DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR MEDICARE

DATE: June 2, 2023

TO: All Part D Sponsors

FROM: Jennifer R. Shapiro, Director, Medicare Plan Payment Group

SUBJECT: Reminder of Regulatory Requirements for Pharmacy Price Concessions

In order to remind Part D plan sponsors of regulatory guidance regarding pharmacy price concessions that takes effect January 1, 2024, the Centers for Medicare & Medicaid Services (CMS) is re-stating for broader dissemination through this memorandum the answers provided to questions recently received on said guidance during the CMS Office of the Actuary's Actuarial User Group Calls.

Question: We have a pharmacy payment arrangement whereby pharmacies, as a condition of participation in the plan's network, must contribute to a pool of money that would then be used to make post-point-of-sale payments to network pharmacies based on pharmacy performance. The pharmacy contribution is not based on the number of prescriptions filled at the pharmacy or otherwise assessed at the claim level. Instead, each pharmacy's contribution to the pool is based on the volume of Part D patients attributed and total payment made to that pharmacy per month. How should the pharmacy's contribution and any potential performance payment to the pharmacy be reported and accounted for in the bid pricing tool?

Answer: We wish to remind plans that the pharmacy price concessions provision finalized in the May 9, 2022 final rule (CMS-4192-F) takes effect January 1, 2024 and requires the application of all pharmacy price concessions at the point of sale.[1] If the payment to a Part D pharmacy may be reduced by up to a certain amount, the maximum possible reduction in payment must be treated as a pharmacy price concession and reflected in the negotiated price available at the point of sale and reported to CMS on a PDE record. This is the case regardless of whether the maximum possible reduction in payment is calculated on a per claim basis. As stated on pg. 27851 of the final rule, for pharmacy price concessions that are not assessed at the claim level, Part D sponsors would have to determine a methodology to attribute such concessions to the claim level to remain in compliance with the definition of negotiated price.

This guidance is applicable for the kinds of arrangements described in the question. We remind Part D sponsors that the pharmacy's contribution to the plan's pool, even when not assessed on a per claim basis, is considered a price concession that must be applied at the point of sale to

[1] See final rule titled "Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs" (CMS-4192-F) (87 FR 27704) at: https://www.govinfo.gov/content/pkg/FR-2022-05-09/pdf/2022-09375.pdf

reduce the negotiated price. If the pharmacy receives a post-point-of-sale payment from the plan for good performance, then that payment amount must be reported as a negative direct and indirect remuneration (DIR) amount, which would mean a lower total DIR amount reported in the bid pricing tool. OACT will be closely reviewing the DIR and gross cost estimates in 2024 plan bid pricing tools to ensure that the bid reflects the requirements of the final rule.

Question: In 2023 bids, we reported retained DIR under both non-benefit expense (NBE) and DIR as per the 2023 bid instructions. Given the changes related to pharmacy DIR effective 2024, we seek guidance on how the retained DIR should be handled in the 2024 bid.

Answer: PBM-retained pharmacy price concessions must be reported as NBE in the bid pricing tool. Consistent with the requirements finalized in the May 9, 2022 Final Rule (CMS-4192-F), the negotiated price reported on the PDE record must reflect the lowest possible reimbursement for the network pharmacy. The allowed cost in the bid pricing tool must match the PDE reporting. Retained DIR will continue to be a part of NBE in 2024, and it will no longer be reported as DIR in the 2024 bid as it will be a reduction to the gross claim cost in the 2024 bid.

Additionally, we want to emphasize that PDE reporting must reflect the lowest possible reimbursement to the pharmacy. If the ultimate reimbursement to the pharmacy is higher than reported on the PDE record, that difference must be reported as a negative DIR amount, consistent with DIR reporting guidelines, and must result in a lower 2024 DIR amount reported in the bid pricing tool.