



BENEFIT NEWS BRIEFS

CMS Publishes Interim Final & Proposed Revisions to RDS-Related Regulation

CMS Also Posts Revised Guidance on Rebates and Other Price Concessions

CMS recently published interim final revisions to the Retiree Drug Subsidy (RDS) regulations in the *Federal Register* (74 FR 1494) which adds definitions of several terms and revises definitions of several other terms that already appear in the RDS regulations. The interim final revisions are available online at: <http://edocket.access.gpo.gov/2009/pdf/E9-148.pdf> or by "[clicking here](#)".

CMS also published in the *Federal Register* (74 FR 1550) proposed revisions to Federal regulations that would permit CMS to waive certain requirements that would otherwise apply to RDS Plan Sponsors. The proposed revisions are available at <http://edocket.access.gpo.gov/2009/pdf/E9-151.pdf> or by "[clicking here](#)".

The Interim Final Revisions

According to CMS, the interim final revisions add definitions for the following terms:

- Actually Paid
- Administrative Costs

CMS further notes that the interim final revisions also revise definitions that already appear in the regulations for the following terms:

- Allowable retiree costs
- Gross covered retiree plan-related prescription drug costs

The discussion of these revisions begins at 74 FR 1515 and is available by "[clicking here](#)". The revised definitions are found at 74 FR 1549 or by "[clicking here](#)". CMS explained that it is adding and revising these definitions to ensure continued consistency in language between these RDS definitions and definitions that apply to the Medicare Part D Program. However, according to CMS, these added and revised

definitions differ from the Medicare Part D definitions by NOT requiring RDS Plan Sponsors to report drug costs that reflect the amount the Plan Sponsor's contracting Pharmacy Benefit Manager (PBM) or other intermediary contracting organization pays a pharmacy (pass-through prices), which is the amount Medicare Part D plans must report under the new regulations.

Instead, RDS Plan Sponsors can report pass-through prices, or the amount the Plan Sponsor pays its contracted PBM or other intermediary contracting organization for the drugs (lock-in prices).

Unlike the definitions that apply to the Medicare Part D Program, these added and revised RDS definitions do NOT require RDS Plan Sponsors to report rebates and other price concessions retained by a PBM or other intermediary contracting organization. CMS clarified that although previously published CMS guidance indicated that there was no such requirement with respect to RDS plan years that begin prior to January 1, 2007, that guidance has been updated to state that there is no such requirement with respect to ANY RDS plan year, unless and until CMS publishes guidance to the contrary. The updated guidance is discussed following The Proposed Revisions information below.

The Proposed Revisions

According to CMS, the proposed revisions would expand an existing regulatory interpretation which permits CMS to waive certain requirements on employer-sponsored Medicare Part D plans and to also waive requirements on RDS Plan Sponsors. If CMS should adopt one specific legal theory of the three set forth in the previously discussed interim final rule, then finalizing the proposed revisions would enable CMS to implement it.

Updated Guidance on Rebates and Other Price Concessions

The updated guidance document titled "*CMS Retiree Drug Subsidy Guidance: Rebates and Other Price Concessions*" is available at the [CMS Employer Information](#) page and or by "[clicking here](#)." CMS has indicated if users have questions about the guidance document, they should call (410) 786-0709 and leave a voice mail with your name, the name of your organization and your telephone number.

The updated guidance incorporates existing guidance published June 6, 2008, but modifies that guidance by:

- Specifying that there is no requirement, ***for any RDS plan year***, to take into account manufacturer rebates and similar price concessions that are retained by a PBM. CMS notes this approach is consistent with regulations published in the *Federal Register* (74 FR 1494).
- Clarifying that the discussion about how to allocate rebates and similar price concessions among benefit options, by month, applies only to rebates and similar price concessions for Medicare Part D drugs.

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