

deemed to have been met if the State does not have a licensing process in effect with respect to the PDP sponsor; and

(ii) for plan years beginning before January 1, 2008, if the State does have such a licensing process in effect, such ground for approval described in such section is deemed to have been met upon submission of an application described in such section.

(3) Application of waiver procedures

With respect to an application for a waiver (or a waiver granted) under paragraph (1)(A) of this subsection, the provisions of subparagraphs (E), (F), and (G) of section 1395w-25(a)(2) of this title shall apply, except that clauses (i) and (ii) of such subparagraph (E) shall not apply in the case of a State that does not have a licensing process described in paragraph (2)(B)(i) in effect.

(4) References to certain provisions

In applying provisions of section 1395w-25(a)(2) of this title under paragraphs (2) and (3) of this subsection to prescription drug plans and PDP sponsors—

(A) any reference to a waiver application under section 1395w-25 of this title shall be treated as a reference to a waiver application under paragraph (1)(A) of this subsection; and

(B) any reference to solvency standards shall be treated as a reference to solvency standards established under subsection (d) of this section.

(d) Solvency standards for non-licensed entities

(1) Establishment and publication

The Secretary, in consultation with the National Association of Insurance Commissioners, shall establish and publish, by not later than January 1, 2005, financial solvency and capital adequacy standards for entities described in paragraph (2).

(2) Compliance with standards

A PDP sponsor that is not licensed by a State under subsection (a)(1) and for which a waiver application has been approved under subsection (c) shall meet solvency and capital adequacy standards established under paragraph (1). The Secretary shall establish certification procedures for such sponsors with respect to such solvency standards in the manner described in section 1395w-25(c)(2) of this title.

(e) Licensure does not substitute for or constitute certification

The fact that a PDP sponsor is licensed in accordance with subsection (a)(1) or has a waiver application approved under subsection (c) does not deem the sponsor to meet other requirements imposed under this part for a sponsor.

(f) Periodic review and revision of standards

(1) In general

Subject to paragraph (2), the Secretary may periodically review the standards established under this section and, based on such review, may revise such standards if the Secretary determines such revision to be appropriate.

(2) Prohibition of midyear implementation of significant new regulatory requirements

The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a PDP sponsor or a prescription drug plan.

(g) Prohibition of State imposition of premium taxes; relation to State laws

The provisions of sections 1395w-24(g) and 1395w-26(b)(3) of this title shall apply with respect to PDP sponsors and prescription drug plans under this part in the same manner as such sections apply to MA organizations and MA plans under part C.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-12, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2099; amended Pub. L. 110-275, title I, §§171(a), 172(a)(1), 173(a), 181, July 15, 2008, 122 Stat. 2578, 2580-2582; Pub. L. 115-271, title II, §2008(a), Oct. 24, 2018, 132 Stat. 3931.)

AMENDMENTS

2018—Subsec. (b)(7). Pub. L. 115-271 added par. (7).

2008—Subsec. (b)(3)(D). Pub. L. 110-275, §181, inserted at end “Notwithstanding any other provision of law, information provided to the Secretary under the application of section 1395w-27(e)(1) of this title to contracts under this section under the preceding sentence—” and added cls. (i) and (ii).

Subsec. (b)(4). Pub. L. 110-275, §171(a), added par. (4).

Subsec. (b)(5). Pub. L. 110-275, §172(a)(1), added par. (5).

Subsec. (b)(6). Pub. L. 110-275, §173(a), added par. (6).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 2008(a) of Pub. L. 115-271 applicable with respect to plan years beginning on or after Jan. 1, 2020, see section 2008(e) of Pub. L. 115-271, set out as a note under section 1395w-27 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 171(a) of Pub. L. 110-275 applicable to plan years beginning on or after Jan. 1, 2010, see section 171(c) of Pub. L. 110-275, set out as a note under section 1395w-27 of this title.

Amendment by section 172(a)(1) of Pub. L. 110-275 applicable to plan years beginning on or after Jan. 1, 2010, see section 172(b) of Pub. L. 110-275, set out as a note under section 1395w-27 of this title.

Amendment by section 173(a) of Pub. L. 110-275 applicable to plan years beginning on or after Jan. 1, 2009, see section 173(c) of Pub. L. 110-275, set out as a note under section 1395w-27 of this title.

