make a determination within 90 calendar days of receipt of the manufacturer's request for review.

(6)(i) CMS or a manufacturer that receives an unfavorable determination from the independent review entity may request review by the CMS Administrator within 30 calendar days of receipt of the notification of such determination.

(ii) The decision of the CMS Administrator is final and binding.

(7) CMS adjusts future invoices (or implements an alternative reimbursement process if determined necessary by CMS) if the dispute is resolved in favor of the manufacturer.

[77 FR 22172, Apr. 12, 2012, as amended at 85 FR 72909, Nov. 16, 2020]

#### **§ 423.2335 Beneficiary dispute resolution.**

The Part D coverage determination and appeals process as described in §§ 423.558 through 423.638 applies to beneficiary disputes involving the availability and amount of applicable discounts under the Discount Program.

#### **§ 423.2340 Compliance monitoring and civil money penalties.**

(a) *General rule.* CMS monitors compliance by a manufacturer with the terms of the Discount Program Agreement.

(b) *Basis for imposing civil money penalties.* CMS imposes a civil money penalty (CMP) on a manufacturer that fails to provide applicable beneficiaries applicable discounts for applicable drugs of the manufacturer in accordance with the Discount Program Agreement.

(c) *Determination of the civil money penalty amounts.* CMS imposes a CMP for each failure by a manufacturer to provide an applicable discount in accordance with the Discount Program Agreement equal to the sum of the following:

(1) The amount of applicable discount the manufacturer would have paid under the Discount Program Agreement, which will then be used to pay the applicable discount that the manufacturer had failed to provide.

(2) Twenty-five percent of such amount.

(d) *Procedures for imposing civil money penalties.* If CMS makes a determination to impose a CMP described in paragraph (c) of this section, CMS sends a written notice of its decision to impose a CMP to include the following:

(1) A description of the basis for the determination.

(2) The basis for the penalty.

(3) The amount of the penalty.

(4) The date the penalty is due.

(5) The manufacturer's right to a hearing (as specified in § 423.1006).

(6) Information about where to file the request for hearing.

(e) *Collection of civil money penalties imposed by CMS.* (1) When a manufacturer does not request a hearing, CMS initiates the collection of the CMP following the expiration of the timeframe for requesting an ALJ hearing as specified in § 423.1020.

(2) If a manufacturer requests a hearing and the Administrator upholds CMS' decision to impose a CMP, CMS may initiate collection of the CMP once the Administrator's decision is final.

(f) *Other applicable provisions.* The provisions of section 1128A of the Act (except subsections (a) and (b) of section of 1128A of the Act) apply to CMPs under this section to the same extent that they apply to a CMP or procedure under section 1128A(a) of the Act.

**§ 423.2345 Termination of Discount Program Agreement.**

(a)(1) CMS may terminate the Discount Program Agreement for a knowing and willful violation of the requirements of the agreement or other good cause shown in relation to the manufacturer's participation in the Discount Program.

(2) The termination must not be effective earlier than 30 days after the date of notice to the manufacturer of such termination and must not be effective prior to resolution of timely appeal requests received in accordance with paragraphs (a)(4) and (5) of this section.

(3)(i) CMS provides the manufacturer with an opportunity to cure any ground for termination for cause or to show the manufacturer is in compliance with the Discount Program Agreement within 30 calendar days of receipt of the written termination notice.

(ii) If the manufacturer cures the violation, or establishes that it was in compliance within the cure period, CMS repeals the termination notice by written notice.

(4) CMS provides upon request a manufacturer with a hearing with the hearing officer concerning such termination if requested in writing within 15 calendar days of receiving notice of the termination. The hearing takes place prior to the effective date of the termination with sufficient time for such effective date to be repealed if CMS determines appropriate.

(5)(i) CMS or a manufacturer that has received an unfavorable determination from the hearing officer may request review by the CMS Administrator within 30 calendar days of receipt of the notification of such determination.

(ii) The decision of the CMS Administrator is final and binding.

(b)(1) The manufacturer may terminate the Discount Program Agreement for any reason.

(2) Such termination is effective as of the day after the end of the calendar year if the termination occurs before January 30 of a calendar year, or as of the day after the end of the succeeding calendar year if the termination occurs on or after January 30 of a calendar year.