

Act for the reference biological product (as defined in § 414.902).

[69 FR 66424, Nov. 15, 2004, as amended at 70 FR 70332, Nov. 21, 2005; 71 FR 69788, Dec. 1, 2006; 72 FR 66402, Nov. 27, 2007; 73 FR 69937, Nov. 19, 2008; 73 FR 80304, Dec. 31, 2008; 74 FR 62012, Nov. 25, 2009; 75 FR 73626, Nov. 29, 2010; 76 FR 73473, Nov. 28, 2011; 77 FR 69368, Nov. 16, 2012; 80 FR 71382, Nov. 16, 2015; 82 FR 53363, Nov. 15, 2017; 83 FR 60074, Nov. 23, 2018; 85 FR 71197, Nov. 6, 2020; 86 FR 65669, Nov. 19, 2021; 87 FR 70226, Nov. 18, 2022; 88 FR 79532, Nov. 16, 2023]

§ 414.906 Competitive acquisition program as the basis for payment.

(a) *Program payment.* Beginning in 2006, as an alternative to payment under § 414.904, payment for a CAP drug may be made through the CAP if the following occurs:

(1) The CAP drug is supplied under the CAP by an approved CAP vendor as specified in § 414.908(b).

(2) The claim for the prescribed drug is submitted by the approved CAP vendor that supplied the drug, and payment is made only to that vendor.

(3) The approved CAP vendor collects applicable deductible and coinsurance with respect to the drug furnished under the CAP only after the drug is administered to the beneficiary.

(4) The approved CAP vendor delivers CAP drugs directly to the participating CAP physician in unopened vials or other original containers as supplied by the manufacturer or from a distributor that has acquired the products directly from the manufacturer and includes language with the shipping material stating that the drug was acquired in a manner consistent with all statutory requirements. If the approved CAP vendor opts to split shipments, the participating CAP physician must be notified in writing which can be included with the initial shipment, and each incremental shipment must arrive at least 2 business days before the anticipated date of administration.

(5) The approved CAP vendor bills Medicare only for the amount of the drug administered to the patient, and the beneficiary's coinsurance will be calculated from the quantity of drug that is administered.

(b) *Exceptions to competitive acquisition.* Specific CAP drugs, including a

category of these drugs, may be excluded from the CAP if the application of competitive bidding to these drugs—

(1) Is not likely to result in significant savings; or

(2) Is likely to have an adverse impact on access to those drugs.

(c) *Computation of payment amount.* Except as specified in paragraph (c)(2) of this section, payment for CAP drugs is based on bids submitted as a result of the bidding process as described in § 414.910 of this subpart.

(1) *Single payment amount.* (i) A single payment amount for each CAP drug in the competitive acquisition area is determined on the basis of the bids submitted and accepted and updated from the bidding period to the beginning of the payment year.

(ii) The single payment amount is then updated quarterly based on the approved CAP vendor's reasonable net acquisition costs for that category as determined by CMS, and limited by the weighted payment amount established under section 1847A of the Act across all drugs for which a composite bid is required in the category.

(iii) The payment amount for each other drug for which the approved CAP vendor submits a bid in accordance with § 414.910 of this subpart and each other drug that is approved by CMS for the approved CAP vendor to furnish under the CAP is also updated quarterly based on the approved CAP vendor's reasonable net acquisition costs for each HCPCS code and limited by the payment amount established under section 1847A of the Act.

(2) *Updates to payment amount.* (i) The first update is effective on the first day of claims processing for the first quarter of an approved CAP vendor's contract. The first quarterly contract update is based on the reasonable net acquisition cost (RNAC) data reported to CMS or its designee for any purchases of drug before the beginning of CAP claims processing for the contract period and reported to CMS no later than 30 days before the beginning of CAP claims processing.

(ii) For subsequent quarters, each approved CAP vendor must report to CMS or its designee RNAC data for a quarter of CAP drug purchases within 30 days of the close of that quarter.

(iii) For all quarters, only RNAC data from approved CAP vendors that are supplying CAP drugs under their CAP contract at the time updates are being calculated must be used to calculate updated CAP payment amounts.

(iv) CMS excludes such RNAC data submitted by an approved CAP vendor if, during the time calculations are being done, CMS knows that the approved CAP vendor will not be under contract for the applicable quarterly update.

(v) The payment amount weights must be calculated based on the more recent of the following:

(A) Contract bidding weights.

(B) CAP claims data.

(vi) The payment limit must be determined using the most recent payment limits available to CMS under section 1847A of the Act.

(vii) The following payment amount update calculation must be applied for the group of all drugs for which a composite bid is required.

(A) The most recent previous composite payment amount for the group is updated by—

(1) Calculating the percent change in reasonable net acquisition costs for each approved CAP vendor;

(2) Calculating the median of all participating approved CAP vendors' adjusted CAP payment amounts; and

(3) Limiting the payment as described in paragraph (c)(1) of this section.

(B) The median percent change, subject to the limit described in paragraph (c)(1) of this section, must be the update percentage for that quarter.

(C) The single update percentage must be applied to the payment amount for each drug in the group of drugs for which a composite bid is required in the category.

(viii) The following payment amount update calculation must be applied for each of the following items: Each HCPCS code not included in the composite bid list; Each HCPCS code added to the drug list during the contract period; and each drug that has not yet been assigned a HCPCS code, but for which a HCPCS code will be established.