§ 1395w-113. Premiums; late enrollment penalty

(a) Monthly beneficiary premium

(1) Computation

(A) In general

The monthly beneficiary premium for a prescription drug plan is the base beneficiary premium computed under paragraph (2) as adjusted under this paragraph.

(B) Adjustment to reflect difference between bid and national average bid

(i) Above average bid

If for a month the amount of the standardized bid amount (as defined in paragraph (5)) exceeds the amount of the adjusted national average monthly bid

amount (as defined in clause (iii)), the base beneficiary premium for the month shall be increased by the amount of such excess.

(ii) Below average bid

If for a month the amount of the adjusted national average monthly bid amount for the month exceeds the standardized bid amount, the base beneficiary premium for the month shall be decreased by the amount of such excess.

(iii) Adjusted national average monthly bid amount defined

For purposes of this subparagraph, the term “adjusted national average monthly bid amount” means the national average monthly bid amount computed under paragraph (4), as adjusted under section 1395w-115(c)(2) of this title.

(C) Increase for supplemental prescription drug benefits

The base beneficiary premium shall be increased by the portion of the PDP approved bid that is attributable to supplemental prescription drug benefits.

(D) Increase for late enrollment penalty

The base beneficiary premium shall be increased by the amount of any late enrollment penalty under subsection (b).

(E) Decrease for low-income assistance

The monthly beneficiary premium is subject to decrease in the case of a subsidy eligible individual under section 1395w-114 of this title.

(F) Increase based on income

The monthly beneficiary premium shall be increased pursuant to paragraph (7).

(G) Uniform premium

Except as provided in subparagraphs (D), (E), and (F), the monthly beneficiary premium for a prescription drug plan in a PDP region is the same for all part D eligible individuals enrolled in the plan.

(2) Base beneficiary premium

The base beneficiary premium under this paragraph for a prescription drug plan for a month is equal to the product¹—

(A) the beneficiary premium percentage (as specified in paragraph (3)); and

(B) the national average monthly bid amount (computed under paragraph (4)) for the month.

(3) Beneficiary premium percentage

For purposes of this subsection, the beneficiary premium percentage for any year is the percentage equal to a fraction—

(A) the numerator of which is 25.5 percent; and

(B) the denominator of which is 100 percent minus a percentage equal to—

(i) the total reinsurance payments which the Secretary estimates are payable under section 1395w-115(b) of this title with respect to the coverage year; divided by

(ii) the sum of—

(I) the amount estimated under clause (i) for the year; and

(II) the total payments which the Secretary estimates will be paid to prescription drug plans and MA-PD plans that are attributable to the standardized bid amount during the year, taking into account amounts paid by the Secretary and enrollees.

(4) Computation of national average monthly bid amount

(A) In general

For each year (beginning with 2006) the Secretary shall compute a national average monthly bid amount equal to the average of the standardized bid amounts (as defined in paragraph (5)) for each prescription drug plan and for each MA-PD plan described in section 1395w-21(a)(2)(A)(i) of this title. Such average does not take into account the bids submitted for MSA plans, MA private fee-for-service plan, and specialized MA plans for special needs individuals, PACE programs under section 1395eee of this title (pursuant to section 1395w-131(f) of this title), and under reasonable cost reimbursement contracts under section 1395mm(h) of this title (pursuant to section 1395w-131(e) of this title).

(B) Weighted average

(i) In general

The monthly national average monthly bid amount computed under subparagraph (A) for a year shall be a weighted average, with the weight for each plan being equal to the average number of part D eligible individuals enrolled in such plan in the reference month (as defined in section 1395w-27a(f)(4) of this title).

(ii) Special rule for 2006

For purposes of applying this paragraph for 2006, the Secretary shall establish procedures for determining the weighted average under clause (i) for 2005.

(5) Standardized bid amount defined

For purposes of this subsection, the term “standardized bid amount” means the following:

(A) Prescription drug plans

(i) Basic coverage

In the case of a prescription drug plan that provides basic prescription drug coverage, the PDP approved bid (as defined in paragraph (6)).

(ii) Supplemental coverage

In the case of a prescription drug plan that provides supplemental prescription drug coverage, the portion of the PDP approved bid that is attributable to basic prescription drug coverage.

