

**(B) Target amount described**

The target amount described in this paragraph is, with respect to a prescription drug plan or an MA-PD plan in a year, the total amount of payments paid to the PDP sponsor or MA-PD organization for the plan for the year, taking into account amounts paid by the Secretary and enrollees, based upon the standardized bid amount (as defined in section 1395w-113(a)(5) of this title and as risk adjusted under subsection (c)(1) of this section), reduced by the total amount of administrative expenses for the year assumed in such standardized bid.

**(C) First and second threshold risk percentage defined****(i) First threshold risk percentage**

Subject to clause (iii), for purposes of this section, the first threshold risk percentage is—

(I) for 2006 and 2007, and<sup>1</sup> 2.5 percent;

(II) for 2008 through 2011, 5 percent; and

(III) for 2012 and subsequent years, a percentage established by the Secretary, but in no case less than 5 percent.

**(ii) Second threshold risk percentage**

Subject to clause (iii), for purposes of this section, the second threshold risk percentage is—

(I) for 2006 and 2007, 5 percent;

(II) for 2008 through 2011, 10 percent; and

(III) for 2012 and subsequent years, a percentage established by the Secretary that is greater than the percent established for the year under clause (i)(III), but in no case less than 10 percent.

**(iii) Reduction of risk percentage to ensure 2 plans in an area**

Pursuant to section 1395w-111(b)(2)(E)(ii) of this title, a PDP sponsor may submit a bid that requests a decrease in the applicable first or second threshold risk percentages or an increase in the percents applied under paragraph (2).

**(4) Plans at risk for entire amount of supplemental prescription drug coverage**

A PDP sponsor and MA organization that offers a plan that provides supplemental prescription drug benefits shall be at full financial risk for the provision of such supplemental benefits.

**(5) No effect on monthly premium**

No adjustment in payments made by reason of this subsection shall affect the monthly beneficiary premium or the MA monthly prescription drug beneficiary premium.

**(f) Disclosure of information****(1) In general**

Each contract under this part and under part C of this subchapter shall provide that—

(A) the PDP sponsor offering a prescription drug plan or an MA organization offering an MA-PD plan shall provide the Sec-

retary with such information as the Secretary determines is necessary to carry out this section; and

(B) the Secretary shall have the right in accordance with section 1395w-27(d)(2)(B) of this title (as applied under section 1395w-112(b)(3)(C) of this title) to inspect and audit any books and records of a PDP sponsor or MA organization that pertain to the information regarding costs provided to the Secretary under subparagraph (A).

**(2) Restriction on use of information**

Information disclosed or obtained pursuant to the provisions of this section may be used—

(A) by officers, employees, and contractors of the Department of Health and Human Services for the purposes of, and to the extent necessary in—

(i) carrying out this section; and

(ii) conducting oversight, evaluation, and enforcement under this subchapter; and

(B) by the Attorney General and the Comptroller General of the United States for the purposes of, and to the extent necessary in, carrying out health oversight activities.

**(g) Payment for fallback prescription drug plans**

In lieu of the amounts otherwise payable under this section to a PDP sponsor offering a fallback prescription drug plan (as defined in section 1395w-111(g)(4) of this title<sup>2</sup>), the amount payable shall be the amounts determined under the contract for such plan pursuant to section 1395w-111(g)(5) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-15, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2113; amended Pub. L. 111-148, title VI, §6402(b)(1), Mar. 23, 2010, 124 Stat. 756.)

## REFERENCES IN TEXT

Section 1395w-111(g)(4) of this title, referred to in subsec. (g), was in the original “section 1860D-3(c)(4)”, and was translated as reading “section 1860D-11(g)(4)”, meaning section 1860D-11(g)(4) of the Social Security Act, to reflect the probable intent of Congress, because section 1860D-3, which is classified to section 1395w-103 of this title, does not contain a subsec. (c), and section 1395w-111(g)(4) of this title defines “fallback prescription drug plan” for purposes of this part.

