

Actuarial Bid Training

Presentation: Related-Party Arrangements

Slides and Script prepared by CMS Office of the Actuary

Update April 2014

[Slide 1] Related-Party Arrangements

Welcome to the training session on Related-Party Arrangements for Medicare Advantage and Part D plan sponsors.

[Slide 2] In this session . . .

This session will cover the objective of CMS' guidance on related-party arrangements, and it will provide plan sponsors with clarification around the requirements and options for completing and documenting the bid pricing tool, or BPT.

[Slide 3] Related-Party Guidance Objective

The objective of CMS' related-party guidance is to obtain a level of disclosure of every related-party arrangement that ensures that financial arrangements between the bid sponsor and related parties are not significantly different from the financial arrangements that would have been achieved in the absence of the relationship, and do not provide an opportunity to over-or under-subsidize the bid.

This guidance is focused on appropriate reporting and documentation and generally does not assess the competitiveness or limit the amount of fees associated with these transactions.

[Slide 4] Related-Party Guidance Objective (cont.)

The bid must reflect the revenue requirements of the plan, and in accord, CMS' related-party guidance is directed at obtaining from sponsors the full disclosure of, and support for the costs of related-party arrangements that are presented in the bid pricing tool.

[Slide 5] When Does Related-Party Guidance Apply?

CMS' related-party requirements apply to all Medicare Advantage (abbreviated as MA) and Part D sponsors that enter into any type of arrangement with, or receive services from an entity that is associated with the plan sponsor through any form of common, privately-held ownership, control, or investment. This guidance applies when the related-party arrangements are carried out through one or more unrelated parties.

[Slide 6] Requirements for Sponsors in Related-Party Arrangements

Plan sponsors must disclose each related-party arrangement in the bid at the time of the initial bid submission, prepare the BPT in accord with CMS guidance, and support each related-party arrangement as required by CMS guidance.

[Slide 7] Options for Preparing the Bid Pricing Tool

Generally, there are three acceptable approaches for pricing related-party arrangements in the BPT. Sponsors can enter related-party costs using the actual cost method, or demonstrate that the sponsor's related-party arrangement is comparable to arrangements with other unrelated parties of the plan sponsor, or demonstrate that the related party has comparable arrangements with unrelated parties. It is always acceptable for plan sponsors to use the actual cost method, whereas demonstrating comparable fees through one of the market comparison methods may only be an option in limited circumstances.

[Slide 8] Actual Cost Method - Medicare Advantage BPT

Under the actual cost method, sponsors prepare the Medicare Advantage BPT in a manner that does not recognize the independence of the related-party organization. All costs of the related party are entered in the BPT as if they were the sponsor's cost. For Medicare Advantage, the benefit expense, non-benefit expense (abbreviated as NBE) and gain/loss margin of the related-party organization are entered on the BPT as the benefit expense, non-benefit expense and gain/loss margin, respectively, of the sponsor. It is not acceptable to enter all of the fees paid to the related party as benefit or non-benefit expense. Additionally, sponsors must support the development of the benefit expense, non-benefit expense, and gain/loss margin as required by the Instructions for Completing the BPT.

[Slide 9] Actual Cost Method for Part D Administrative Cost

The pricing of Part D administrative services under the actual cost method is the same as the Medicare Advantage approach in that sponsors prepare the BPT in a manner that does not recognize the independence of the related-party organization. All costs of the related party are entered in the BPT as if they are the sponsor's cost. The non-benefit expense and gain/loss margin of the related-party organization is entered on the BPT as the non-benefit expense and gain/loss margin, respectively, of the sponsor. It is not acceptable to enter all of the fees paid to the related party as non-benefit expense. Additionally, sponsors must support the development of the non-benefit expense, and gain/loss margin as required by the Instructions for Completing the BPT.

[Slide 10] Actual Cost Method for Part D Benefit Costs

In contrast to Medicare Advantage, when pricing Part D benefits under the actual cost method, all of the fees paid to the related party for Part D benefit costs are entered as the benefit expense of the plan sponsor as if there were no related party. The related-party benefit costs entered in the Part D BPT always remain consistent with the actual and projected Prescription Drug Event experience of the plan. To use the actual cost method, sponsors must declare the gain or loss component of the related party's Part D benefit costs outside the BPT, in the supporting documentation.

[Slide 11] Supporting Part D Benefit Costs under the Actual Cost Method

Sponsors must support the related-party benefit costs reported in the Part D BPT under the actual cost method with an analysis showing any gain or loss to the related party. Ideally the gain or loss is the result of the allowed drug costs less the cost of purchasing pharmaceuticals and dispensing prescriptions. Every analysis must provide a reasonable and auditable estimate of the gain or loss for the related-party benefit costs included in the benefit expense entered in the BPT. Additionally, sponsors must support the development of the benefit cost under the actual cost method as required by the Instructions for Completing the BPT.

