

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

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TO: Medicare Advantage Organizations
Medicare Advantage-Prescription Drug Organizations
Sections 1876 and 1833 Cost Contractors
PACE Organizations
Demonstrations
Prescription Drug Plan Sponsors
Employer/Union-Sponsored Group Health Plans
Medicare-Medicaid Plans

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SUBJECT: Additional Information Regarding the Mandatory Payment Reductions in the Medicare Advantage, Part D, and Other Programs

On March 22, 2013, the Centers for Medicare & Medicaid Services (CMS) released a memorandum notifying Medicare Advantage Organizations (MAOs), Part D plans, and other programs (including Managed Care Organizations) that, beginning April 1, 2013, payments made to MAOs, Part D sponsors, and other programs will generally be reduced by two percent in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended. This process of payment reduction is referred to as sequestration. This memorandum provides additional information about the application of sequestration to the Medicare Advantage (MA) program, Part D, and other specified program payments.

Calculation of Amount Being Sequestered

In its March 22, 2013 memorandum, CMS explained that the two percent sequestration reduction will be applied to MA, Part D, and other program payments associated with enrollment periods beginning on or after April 1, 2013. CMS has received a number of questions asking for more details about how the sequestration applies to the MA, Part D, and other program payments.

Payments to all plans and plan types are subject to sequestration, including MAOs, Prescription Drug Plans, Sections 1876 and 1833 Cost Plans, Health Care Prepayment Plans, PACE plans, and demonstration plans of all types. The two percent reduction is applied to the Net Capitation Payment (NCP) made to plans. All non-exempt capitation payments are included in the NCP. For example, Part C Risk Adjusted payments (after MSP reduction) and MA rebates are included. For Part D, Direct Subsidy payments and Coverage Gap Discount payments are included. Part D payments for Low Income Subsidies and Reinsurance are exempt from sequestration and therefore not reduced.

Beginning April 1, 2013 (and for the duration of the sequestration period), prospective payments in the payment categories identified above are netted against adjustments to capitation payments for enrollment periods beginning or continuing in effect on or after April 1, 2013. The resulting NCP amount, whether positive or negative, is then multiplied by two percent to account for reductions that need to be made, and any reductions that were previously made for payments that are being adjusted (e.g., a retroactive disenrollment adjustment that is being processed for an enrollment payment that was previously reduced due to sequestration).

Only NCPs associated with enrollment periods beginning on or after April 1, 2013 are subject to sequestration. That means, for example, that the April 1, 2013 prospective payment made to a plan for members who were enrolled on April 1, 2013 is subject to the two percent reduction, but any payment adjustments to prospective payments made for those members for periods prior to April 1, 2013 are not subject to sequestration, even if those payment adjustments occur on or after April 1, 2013. Similarly, the 2012 final risk score reconciliation occurring later this year will not be affected by the sequester.

If there are any adjustments for periods that straddle April 1, 2013, the portion of the adjustment for the enrollment period starting on April 1, 2013 will be subject to sequestration. For example, if the State and County Code (SCC) for an enrollee changes for the May 1st payment and the SCC change is retroactive to January 2013, the portion of the adjustment relating to the January, February, and March payments will not be reduced due to the sequester, but the portion of the adjustment related to April payment will be reduced.

Cost Plans: The monthly payments made to Section 1876 and 1833 cost-based Managed Care Organizations (MCOs) are subject to sequestration in the same manner described above for MAOs. In addition, the reduction in payment will apply to the cost reports submitted by Sections 1876 and 1833 cost-based MCOs. The two percent reduction will be prorated based on the portion of the cost reporting period covered by the sequestration order, which became effective for Medicare programs on April 1, 2013. CMS will provide specific cost report preparation instructions at a later date.

Coverage Gap Discount Program (CGDP) Payments: Prospective CGDP payments from CMS to plans are subject to sequestration. Therefore, CMS will reduce the prospective CGDP payments by two percent. However, the actual discounts collected from the pharmaceutical manufacturers are not subject to sequestration. Because CMS is reducing payments associated with enrollment periods beginning April 1, 2013, any offsets that CMS makes for prospective CGDP payments made before April 1, 2013 are not subject to sequestration. CMS will make the

appropriate adjustments to the offset amount to reflect the required reductions, as well as to the prospective CGDP payment, when conducting the CGDP reconciliation for this time period.

Part D Risk Corridor Reconciliation: In accordance with Section 256(d) of BBEDCA, CMS will not take into account any reductions in prospective payment amounts due to sequestration for purposes of computing the Part D risk corridor reconciliation under section 1860D-15(e) of the Social Security Act. In other words, the “Target Amount” will not include any sequester reductions in prospective payments. In addition, Section 256(d)(7) of the BBEDCA exempts payments made under section 1860D-15(e)(2)(B) of the Social Security Act from sequestration. Therefore, any payment resulting from the Part D Reconciliation (i.e., payments made as a result of risk sharing) would not be subject to sequestration.