## AMENDMENTS

2010—Subsec. (f)(2). Pub. L. 111-148 substituted “may be used—” for “may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.” in introductory provisions and added subpars. (A) and (B).

**§ 1395w-116. Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund****(a) Establishment and operation of Account****(1) Establishment**

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the “Medicare Prescription

<sup>1</sup> So in original. The word “and” probably should not appear.

<sup>2</sup> See References in Text note below.

Drug Account” (in this section referred to as the “Account”).

**(2) Funding**

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, such Account as provided in this part.

**(3) Separate from rest of Trust Fund**

Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

**(b) Payments from Account**

**(1) In general**

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including—

(A) payments under section 1395w-114 of this title (relating to low-income subsidy payments);

(B) payments under section 1395w-115 of this title (relating to subsidy payments and payments for fallback plans);

(C) payments to sponsors of qualified retiree prescription drug plans under section 1395w-132(a) of this title; and

(D) payments with respect to administrative expenses under this part in accordance with section 401(g) of this title.

**(2) Transfers to Medicaid account for increased administrative costs**

The Managing Trustee shall transfer from time to time from the Account to the Grants to States for Medicaid account amounts the Secretary certifies are attributable to increases in payment resulting from the application of section 1396u-5(b) of this title.

**(3) Payments of premiums withheld**

The Managing Trustee shall make payment to the PDP sponsor or MA organization involved of the premiums (and the portion of late enrollment penalties) that are collected in the manner described in section 1395w-24(d)(2)(A) of this title and that are payable under a prescription drug plan or MA-PD plan offered by such sponsor or organization.

**(4) Treatment in relation to part B premium**

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

**(c) Deposits into Account**

**(1) Low-income transfer**

Amounts paid under section 1396u-5(c) of this title (and any amounts collected or offset under paragraph (1)(C) of such section) are deposited into the Account.

**(2) Amounts withheld**

Pursuant to sections 1395w-113(c) and 1395w-24(d) of this title (as applied under this

part), amounts that are withheld (and allocated) to the Account are deposited into the Account.

**(3) Appropriations to cover Government contributions**

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Account, an amount equivalent to the amount of payments made from the Account under subsection (b) of this section plus such amounts as the Managing Trustee certifies is necessary to maintain an appropriate contingency margin, reduced by the amounts deposited under paragraph (1) or subsection (a)(2) of this section.

**(4) Initial funding and reserve**

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part and to provide an initial contingency reserve, there are authorized to be appropriated to the Account, out of any moneys in the Treasury not otherwise appropriated, such amount as the Secretary certifies are required, but not to exceed 10 percent of the estimated total expenditures from such Account in 2006.

**(5) Transfer of any remaining balance from Transitional Assistance Account**

Any balance in the Transitional Assistance Account that is transferred under section 1395w-141(k)(5) of this title shall be deposited into the Account.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-16, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2120.)

SUBPART 3—APPLICATION TO MEDICARE ADVANTAGE PROGRAM AND TREATMENT OF EMPLOYER-SPONSORED PROGRAMS AND OTHER PRESCRIPTION DRUG PLANS

**§ 1395w-131. Application to Medicare Advantage program and related managed care programs**

**(a) Special rules relating to offering of qualified prescription drug coverage**

**(1) In general**

An MA organization on and after January 1, 2006—

(A) may not offer an MA plan described in section 1395w-21(a)(2)(A) of this title in an area unless either that plan (or another MA plan offered by the organization in that same service area) includes required prescription drug coverage (as defined in paragraph (2)); and

(B) may not offer prescription drug coverage (other than that required under parts A and B of this subchapter) to an enrollee—

(i) under an MSA plan; or

(ii) under another MA plan unless such drug coverage under such other plan provides qualified prescription drug coverage and unless the requirements of this section with respect to such coverage are met.