[Slide 12] Market Comparison Methods

A sponsor in a related-party arrangement may be able to demonstrate that the sponsor's related-party arrangement is comparable to other arrangements with unrelated parties. Under the market comparison methods, sponsors recognize the independence of the related-party organization when preparing the BPT. This means that the costs for the related-party arrangement are treated as a benefit or administrative cost of the sponsor. For administrative services, all administrative costs in the related-party arrangements are entered on the BPT as non-benefit expense. For benefits, all costs in the related-party arrangements are entered as benefit costs.

[Slide 13] Using the Market Comparison Methods

To use this approach, the sponsor's related-party organization must have a comparable arrangement with an unrelated party, or the sponsor's arrangement with the related-party organization must be comparable to the sponsor's arrangement with an unrelated party. All market comparisons must be supported by a demonstration that the fees are comparable for both the related and unrelated parties.

[Slide 14] Demonstrating Sponsor's Fees are Comparable

Sponsors must demonstrate through analysis and contract terms, how the fees for at least one arrangement with at least one unrelated party are comparable. For benefit costs, the unrelated party must be a Medicare Advantage or Part D organization when demonstrating comparability through the related party. For administrative services, the unrelated party may be a non-Medicare organization.

[Slide 15] Demonstrating Sponsor's Fees are Comparable (cont.)

Comparable rate demonstrations must be based on actual contracts that are available for review upon request by CMS. Comparisons to market surveys, proposed agreements and other postulated agreements are not acceptable. Further, the demonstration must show that the contracts with unrelated parties are associated with sufficient costs of services to be considered valid contracts. In addition, when supporting comparable rates through the related-party organization's arrangement with an unrelated party, the analysis must be accompanied by a signed attestation from the related party, stating that the actual contract will be available for review upon request by CMS.

[Slide 16] Demonstrating Part D Sponsor's Fees are Comparable

Contracts are comparable when shown to be identical, or the results of the same administrative services or benefit utilization priced through the two contracts are shown to be within plus or minus 5 percent. For example, consider a Part D sponsor who uses the same contract with a related and an unrelated pharmacy. This Part D sponsor has two options. The sponsor can demonstrate that the actual contract with the related party pharmacy is identical to the contract between the sponsor and another unrelated party pharmacy, or the sponsor can demonstrate that the price of their utilization through the contract with the related-party pharmacy, and through the contract with the unrelated party pharmacy are within the required plus or minus 5 percent.

[Slide 17] Demonstrating Part D Sponsor's Fees are Comparable (cont.)

A similar process can be employed when a Part D sponsor's related-party pharmacy has a similar contract with an unrelated Part D sponsor. Again, it must be demonstrated that the price of the Part D sponsor's utilization through the contract with the related party pharmacy is within the required plus or minus 5 percent when priced through the related-party pharmacy's arrangement with an unrelated party. To address proprietary concerns, the sponsor may provide utilization data and a pricing model to the unrelated party pharmacy for use in pricing the proprietary contract with the unrelated Part D sponsor.

[Slide 18] Demonstrating Sponsor's Fees are Comparable – Medicare Advantage

The next part of this presentation covers Medicare Advantage-specific related-party requirements. First, for both administrative and benefit market comparisons, "comparable fees" means within plus or minus 5 percent or \$2 PMPM—whichever is greater. Second, under a benefit market comparison, an unrelated Medicare Advantage organization (MAO) or an unrelated provider must provide similar services to a Medicare population. Last, the benefit market comparison approach involving the plan sponsor's arrangement with an unrelated provider has an additional requirement that the unrelated provider must provide similar services in the bid's service area.

[Slide 19] Fee-For-Service Options

In some cases, it is not possible for the Medicare Advantage plan sponsor to provide the “cost” of the related party to provide medical services to the plan sponsor. In this situation, the comparable to 100% FFS method allows the plan sponsor to use 100% Medicare fee-for-service (abbreviated as FFS) costs as a benchmark for demonstrating comparable fees and use the fees under the related-party arrangement when completing net medical expenses in the BPT.

In cases where the plan sponsor cannot comply with any of the methods discussed thus far, 100% Medicare FFS costs can be used as proxy for the plan sponsor’s related-party fees when completing net medical expenses in the BPT.

The next two slides cover both FFS methods in more detail.

[Slide 20] Demonstrating Comparable to FFS

Under the comparable to FFS method, the plan sponsor must demonstrate at the time of bid submission that it cannot comply with the actual cost method.

