

defined in section 1395w-114c(g)(2) of this title, by a manufacturer)” after “by the individual or under the plan”.

Subsec. (f)(2)(A)(i). Pub. L. 117-169, § 11001(b)(1)(H)(ii), inserted “or part E of subchapter XI” after “this section”.

Subsec. (f)(2)(D). Pub. L. 117-328 added subpar. (D).

Subsec. (h). Pub. L. 117-169, § 11406(c)(1), inserted “and Insulin” after “Practices” in heading.

Pub. L. 117-169, § 11401(c)(1), added subsec. (h).

Subsec. (h)(1). Pub. L. 117-169, § 11406(c)(2), substituted “paragraph (8) or (9) of section 1395w-102(b) of this title” for “section 1395w-102(b)(8) of this title”.

2020—Subsec. (f)(2)(C). Pub. L. 116-260, § 112(a)(1), added subpar. (C).

Subsec. (f)(3). Pub. L. 116-260, § 112(a)(2), added par. (3).

2010—Subsec. (f)(2). Pub. L. 111-148 substituted “may be used—” for “may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.” in introductory provisions and added subpars. (A) and (B).

### Statutory Notes and Related Subsidiaries

#### CONSTRUCTION OF 2022 AMENDMENT

Nothing in amendment by section 11401(c)(1) of Pub. L. 117-169 to be construed as limiting coverage under this part for vaccines that are not recommended by the Advisory Committee on Immunization Practices, see section 11401(d) of Pub. L. 117-169, set out as a note under section 1395w-102 of this title.

### § 1395w-116. Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund

#### (a) Establishment and operation of Account

##### (1) Establishment

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the “Medicare Prescription Drug Account” (in this section referred to as the “Account”).

##### (2) Funding

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, such Account as provided in this part.

##### (3) Separate from rest of Trust Fund

Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

#### (b) Payments from Account

##### (1) In general

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including—

(A) payments under section 1395w-114 of this title (relating to low-income subsidy payments);

(B) payments under section 1395w-115 of this title (relating to subsidy payments and payments for fallback plans);

(C) payments to sponsors of qualified retiree prescription drug plans under section 1395w-132(a) of this title;

(D) payments with respect to administrative expenses under this part in accordance with section 401(g) of this title; and

(E) payments under section 1395w-114 of this title (relating to selected drug subsidy payments).

#### (2) Transfers to Medicaid account for increased administrative costs

The Managing Trustee shall transfer from time to time from the Account to the Grants to States for Medicaid account amounts the Secretary certifies are attributable to increases in payment resulting from the application of section 1396u-5(b) of this title.

#### (3) Payments of premiums withheld

The Managing Trustee shall make payment to the PDP sponsor or MA organization involved of the premiums (and the portion of late enrollment penalties) that are collected in the manner described in section 1395w-24(d)(2)(A) of this title and that are payable under a prescription drug plan or MA-PD plan offered by such sponsor or organization.

#### (4) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395f of this title.

#### (c) Deposits into Account

##### (1) Low-income transfer

Amounts paid under section 1396u-5(c) of this title (and any amounts collected or offset under paragraph (1)(C) of such section) are deposited into the Account.

##### (2) Amounts withheld

Pursuant to sections 1395w-113(c) and 1395w-24(d) of this title (as applied under this part), amounts that are withheld (and allocated) to the Account are deposited into the Account.

#### (3) Appropriations to cover Government contributions

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Account, an amount equivalent to the amount of payments made from the Account under subsection (b) plus such amounts as the Managing Trustee certifies is necessary to maintain an appropriate contingency margin, reduced by the amounts deposited under paragraph (1) or subsection (a)(2).

#### (4) Initial funding and reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part and to provide an initial contingency reserve, there are authorized to be appropriated to the Account, out of any moneys in the Treasury not otherwise appropriated, such amount as the Secretary certifies are required, but not to exceed 10 percent of the esti-

mated total expenditures from such Account in 2006.

**(5) Transfer of any remaining balance from Transitional Assistance Account**

Any balance in the Transitional Assistance Account that is transferred under section 1395w-141(k)(5) of this title shall be deposited into the Account.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-16, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2120; amended Pub. L. 117-169, title I, §11201(c)(3), Aug. 16, 2022, 136 Stat. 1888.)