(B) MA-PD plans

In the case of an MA-PD plan, the portion of the accepted bid amount that is attributable to basic prescription drug coverage.

¹So in original. The word “of” probably should appear after “product”.

(6) PDP approved bid defined

For purposes of this part, the term “PDP approved bid” means, with respect to a prescription drug plan, the bid amount approved for the plan under this part.

(7) Increase in base beneficiary premium based on income**(A) In general**

In the case of an individual whose modified adjusted gross income exceeds the threshold amount applicable under paragraph (2) of section 1395r(i) of this title (including application of paragraph (5) of such section) for the calendar year, the monthly amount of the beneficiary premium applicable under this section for a month after December 2010 shall be increased by the monthly adjustment amount specified in subparagraph (B).

(B) Monthly adjustment amount

The monthly adjustment amount specified in this subparagraph for an individual for a month in a year is equal to the product of—

- (i) the quotient obtained by dividing—
 - (I) the applicable percentage determined under paragraph (3)(C) of section 1395r(i) of this title (including application of paragraph (5) of such section) for the individual for the calendar year reduced by 25.5 percent; by
 - (II) 25.5 percent; and
- (ii) the base beneficiary premium (as computed under paragraph (2)).

(C) Modified adjusted gross income

For purposes of this paragraph, the term “modified adjusted gross income” has the meaning given such term in subparagraph (A) of section 1395r(i)(4) of this title, determined for the taxable year applicable under subparagraphs (B) and (C) of such section.

(D) Determination by Commissioner of Social Security

The Commissioner of Social Security shall make any determination necessary to carry out the income-related increase in the base beneficiary premium under this paragraph.

(E) Procedures to assure correct income-related increase in base beneficiary premium**(i) Disclosure of base beneficiary premium**

Not later than September 15 of each year beginning with 2010, the Secretary shall disclose to the Commissioner of Social Security the amount of the base beneficiary premium (as computed under paragraph (2)) for the purpose of carrying out the income-related increase in the base beneficiary premium under this paragraph with respect to the following year.

(ii) Additional disclosure

Not later than October 15 of each year beginning with 2010, the Secretary shall disclose to the Commissioner of Social Security the following information for the purpose of carrying out the income-related increase in the base beneficiary premium under this paragraph with respect to the following year:

(I) The modified adjusted gross income threshold applicable under paragraph (2) of section 1395r(i) of this title (including application of paragraph (5) of such section).

(II) The applicable percentage determined under paragraph (3)(C) of section 1395r(i) of this title (including application of paragraph (5) of such section).

(III) The monthly adjustment amount specified in subparagraph (B).

(IV) Any other information the Commissioner of Social Security determines necessary to carry out the income-related increase in the base beneficiary premium under this paragraph.

(F) Rule of construction

The formula used to determine the monthly adjustment amount specified under subparagraph (B) shall only be used for the purpose of determining such monthly adjustment amount under such subparagraph.

(b) Late enrollment penalty**(1) In general**

Subject to the succeeding provisions of this subsection, in the case of a part D eligible individual described in paragraph (2) with respect to a continuous period of eligibility, there shall be an increase in the monthly beneficiary premium established under subsection (a) in an amount determined under paragraph (3).

(2) Individuals subject to penalty

A part D eligible individual described in this paragraph is, with respect to a continuous period of eligibility, an individual for whom there is a continuous period of 63 days or longer (all of which in such continuous period of eligibility) beginning on the day after the last date of the individual’s initial enrollment period under section 1395w-101(b)(2) of this title and ending on the date of enrollment under a prescription drug plan or MA-PD plan during all of which the individual was not covered under any creditable prescription drug coverage.

(3) Amount of penalty**(A) In general**

The amount determined under this paragraph for a part D eligible individual for a continuous period of eligibility is the greater of—

- (i) an amount that the Secretary determines is actuarially sound for each uncovered month (as defined in subparagraph (B)) in the same continuous period of eligibility; or
- (ii) 1 percent of the base beneficiary premium (computed under subsection (a)(2)) for each such uncovered month in such period.