The plan sponsor must also demonstrate that fees under the related-party arrangement are comparable to FFS costs for similar services, that is, such fees are within plus or minus 5 percent of 100% FFS costs or \$2 PMPM—whichever is greater.

[Slide 21] Demonstrating FFS Proxy

Under the FFS proxy method, the plan sponsor must demonstrate at the time of bid submission that it cannot comply with the actual cost method or the market comparison method. The plan sponsor must also demonstrate that fees under the related-party arrangement are *not* comparable to FFS costs for similar services, that is, such fees are *not* within plus or minus 5 percent of 100% FFS costs or \$2 PMPM—whichever is greater.

[Slide 22] MA Example 1 - Market Comparison through Related Party

Let's work an example. In this case a hospital is a related party to a plan sponsor. The hospital is contracted to serve members insured by the plan sponsor at 105% of FFS. The hospital also has an agreement with an unrelated Medicare Advantage organization to provide services to a Medicare population at 109% of FFS.

Under the market comparison through related party approach, the plan sponsor is able to demonstrate that 105% of FFS fees in the related-party arrangement are comparable to the 109% of FFS fees charged to other MA organizations for providing similar services to a Medicare population. Therefore, the plan sponsor may enter the 105% of FFS costs as net medical expenses in the BPT.

[Slide 23] MA Example 2 - Market Comparison through Plan Sponsor

Let's modify the example so the related-party hospital does *not* contract with an unrelated MA organization. However, the plan sponsor contracts with an unrelated hospital in the bid's service area to serve its Medicare population at 108% of FFS for similar services.

[Slide 24] MA Example 2 - Market Comparison through Plan Sponsor (cont.)

Under the market comparison through plan sponsor approach, the plan sponsor is able to demonstrate that the 105% of FFS fees in the related-party arrangement are comparable to the 108% of FFS fees in its arrangement with the unrelated hospital. Therefore, the plan sponsor may enter the 105% of FFS costs as net medical expenses in the BPT.

[Slide 25] MA Example 3- Comparable to Fee-For-Service

Example 3 is similar to example 2 in that the related-party hospital is contracted to serve members insured by the plan sponsor at 105% of FFS and does *not* contract with an unrelated MA organization. However, in this case the plan sponsor is *not* contracted with an unrelated hospital in the bid's service area. Further, the related-party hospital is unable to provide the plan sponsor with its actual cost to provide medical services to the plan sponsor's members.

Under the comparable to FFS approach, the plan sponsor provides documentation that it is not possible to comply with the actual cost method and uses 100% of FFS costs as a benchmark to demonstrate comparability since the 105% of FFS fees in its arrangement with the related-party hospital are within 5% of 100% FFS costs. Once again, the plan sponsor enters the 105% of FFS costs as net medical expenses in the BPT.

[Slide 26] MA Example 4 – Fee-For-Service Proxy

In this final example, the related hospital is contracted to serve members insured by the plan sponsor at 110% of FFS, but is not contracted with other MA organizations. The plan sponsor also is not contracted with unrelated hospitals in the bid's service area. Further, the related hospital is unable to provide the plan sponsor with its actual cost to provide the medical services for the plan sponsor's members.

[Slide 27] MA Example 4 – FFS Proxy (cont.)

In this case, the plan sponsor demonstrates that (1) it is not possible to comply with the actual cost method, (2) it cannot comply with the market comparison method because there are no applicable arrangements with unrelated Medicare Advantage organizations or unrelated hospitals with which to compare rates, and (3) it cannot comply with the comparable to FFS method because the 110% fees the plan sponsor pays to the related hospital are not within plus or minus 5 percent of 100% FFS costs.

Therefore, under the FFS proxy method, the plan sponsor must enter 100% FFS costs as net medical expense in the BPT.

[Slide 28] Supporting Documentation for Related-Party Arrangements

All plan sponsors must provide written disclosure of whether or not they have related-party arrangements. Sponsors with related-party arrangements must disclose all arrangements and document the approach used to prepare the BPT for each arrangement. Supporting documentation must be provided for each arrangement as required by the bid instructions.

Sponsors have full responsibility for assuring that CMS has timely and complete access to supporting documentation, and sponsors must arrange for the level of disclosure of related-party arrangements as required by CMS.

[Slide 29] Bid Point-of-Contact

At the time of bid submission sponsors must identify one or more persons responsible for disclosure of related-party information to CMS. Sponsors can request that CMS have separate contact with the sponsor and the subcontracted related party to address concerns around proprietary information.

[Slide 30] Questions?

For more information concerning the topics covered in this training session, please refer to the resources indicated on this slide.

This concludes the session on Related-Party Arrangements for Medicare Advantage and Part D.