DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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**MEDICARE PLAN PAYMENT GROUP**

**DATE:**        December 29, 2015

**TO:**          All Part D Plan Sponsors

**FROM:**        Cheri Rice, Director
                 Medicare Plan Payment Group

**SUBJECT:**     Revised Reopening Request Process and Notification of Overpayment Related to PDE
                 and DIR Data


The revisions described in this memorandum replace Prescription Drug Event (PDE) and Direct
and Indirect Remuneration (DIR) overpayment reporting instructions issued in the February 18,
2015 Health Plan Management System (HPMS) memorandum, "Guidance for Reporting and
Returning Medicare Advantage Organization and/or Sponsor Identified Overpayments to the
Centers for Medicare and Medicaid Services (CMS)" and reopening request instructions in the
May 8, 2008 HPMS memorandum, "The Part D Reopenings Process and the Part D Appeals
Process." Process updates are effective as of January 1, 2016.

CMS issued regulations in 42 C.F.R. §§ 422.326 and 423.360, which establish the process for an
organization offering a Medicare Advantage (MA) plan and/or a sponsor offering Part D benefits
to report and return overpayments. This memorandum revises the processes for reporting and
returning overpayments involving (i) PDE data, and (ii) DIR data. Effective January 1, 2016,
Part D sponsors will no longer report sponsor-identified overpayments associated with PDE and
DIR data to the Medicare Advantage and Part D (MAPD) Helpdesk and instead will report those
sponsor-identified overpayments through the reopening request process, as described below.

Per 42 C.F.R. § 423.346, CMS has the authority to reopen and revise initial or reconsidered final
payment determinations. This memorandum further revises the process for requesting a
reopening of final payment determinations to consolidate the reporting of PDE/DIR
overpayments with the reopening request process.

Background on reporting PDE/DIR overpayments and sponsor reopening requests are provided
in Sections I and II of this document, followed by operational guidance on the revised process in
Section III.

**I. Background on Reporting Sponsor-identified PDE or DIR Overpayments**

The term "overpayment" is defined in section 1128J(d)(4)(B) of the Act as, "any funds that a
person receives or retains under title XVIII or XIX to which the person, after applicable
reconciliations, is not entitled under such title." In accordance with 42 C.F.R. §§ 422.326 and
423.360, a Medicare Advantage (MA) plan and/or a sponsor offering Part D benefits must report

and return any overpayment it received no later than 60 days after the date the organization or sponsor identifies the overpayment (79 FR 29844 at 29958). Section 423.360 applies to Part D sponsors, which include Programs of All-inclusive Care for the Elderly (PACE) organizations offering a PACE plan including qualified prescription drug coverage.[1]

MA organizations and Part D sponsors are required to report and return any overpayment that they identify within the six most recently completed payment years as illustrated in the table below.[2]

Look-back periods for the 2015 through 2020 calendar years:

| Calendar Year | Look-back Period **Prior** to the Applicable | Look-back Period **After** the Applicable |
|---|---|---|
| 2015 | 2013-2008 | 2014-2009 |
| 2016 | 2014-2009 | 2015-2010 |
| 2017 | 2015-2010 | 2016-2011 |
| 2018 | 2016-2011 | 2017-2012 |
| 2019 | 2017-2012 | 2018-2013 |
| 2020 | 2018-2013 | 2019-2014 |

*Part C applicable reconciliation typically occurs around 13 months after the end of the risk adjustment data collection year. Part D applicable reconciliation typically occurs around 6 months after the end of the payment year.

The report and return obligation begins on the day after the applicable reconciliation for the payment year. If an overpayment results from the submission of incorrect PDE or DIR data, the obligation to report an identified overpayment for a given year begins on the day after the Part D applicable reconciliation date (*i.e.*, the later of the deadlines for submitting PDE or DIR data for the applicable year). If PDE data is the source of the Part D-related overpayment, the Part D sponsor will adjust, delete, or resubmit the PDE data to rectify the reported overpayment. If DIR data is the source of the Part D-related overpayment, the Part D sponsor will modify the DIR data to rectify the reported overpayment. In most cases, CMS will recover sponsor-reported overpayments involving PDE or DIR data through the routine Part D payment processes.