(B) Uncovered month defined

For purposes of this subsection, the term “uncovered month” means, with respect to a part D eligible individual, any month beginning after the end of the initial enrollment period under section 1395w-101(b)(2) of this

title unless the individual can demonstrate that the individual had creditable prescription drug coverage (as defined in paragraph (4)) for any portion of such month.

(4) Creditable prescription drug coverage defined

For purposes of this part, the term “creditable prescription drug coverage” means any of the following coverage, but only if the coverage meets the requirement of paragraph (5):

(A) Coverage under prescription drug plan or MA-PD plan

Coverage under a prescription drug plan or under an MA-PD plan.

(B) Medicaid

Coverage under a medicaid plan under subchapter XIX or under a waiver under section 1315 of this title.

(C) Group health plan

Coverage under a group health plan, including a health benefits plan under chapter 89 of title 5 (commonly known as the Federal employees health benefits program), and a qualified retiree prescription drug plan (as defined in section 1395w-132(a)(2) of this title).

(D) State pharmaceutical assistance program

Coverage under a State pharmaceutical assistance program described in section 1395w-133(b)(1) of this title.

(E) Veterans’ coverage of prescription drugs

Coverage for veterans, and survivors and dependents of veterans, under chapter 17 of title 38.

(F) Prescription drug coverage under medigap policies

Coverage under a medicare supplemental policy under section 1395ss of this title that provides benefits for prescription drugs (whether or not such coverage conforms to the standards for packages of benefits under section 1395ss(p)(1) of this title).

(G) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(H) Other coverage

Such other coverage as the Secretary determines appropriate.

(5) Actuarial equivalence requirement

Coverage meets the requirement of this paragraph only if the coverage is determined (in a manner specified by the Secretary) to provide coverage of the cost of prescription drugs the actuarial value of which (as defined by the Secretary) to the individual equals or exceeds the actuarial value of standard prescription drug coverage (as determined under section 1395w-111(c) of this title).

(6) Procedures to document creditable prescription drug coverage

(A) In general

The Secretary shall establish procedures (including the form, manner, and time) for the documentation of creditable prescription

drug coverage, including procedures to assist in determining whether coverage meets the requirement of paragraph (5).

(B) Disclosure by entities offering creditable prescription drug coverage

(i) In general

Each entity that offers prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) shall provide for disclosure, in a form, manner, and time consistent with standards established by the Secretary, to the Secretary and part D eligible individuals of whether the coverage meets the requirement of paragraph (5) or whether such coverage is changed so it no longer meets such requirement.

(ii) Disclosure of non-creditable coverage

In the case of such coverage that does not meet such requirement, the disclosure to part D eligible individuals under this subparagraph shall include information regarding the fact that because such coverage does not meet such requirement there are limitations on the periods in a year in which the individuals may enroll under a prescription drug plan or an MA-PD plan and that any such enrollment is subject to a late enrollment penalty under this subsection.

(C) Waiver of requirement

In the case of a part D eligible individual who was enrolled in prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) which is not creditable prescription drug coverage because it does not meet the requirement of paragraph (5), the individual may apply to the Secretary to have such coverage treated as creditable prescription drug coverage if the individual establishes that the individual was not adequately informed that such coverage did not meet such requirement.

(7) Continuous period of eligibility

(A) In general

Subject to subparagraph (B), for purposes of this subsection, the term “continuous period of eligibility” means, with respect to a part D eligible individual, the period that begins with the first day on which the individual is eligible to enroll in a prescription drug plan under this part and ends with the individual’s death.

(B) Separate period

Any period during all of which a part D eligible individual is entitled to hospital insurance benefits under part A and—

(i) which terminated in or before the month preceding the month in which the individual attained age 65; or

(ii) for which the basis for eligibility for such entitlement changed between section 426(b) of this title and section 426(a) of this title, between 426(b)² of this title and sec-

² So in original. Probably should be “section 426(b)”.

tion 426-1 of this title, or between section 426-1 of this title and section 426(a) of this title,

shall be a separate continuous period of eligibility with respect to the individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this paragraph).

(8) Waiver of penalty for subsidy-eligible individuals

In no case shall a part D eligible individual who is determined to be a subsidy eligible individual (as defined in section 1395w-114(a)(3) of this title) be subject to an increase in the monthly beneficiary premium established under subsection (a).