(A) The most recent previous payment amount for each drug must be up-

dated by calculating the percent change in reasonable net acquisition costs for each approved CAP vendor, then calculating the median of all participating approved CAP vendors' adjusted CAP payment amounts.

(B) The median percent change calculated for each drug, subject to the limit described in paragraph (c)(1) of this section, must be applied to the payment amount for each drug.

(3) *Alternative payment amount.* The alternative payment amount established under section 1847A of the Act may be used to establish payment for a CAP drug if—

(i) The drug is properly assigned to a category established under the CAP; and

(ii) It is a drug for which a HCPCS code must be established.

(d) *Adjustments.* There is an established process for adjustments to payments to account for drugs that were billed, but which were not administered.

(e) *Resupply of participating CAP physician drug inventory.* A participating CAP physician may acquire drugs under the CAP to resupply his or her private inventory if all of the following requirements are met:

(1) The drugs were required immediately.

(2) The participating CAP physician could not have anticipated the need for the drugs.

(3) The approved CAP vendor could not have delivered the drugs in a timely manner. For purposes of this section, timely manner means delivery within the emergency delivery timeframe, as defined in § 414.902.

(4) The participating CAP physician administered the drugs in an emergency situation, as defined in § 414.902.

(f) *Substitution or addition of drugs on an approved CAP vendor's CAP drug list—*(1) *Short-term substitution of a CAP drug.* On an occasional basis (for a period of time less than 2 weeks), an approved CAP vendor may agree to furnish a substitute NDC within a HCPCS code on the approved CAP vendor's CAP drug list if the approved CAP vendor—

(i) Is willing to accept the payment amount that was established for the HCPCS code under this section; and

(ii) Obtains the participating CAP physician's prior approval.

(2) *Long-term substitution or addition of a CAP drug.* An approved CAP vendor may submit a request, as specified in paragraph (f)(3) of this section, for approval to substitute an NDC supplied by the approved CAP vendor for another NDC within the same HCPCS code or to add an NDC to the approved CAP vendor's drug list, if at least one of the following criteria is met:

(i) Proposed substitution of an NDC for a period of 2 weeks or longer.

(ii) Proposed addition of one or more NDCs within a HCPCS code included in the CAP drug category specified by CMS or on the approved CAP vendor's approved CAP drug list.

(iii) Proposed addition of—

(A) One or more newly issued HCPCS codes; or

(B) One of the following single indication orphan drug J codes or their updates: J0205, J0256, J9300, J1785, J2355, J3240, J7513, J9010, J9015, J9017, J9160, J9216.

(iv) Beginning January 1, 2007, the proposed addition of a drug(s) that has not yet been assigned a HCPCS code, but for which a HCPCS code must be established.

(v) On or after January 1, 2010, the proposed addition of drugs with similar therapeutic uses to drugs already supplied under the CAP by the approved CAP vendor(s).

(3) *Requesting the addition or substitution of CAP drug.* An approved CAP vendor that meets the one of the criteria specified in paragraph (f)(2) must submit a written request to CMS or its designee. The request must—

(i) Specify the NDC(s) and the respective HCPCS code that is to be added or substituted.

(ii) Address the rationale for the substitution or addition of the NDC(s) or the addition of the HCPCS code(s) as applicable; and

(iii) Address the impact of the substitution of the NDC(s) or the addition of the NDC(s) or HCPCS code(s), or both on—

(A) Patient and drug safety;

(B) Drug waste; and

(C) The potential for cost savings.

(iv) In the case of additions requested under paragraph (f)(2)(v) of this sec-

tion, address and document the need for such an expansion based on demand for the product(s).

(4) *Approval of a request(s).* CMS or its designee notifies the approved CAP vendor of its decision.

(i) Except as specified in paragraph (f)(4)(ii) of this section, an approved request is effective at the beginning of the next calendar quarter.

(ii) Approved substitutions for request based on a drug shortage or other exigent circumstance may become effective immediately provided that—

(A) CMS approves the immediate substitution; and

(B) The approved CAP vendor's notifies its CAP participating physicians of the substitution immediately following CMS approval.

(5) *Payment for an approved drug change(s).* The payment for—

(i) Substituted or added CAP drugs that are within a HCPCS code for which payment is computed under paragraph (c)(1) of this section is the single payment for that HCPCS code, as determined and updated in accordance with paragraph (c)(1) of this section; or

(ii) Added CAP drugs that are not within a HCPCS code for which payment is computed under paragraph (c)(1) of this section is specified under paragraph (c)(2) of this section.

(g) *Deletion of drugs on an approved CAP vendor's CAP drug list.* Deletion of drugs on an approved CAP vendor's CAP drug list due to unavailability requires a written request and approval as described in paragraphs (f)(3)(i) through (iii) and (f)(4) of this section.

[70 FR 39094, July 6, 2005, as amended at 70 FR 70333, Nov. 21, 2005; 71 FR 9460, Feb. 24, 2006; 74 FR 62012, Nov. 25, 2009]

§414.908 Competitive acquisition program.

(a) Participating CAP *physician selection of an approved CAP vendor.* (1) CMS provides the participating CAP physician with a process for the selection of an approved CAP vendor on an annual basis, with exceptions as specified in §414.908(a)(2). Participating CAP physicians will also receive information about the CAP in the enrollment process for Medicare participation set forth in section 1842(h) of the Act.