Electronic Health Records (EHR) Incentive Program Payments: Under section 256(d) of BBEDCA, incentive payments made under the EHR Incentive Program are subject to sequestration. Following the approach of applying sequestration to payments associated with enrollment periods beginning April 1, 2013, CMS will reduce the incentive payments by two percent when the last day of the EHR reporting period is on or after April 1, 2013. Note that the two percent reduction will be applied to the total incentive amount for that reporting period regardless of whether some of the EHR use accounted for in that reporting period occurred prior to April 1, 2013. The MA EHR incentive payments that CMS will make in June 2013 are for the 2012 reporting period and therefore will not be reduced due to sequestration.

Reducing Payments to Contracted Providers

Section 1854(a)(6)(B)(iii) of the Social Security Act prohibits CMS from interfering in the payment arrangements between MAOs and contract providers. The statute specifies that CMS “may not require any MA organization to...require a particular price structure for payment under such a contract...” Thus, whether and how sequestration might affect an MAO’s payments to its contracted providers are governed by the terms of the contract between the MAO and the provider. We note that MAOs must follow the prompt pay provisions established in their contracts with providers and to pay providers under the terms of those contracts (see 42 CFR sections 422.520(b)(1) and (2)). Similarly, the question of whether and how sequestration might affect a Part D plan sponsor’s payment to its contracted providers is governed by the payment terms of the contract between the plan sponsor and its network pharmacy providers. We note that Part D plan sponsors must follow the prompt pay provisions established in their contracts with network pharmacy providers and to pay the providers under the terms of those contracts (see 42 CFR sections 423.520(b)(1) and (2)).

Beneficiary Liability Under Sequestration

Sequestration does not affect the basic and supplemental benefits offered by the MAO or Part D sponsor, nor does it change the plan’s approved premium or cost sharing requirements for CY 2013. As a result, MAOs and Part D sponsors are not permitted to modify the currently-approved benefit or cost sharing structure in any way. This includes increases in premiums or cost sharing, or reductions in benefits in an attempt to offset the lower payments due to sequestration.

Reducing Payments to Non-Contract Providers

Pursuant to the Medicare regulations at 42 CFR § 422.214, a non-contract provider must accept, as payment in full, the amount that it could collect if the beneficiary were enrolled in the Medicare Fee-for-Service program. On March 8, 2013, CMS sent a bulletin titled “Mandatory Payment Reductions in the Medicare Fee-for-Service (FFS) Program – Sequestration” via the Medicare Learning Network. That bulletin provided the following guidance regarding how the reduction applies to payments under the Medicare FFS program (i.e., Part A and Part B):

In general, Medicare FFS claims with dates-of-service or dates-of-discharge on or after April 1, 2013, will incur a 2 percent reduction in Medicare payment. Claims for durable medical equipment (DME), prosthetics, orthotics, and supplies, including claims under the DME Competitive Bidding Program, will be reduced by 2 percent based upon whether the date-of-service or the start date for rental equipment or multi-day supplies is on or after April 1, 2013.

The claims payment adjustment shall be applied to all claims after determining coinsurance, any applicable deductible, and any applicable Medicare Secondary Payment adjustments.

Though beneficiary payments for deductibles and coinsurance are not subject to the 2 percent payment reduction, Medicare’s payment to beneficiaries for unassigned claims is subject to the 2 percent reduction.

For example, if a provider bills for a service with a Medicare approved amount of \$100.00 and \$50.00 is applied to the deductible, a balance of \$50.00 remains. Medicare FFS normally would pay 80 percent of the approved amount after the deductible is met, which is \$40.00 ($\$50.00 \times 80 \text{ percent} = \40.00). The patient is responsible for the remaining 20 percent coinsurance amount of \$10.00 ($\$50.00 - \$40.00 = \10.00). However, due to the sequestration reduction, 2 percent of the \$40.00 calculated payment amount is not paid, resulting in a payment of \$39.20 instead of \$40.00 ($\$40.00 \times 2 \text{ percent} = \0.80).

MAOs may apply a similar process to determine the amount owed to a non-contract provider. The MAO should calculate the net payment owed to the non-contract provider by subtracting the member’s out-of-network (OON) cost-sharing amount from the total Medicare approved amount under FFS for that particular service. The minimum payment amount due to the non-contract provider would be equal to the net payment amount reduced by 2 percent due to sequestration. As an example, if a non-contract provider bills an MAO for a service with a FFS approved amount of \$100.00 and the member has a 20 percent OON cost-sharing obligation, the member would be responsible for paying the \$20 coinsurance amount ($\$100 \times 20 \text{ percent} = \20) and the MAO would normally pay the non-contract provider \$80 ($\$100 \times 80\% = \80). However, due to the sequestration reduction, the \$80.00 calculated payment amount would be reduced by 2 percent ($\$80.00 \times 2 \text{ percent} = \1.60), resulting in a payment of \$78.40 instead of \$80.00 ($\$80.00 - \$1.60 = \$78.40$).

We would note, however, that the requirement for a non-contract provider to accept FFS payment amounts as payment in full serves as a floor on MAOs' payments to these providers. As a result, it is at the MAOs' discretion as to whether to impose a reduction due to sequestration for these payments. Additionally, MAOs must continue to meet the prompt payment requirements for paying non-contract providers (see 42 CFR section 422.520(a)(3)).

If you have any questions about the guidance in the memorandum, please contact Jean Stiller at Jean.Stiller@cms.hhs.gov.