(c) Collection of monthly beneficiary premiums

(1) In general

Subject to paragraphs (2), (3), and (4), the provisions of section 1395w-24(d) of this title shall apply to PDP sponsors and premiums (and any late enrollment penalty) under this part in the same manner as they apply to MA organizations and beneficiary premiums under part C, except that any reference to a Trust Fund is deemed for this purpose a reference to the Medicare Prescription Drug Account.

(2) Crediting of late enrollment penalty

(A) Portion attributable to increased actuarial costs

With respect to late enrollment penalties imposed under subsection (b), the Secretary shall specify the portion of such a penalty that the Secretary estimates is attributable to increased actuarial costs assumed by the PDP sponsor or MA organization (and not taken into account through risk adjustment provided under section 1395w-115(c)(1) of this title or through reinsurance payments under section 1395w-115(b) of this title) as a result of such late enrollment.

(B) Collection through withholding

In the case of a late enrollment penalty that is collected from a part D eligible individual in the manner described in section 1395w-24(d)(2)(A) of this title, the Secretary shall provide that only the portion of such penalty estimated under subparagraph (A) shall be paid to the PDP sponsor or MA organization offering the part D plan in which the individual is enrolled.

(C) Collection by plan

In the case of a late enrollment penalty that is collected from a part D eligible individual in a manner other than the manner described in section 1395w-24(d)(2)(A) of this title, the Secretary shall establish procedures for reducing payments otherwise made to the PDP sponsor or MA organization by an amount equal to the amount of such penalty less the portion of such penalty estimated under subparagraph (A).

(3) Fallback plans

In applying this subsection in the case of a fallback prescription drug plan, paragraph (2) shall not apply and the monthly beneficiary

premium shall be collected in the manner specified in section 1395w-24(d)(2)(A) of this title (or such other manner as may be provided under section 1395s of this title in the case of monthly premiums under section 1395r of this title).

(4) Collection of monthly adjustment amount

(A) In general

Notwithstanding any provision of this subsection or section 1395w-24(d)(2) of this title, subject to subparagraph (B), the amount of the income-related increase in the base beneficiary premium for an individual for a month (as determined under subsection (a)(7)) shall be paid through withholding from benefit payments in the manner provided under section 1395s of this title.

(B) Agreements

In the case where the monthly benefit payments of an individual that are withheld under subparagraph (A) are insufficient to pay the amount described in such subparagraph, the Commissioner of Social Security shall enter into agreements with the Secretary, the Director of the Office of Personnel Management, and the Railroad Retirement Board as necessary in order to allow other agencies to collect the amount described in subparagraph (A) that was not withheld under such subparagraph.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D-13, as added Pub. L. 108-173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2102; amended Pub. L. 110-275, title I, §114(a)(1), July 15, 2008, 122 Stat. 2506; Pub. L. 111-148, title III, §3308(a), (b)(1), Mar. 23, 2010, 124 Stat. 472, 474.)

AMENDMENTS

2010—Subsec. (a)(1)(F), (G). Pub. L. 111-148, §3308(b)(1), added subpar. (F), redesignated former subpar. (F) as (G), and substituted “(D), (E), and (F)” for “(D) and (E)” in subpar. (G).

Subsec. (a)(7). Pub. L. 111-148, §3308(a)(1), added par. (7).

Subsec. (c)(1). Pub. L. 111-148, §3308(a)(2)(A), substituted “(2), (3), and (4)” for “(2) and (3)”.

Subsec. (c)(4). Pub. L. 111-148, §3308(a)(2)(B), added par. (4).

2008—Subsec. (b)(8). Pub. L. 110-275 added par. (8).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-275, title I, §114(b), July 15, 2008, 122 Stat. 2507, provided that: “The amendments made by this section [amending this section and section 1395w-114 of this title] shall apply to subsidies for months beginning with January 2009.”

§ 1395w-114. Premium and cost-sharing subsidies for low-income individuals

(a) Income-related subsidies for individuals with income up to 150 percent of poverty line

(1) Individuals with income below 135 percent of poverty line

In the case of a subsidy eligible individual (as defined in paragraph (3)) who is determined to have income that is below 135 percent of the poverty line applicable to a family of the size involved and who meets the resources requirement described in paragraph (3)(D) or who is covered under this paragraph under paragraph