In the preamble to our final rule that implemented 42 C.F.R. § 423.360, we stated that Part D sponsors cannot be held accountable for the accuracy of data controlled and submitted to CMS by other entities. As an example, we noted that the Social Security Administration is the authoritative source for date of death and that when CMS recoups an incorrect payment from a Part D sponsor based on data corrections submitted by other authoritative sources, CMS would not consider this recoupment to be the return of an overpayment under § 423.360. We went on to explain that "funds," as the term is used in the definition of "overpayment," refers to a payment amount that a Part D sponsor received from CMS that is based on data that the Part D sponsor controls and submits to CMS.

Likewise, when CMS recoups an incorrect payment from a Part D sponsor based on data corrections submitted by CMS or one of its contractors, CMS would not consider this

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[1] "Part D sponsor" is defined in 42 C.F.R. § 423.4.
[2] In this context, the term "completed payment year" refers to a calendar year for which the applicable reconciliation date has passed.

recoupment to be the return of an overpayment under § 423.360.  These data corrections include, but are not limited to, the following:

- Corrections as a result of LICS changes when those corrections occur as a result of retroactive changes to the TRR
- Corrections as a result of excluded provider changes when those corrections occur as a result of retroactive changes to the OIG Exclusion file.
- Corrections related to information coming directly from CMS' Transaction Facilitator, including eligibility verification transactions for Medicare Part A, B and D (E1 Transactions), TrOOP balance transfer transactions (FIR Transactions), and routing of record of supplemental payment to Part D plans (Nx Transactions).

Note that CMS does expect the PDE data be corrected based on changes to these files, but so long as the corrections are made by the Part D sponsor in a timely fashion (*i.e.*, within 90 days of discovery)[3], the corrections do not need to be reported under § 423.360.

For information regarding the identification of a Part D-related overpayment, please refer to our regulations at 42 C.F.R. § 423.360 (for Part D).  If questions persist about when something becomes a self-identified overpayment, we recommend that you consult with your attorneys.  We also direct your attention to the preamble of our final rule at 79 FR 29844 (May 23, 2014), which codified the overpayment provisions of section 1128J(d) of the Social Security Act.

## II. Background on Reopening Requests

Subject to 42 C.F.R. § 423.346 and applicable guidance, CMS may reopen on its own volition or a sponsor may request that CMS, at its discretion, reopen and revise a final payment determination.  Sponsors are required to request a reopening after a PDE or DIR overpayment has been identified.  Sponsors may also submit a request for reopening within specified time periods, for any reason.[4]

Reopening requests are granted based on the following timeline.  CMS may reopen a final payment determination within 12 months from the date of the notice of final determination to the Part D sponsor for any reason.  After 12 months, but within four years, CMS may reopen upon establishment of good cause.  "Good cause" is defined in the regulation as:

- New and material evidence that was not readily available at the time the final determination was made;
- A clerical error in the computation of payments; or
- When evidence that was considered in making the determination clearly shows on its face that an error was made.

Sponsors should therefore submit reopening requests in time for CMS to evaluate the request, submit the data identified in the reopening request, and, if granted, CMS will proceed with

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[3] See the HPMS memorandum, *Revision to Previous Guidance Titled "Timely Submission of Prescription Drug Event (PDE) Records and Resolution of Rejected PDEs,"* October 6, 2011.

[4] The reopening process is separate from the appeals process.  Appeals are filed when a sponsor does not believe that CMS applied its stated payment methodology correctly.  Further explanation of the appeals process can be found in the May 8, 2008 HPMS memorandum, "The Part D Reopenings Process and the Part D Appeals Process."

reopening and revising the final payment determination within the specified time period. Final payment determinations include determinations of the final amounts of direct subsidy, reinsurance, low-income subsidy, or risk corridor payments.

