

Medicare Program

Part B Average Sales Price (ASP) Data Reporting Guidance: Clarification on Medicaid Drug Rebate Program “Multiple Best Prices” Reporting Option

Separately payable drugs and biological products (hereafter, drugs) covered under Medicare Part B are paid based on section 1847A of the Act, which describes Average Sales Price (ASP) drug payment methodology. The statute at Section 1847A(c)(2)(A) of the Act allows drug manufacturers to exclude from ASP reported data those sales that are also “exempt from the inclusion in the determination of ‘best price’” under the Medicaid Drug Rebate Program (MDRP), as described at Section 1927 of the Act. The statute at Section 1847A(c)(3) of the Act also specifies that rebates under Section 1927 of the Act should not be included in the calculation of the manufacturer’s ASP.

Beginning July 1, 2022, MDRP allows manufacturers to elect the “multiple best price” reporting option when reporting a Medicaid-covered outpatient drug to the MDRP, if associated with a value-based purchasing (VBP) arrangement that meets the definition of such an arrangement at 42 CFR § 447.502, and if that arrangement is offered to all states.

In this document, we are clarifying our existing policy that, for the purposes of ASP data reporting, rebates paid to states under the multiple best prices reporting option, that are associated with VBP arrangements that meet the definition of such an arrangement at 42 CFR § 447.502, are considered a Section 1927 rebate for the purposes of Section 1847A(c)(3) of the Act, and thus such rebates should not be included in the calculation of the manufacturer-reported ASP for the drug.

In a 2020 final rule ([85 FR 87025](#)), CMS explained that its authority to define “best price” under Section 1927, and specifically its pre-existing definition of best price at § 447.505(a) to include the best price “in any pricing structure,” accommodates various VBP pricing structures that are available in the marketplace. Therefore, in that rule, CMS finalized its policy to allow the reporting of multiple price points associated with certain VBP arrangements under its Section 1927 Medicaid Drug Rebate Program. In this way, rebates provided to Medicaid under certain multiple best price VBP arrangements are considered rebates under Section 1927.

Section 1847A of the Act describes the use of ASP payment methodology to pay for drugs under Medicare Part B. Section 1847A(c)(3) lists the price discounts that must be included in the computation of the manufacturer-reported ASP, including volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates. The paragraph continues and lists in parentheses those discounts that do *not* need to be included in the computation of ASP, such as rebates under Section 1927.

Since rebates paid to state Medicaid programs resulting from VBP arrangements that are authorized under supplemental rebate agreements or under the multiple best price program are considered rebates under Section 1927, such rebates do not need to be included in computation of the manufacturer-reported ASP. We reiterate that only those VBP rebates that are paid to states that meet the definition of a value-based purchasing arrangement under § 447.502 for purposes of the multiple best price option are exempt from ASP.

Resources:

- **Section 1847A of the Social Security Act, current:** [42 USC 1395w-3a](#)
- **Section 1927 of the Social Security Act, current:** [42 USC 1396r-8](#)
- **2020 Medicaid Final Rule: Supporting Value-Based Purchasing (VBP) for Drugs Covered in Medicaid** ([85 FR 87000-87104, December 31, 2020](#))
- **2022 Technical Guidance: Value-Based Purchasing (VBP) Arrangements for Drug Therapies using Multiple Best Prices** ([MDRP Notice, Release No. 116, March 23, 2022](#))