**Editorial Notes**

AMENDMENTS

2022—Subsec. (b)(1)(E). Pub. L. 117-169 added subpar. (E).

SUBPART 3—APPLICATION TO MEDICARE ADVANTAGE PROGRAM AND TREATMENT OF EMPLOYER-SPONSORED PROGRAMS AND OTHER PRESCRIPTION DRUG PLANS

**§ 1395w-131. Application to Medicare Advantage program and related managed care programs**

**(a) Special rules relating to offering of qualified prescription drug coverage**

**(1) In general**

An MA organization on and after January 1, 2006—

(A) may not offer an MA plan described in section 1395w-21(a)(2)(A) of this title in an area unless either that plan (or another MA plan offered by the organization in that same service area) includes required prescription drug coverage (as defined in paragraph (2)); and

(B) may not offer prescription drug coverage (other than that required under parts A and B) to an enrollee—

(i) under an MSA plan; or

(ii) under another MA plan unless such drug coverage under such other plan provides qualified prescription drug coverage and unless the requirements of this section with respect to such coverage are met.

**(2) Qualifying coverage**

For purposes of paragraph (1)(A), the term “required coverage” means with respect to an MA-PD plan—

(A) basic prescription drug coverage; or

(B) qualified prescription drug coverage that provides supplemental prescription drug coverage, so long as there is no MA monthly supplemental beneficiary premium applied under the plan (due to the application of a credit against such premium of a rebate under section 1395w-24(b)(1)(C) of this title).

**(b) Application of default enrollment rules**

**(1) Seamless continuation**

In applying section 1395w-21(c)(3)(A)(ii) of this title, an individual who is enrolled in a health benefits plan shall not be considered to have been deemed to make an election into an MA-PD plan unless such health benefits plan provides any prescription drug coverage.

**(2) MA continuation**

In applying section 1395w-21(c)(3)(B) of this title, an individual who is enrolled in an MA plan shall not be considered to have been deemed to make an election into an MA-PD plan unless—

(A) for purposes of the election as of January 1, 2006, the MA plan provided as of December 31, 2005, any prescription drug coverage; or

(B) for periods after January 1, 2006, such MA plan is an MA-PD plan.

**(3) Discontinuance of MA-PD election during first year of eligibility**

In applying the second sentence of section 1395w-21(e)(4) of this title in the case of an individual who is electing to discontinue enrollment in an MA-PD plan, the individual shall be permitted to enroll in a prescription drug plan under part D at the time of the election of coverage under the original medicare fee-for-service program.

**(4) Rules regarding enrollees in MA plans not providing qualified prescription drug coverage**

In the case of an individual who is enrolled in an MA plan (other than an MSA plan) that does not provide qualified prescription drug coverage, if the organization offering such coverage discontinues the offering with respect to the individual of all MA plans that do not provide such coverage—

(i) the individual is deemed to have elected the original medicare fee-for-service program option, unless the individual affirmatively elects to enroll in an MA-PD plan; and

(ii) in the case of such a deemed election, the disenrollment shall be treated as an involuntary termination of the MA plan described in subparagraph (B)(ii) of section 1395ss(s)(3) of this title for purposes of applying such section.

The information disclosed under section 1395w-22(c)(1) of this title for individuals who are enrolled in such an MA plan shall include information regarding such rules.

**(c) Application of part D rules for prescription drug coverage**

With respect to the offering of qualified prescription drug coverage by an MA organization under this part on and after January 1, 2006—

**(1) In general**

Except as otherwise provided, the provisions of this part shall apply under part C with respect to prescription drug coverage provided under MA-PD plans in lieu of the other provisions of part C that would apply to such coverage under such plans.

**(2) Waiver**

The Secretary shall waive the provisions referred to in paragraph (1) to the extent the Secretary determines that such provisions duplicate, or are in conflict with, provisions otherwise applicable to the organization or plan under part C or as may be necessary in order to improve coordination of this part with the benefits under this part.