CMS may also reopen final payment determinations at any time in instances of fraud or similar fault of the Part D sponsor or any subcontractor of the Part D Sponsor. Except in instances of fraud or similar fault, the regulation does not allow for reopenings beyond the four-year period.

### III. Consolidated PDE/DIR Overpayment and Reopening Process

The following subsections outline the revised process for reporting a PDE/DIR overpayment and submitting a reopening request, or submitting a reopening request independent of reporting an overpayment.

### 1. Initiating an overpayment report and/or reopening request

Sponsors will report PDE/DIR overpayments and request a reopening by submitting a reopening request form and any supporting documentation to the Part D Payment Support website (https://partd.programinfo.us/PaymentSupport). The reopening request form will be available on January 1, 2016 on the Part D Payment Support website and may be accessed using the following path: Home > Reference Docs. This process will replace the Remedy Ticket process outlined in the February 18, 2015 memorandum, "Guidance for Reporting and Returning Medicare Advantage Organization and/or Sponsor Identified Overpayments to the Centers for Medicare and Medicaid Services" for PDE/DIR overpayment whether or not the Part D sponsor has the data to correct the overpayment.

Sponsors will follow the same process for submitting a reopening request, regardless of the reason. When reporting overpayments or other types of reopening requests, parent organizations should submit one request form per payment year. If new or updated information for a payment year becomes available, sponsors will submit a revised version of the request form on the Part D Payment website.

### 2. Accurately completing the reopening request form

Sponsors should provide the following information on the request form:

- Parent organization
- Parent organization address
- Parent organization ID
- Contact person(s)
- Contract information
- Name(s) of legal entity
- Calendar year for which the reopening is requested
- Whether the request is a new request or updated resubmission

Sponsors will also report issues separately for each contract and issue type. In other words, the request form should be populated with a row for each contract and data issue. For each contract and issue type, sponsors should indicate the following:

- Whether the issue resulted in an over- or underpayment
- Whether the issue was identified by CMS[5] or the sponsor
- The amount in dispute, total and by type
- A detailed explanation of the issue

Request forms will not successfully upload if any required fields are missing. Helpful hints for completing and uploading the request form will be available on the Part D Payment website.

## 3. Request processing and tracking

Request forms that have been successfully uploaded to the Part D Payment website will be assigned a unique ticket number and status. The status of the ticket will be updated periodically as the request form is reviewed and processed, and sponsors will receive an email notification when a ticket status is changed. For example, if further information is needed to research a request, the ticket status will be updated on the Part D Payment website to indicate that additional information is requested. Sponsors will also receive an email requesting that additional information be uploaded to the website.

CMS will close the associated ticket when the overpayment and/or underpayment has been processed; this closure will be reflected on the website's Ticket Tracking page and the sponsor will receive email notification. Tickets are generally going to be closed when CMS conducts the global reopening for the contract year in which the overpayment occurred, assuming that the overpayment can be corrected through the global reopening.

As a result of this new process, Part D sponsors will not be required to provide the ticket number on the reopening spreadsheet, as described in the February 18, 2015 HPMS memorandum. Likewise, the Part D sponsor is no longer required to place a ticket number in the Adjustment Reason Code field on the PDE or the *Explanation for Resubmission* text box in the DIR submission information for DIR resubmissions.

## 4. Payment recovery

If the PDE data is the source of the data error, the Part D sponsor will adjust, delete, or resubmit the PDE data to rectify the payment discrepancy.

If DIR data is the source of the payment discrepancy, the Part D sponsor is required to modify the DIR data to rectify reported overpayments or underpayments. The Part D sponsor should submit the revised DIR data in a manner consistent with the annual Medicare Part D DIR Reporting Requirements released mid-year. The resubmission window for submitting DIR reports for previous benefit years occurs in the month of July. The Part D sponsor will satisfy the requirement to return the overpayment by submitting a reopening request and subsequently

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[5] Note that when the CMS-identified overpayment is corrected in a timely fashion (*i.e.*, within 90-days of the notification of the data error), the Part D sponsor should not request a reopening. CMS expects that the CMS-identified overpayment be corrected through DIR resubmissions or PDE adjustments/deletions/resubmissions, as appropriate. These CMS-identified overpayments include, but are not limited to, the Part D Potential Exclusion Warning Report (see the HPMS memorandum, "Updates to the Reconciliation Prescription Drug Event (PDE) Exclusion Process," April 16, 2014), various audits from the Center for Program Integrity or the Office of Financial Management at CMS, and CMS-identified overpayment under § 423.352.

resubmitting the DIR report for the applicable year during the next DIR resubmission window. Please refer to the HPMS memorandum "Final Medicare Part D DIR Reporting Requirements for 2013," Section G "Resubmitting Summary DIR Reports for Prior Coverage Years" published on May 28, 2014 for an example.

CMS will resolve sponsor-reported over- and underpayments involving PDE or DIR data through the routine Part D payment processes. The reopening schedule will be developed by CMS and announced through HPMS memoranda. CMS may reopen and revise an initial or reconsidered payment determination consistent with 42 C.F.R. § 423.346. However, CMS typically performs one global reopening each year. We anticipate being able to recover the majority of overpayments through this global reopening process but may perform targeted reopenings at our discretion consistent with § 423.346.

### *4.1 Payment recovery when the Part D sponsor cannot submit corrected data*

If CMS cannot resolve the overpayment involving PDE or DIR data due to for example, a loss of data, CMS will contact the sponsor to discuss how the overpayment will be returned to CMS. Most likely, the overpayment will be resolved through an offset of the Part D sponsor's monthly payment based on the Part D sponsor's auditable estimate provided to CMS through the reopening request form (Attachment A).

In addition to the auditable estimate provided through the reopening request form, the Part D sponsor will provide documentation of the reason for the overpayment and the reason for not being able to submit the corrected PDE or DIR data.

Note that this process replaces the process for reporting "Other" Part D overpayments as described in the February 18, 2015 HPMS memorandum.

### 5. Contact information

For more information or technical assistance submitting the request form, please contact the Part D Reconciliation Contractor, Acumen LLC at PartDPaymentSupport@acumenllc.com.

**Attachment A: Reopening Request Form**

**NOTE this pages is 8.5" x 14" (legal size)**

| | |
|---|---|
| Parent Organization Name: | |
| Parent Organization Address: | |
| Parent Organization City, State and Zip: | |
| Parent Organization ID: | |
| Contact Person(s): | |
| Phone Number: | |
| Fax Number: | |
| E-mail address: | |
| Name(s) of Legal Entity: | |
| Calendar Year : | |
| New or Updated Request: | |

**Please note:**

*Financial amounts should be differences from the amounts used in the Part D Payment Reconciliation.

*Calculate the difference as: Your expected value - actual CMS value used in reconciliation

*For example, if the GDCB used in reconciliation was $11,000,000 and you expected the amount to be $14,000,000 then populate the GDCB column with $3,000,000.

*List relevant amounts for each data inaccuracy for each contract in separate rows.

| Brief Description of the issue | Contract | Overpayment or Underpayment | Identified by CMS or Sponsor | Total Amount Disputed | Gross Drug Cost Below the Out-of-Pocket Threshold Amount | Gross Drug Cost Above the Out-of-Pocket Threshold Amount | Low Income Cost-Sharing Subsidy Amount | Covered Plan Paid Amount | Prospective Reinsurance Subsidy Amount | Part D Basic Premium Amount | Direct Subsidy Amount | Direct and Indirect Remuneration | Low Income Cost-Sharing Subsidy Adjustment Amount | Reinsurance Subsidy Adjustment Amount | Risk Sharing Amount | Adjustment Due to Reconciliation Amount | Other financial amounts (specify category along with financial amount below) | Detailed Explanation for the issue |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | | | | | | |