

Monday, April 21, 2025

Dear

I wanted to thank you and Mr. Robin Johnson for taking the time out on Friday, May 5th 2017 to discuss the Retiree Drug Subsidy recovery opportunity for the State of South Carolina on the phone.

The RDS Services, LLC proprietary data aggregation software and analytics process is a sole source solution that will accurately capture all reimbursable costs within the Retiree Drug Subsidy program. Our systems and processes have increased subsidy recoveries a mean average of 10%. Many of our recovery clients have recovered in excess of 18% or more as demonstrated on the attached reference list.

In reference to our discussion, you had asked for specific reference materials concerning the Federal statute that creates the opportunity to recover the additional subsidy payments through the Retiree Drug Subsidy program.

As I indicated during our discussion, the reopening process is not only allowed by the statute, but the Centers for Medicare and Medicaid encourages plan sponsors to conduct a reopening because the program has a known deficiency of subsidy payments to plan sponsors. The Centers for Medicare and Medicaid Services recognizes the need for accurate Retiree Drug Subsidy information and relies upon RDS Services, LLC, as authorized submitters, to deliver accurate data aggregation through our proprietary software platform.

To provide you with the highest degree of clarity on this topic, I will direct you to several provisions within the Federal statute that will provide you guidance on the ability of plan sponsors to conduct a reopening.



The Retiree Drug Subsidy is authorized by CFR, Title 42, Chapter IV, Subchapter B, Part 423, Subpart R, and Section 423.886

§ 423.886 Retiree drug subsidy amounts.

(a) Amount of subsidy payment.

(1) For each qualifying covered retiree enrolled with the sponsor of a qualified retiree prescription drug plan in a plan year, the sponsor receives a subsidy payment in the amount of 28 percent of the allowable retiree costs (as defined in § 423.882) in the plan year for such retiree attributable to gross retiree costs between the cost threshold and the cost limit as defined in paragraph (b) of this section. The subsidy payment is calculated by first determining gross retiree costs between the cost threshold and cost limit, and then determining allowable retiree costs attributable to the gross retiree costs. For this purpose and where otherwise relevant in this subpart, plan year is the calendar, policy, or fiscal year on which the records of a plan are kept.

(b) Cost threshold and cost limit. The following cost threshold and cost limits apply -

(1) Subject to paragraph (b)(3) of this section, the cost threshold under this section is equal to \$250 for plan years that end in 2006.

(2) Subject to paragraph (b)(3) of this section, the cost limit under this section is equal to \$5,000 for plan years that end in 2006.

(3) The cost threshold and cost limit specified in paragraphs (b)(1) and (b)(2) of this section, for plan years that end in years after 2006, are adjusted in the same manner as the annual Part D deductible and the annual Part D out-of-pocket threshold are adjusted annually under § 423.104(d)(1)(ii) and (d)(5)(iii)(B), respectively.

(1) - <https://www.law.cornell.edu/cfr/text/42/423.886>

As noted above, there is **no methodology or guidance** provided in the statute for the aggregation of claims data to be submitted, and therefore, the Centers for Medicare and Medicaid recognizes that there are omissions or data discrepancies. Because of this known omission of guidance, the RDS Service center allows for the reopening process to be conducted by authorized submitters when new aggregate data sets will result in the increase of a subsidy payment to a plan sponsor. The reopening process is enabled under (D) 1 thru 6 of the appeals provisions.

§ 423.890 Appeals.

(a) Informal written reconsideration -

(1) Initial determinations. A [sponsor](#) is entitled to an informal written reconsideration of an adverse initial determination. An initial determination is a determination regarding the following:

(i) The amount of the subsidy [payment](#).

(ii) The [actuarial equivalence](#) of the [sponsor's](#) retiree prescription drug plan.

(iii) If an enrollee in a retiree prescription drug plan is a [qualifying covered retiree](#); or

(iv) Any other similar determination (as determined by CMS) that affects [eligibility](#) for, or the amount of, a subsidy [payment](#).

(2) Effect of an initial determination regarding the retiree drug subsidy. An initial determination is final and binding unless reconsidered in accordance with this [paragraph \(a\)](#) of this section.

(3) Manner and timing for request. A request for reconsideration must be made in writing and filed with [CMS](#) within 15 days of the date on the notice of adverse determination.

(4) Content of request. The request for reconsideration must specify the findings or issues with which the [sponsor](#) disagrees and the reasons for the disagreements. The request for reconsideration may include additional documentary evidence the [sponsor](#) wishes [CMS](#) to consider.

(5) Conduct of informal written reconsideration. In conducting the reconsideration, [CMS](#) reviews the subsidy determination, the evidence and findings upon which it was based, and any other written evidence submitted by the [sponsor](#) or by [CMS](#) before notice of the reconsidered determination is made.

(6) Decision of the informal written reconsideration. [CMS](#) informs the [sponsor](#) of the decision orally or through electronic mail. [CMS](#) sends a written decision to the [sponsor](#) on the [sponsor's](#) request.

(7) Effect of CMS informal written reconsideration. A reconsideration decision, whether delivered orally or in writing, is final and binding unless a request for [hearing](#) is filed in accordance with [paragraph \(b\)](#) of this section, or it is revised in accordance [paragraph \(d\)](#) of this section.



(b)Right to informal hearing. A [sponsor](#) dissatisfied with the [CMS](#) reconsideration decision is entitled to an informal [hearing](#) as provided in this section.

(1)Manner and timing for request. A request for a [hearing](#) must be made in writing and filed with [CMS](#) within 15 days of the date the [sponsor](#) receives the [CMS](#) reconsideration decision.

(2)Content of request. The request for informal [hearing](#) must include a copy of the [CMS](#) reconsideration decision (if any) and must specify the findings or issues in the decision with which the [sponsor](#) disagrees and the reasons for the disagreements.

(3)Informal hearing procedures. (i)[CMS](#) provides written notice of the time and place of the informal [hearing](#) at least 10 days before the scheduled date.

(ii) The [hearing](#) is conducted by a [CMS hearing](#) officer who neither receives testimony nor accepts any new evidence that was not presented with the reconsideration request. The [CMS hearing](#) officer is limited to the review of the record that was before [CMS](#) when [CMS](#) made both its initial and reconsideration determinations.

(iii) If [CMS](#) did not issue a written reconsideration decision, the [hearing](#) officer may request, but not require, a written statement from [CMS](#) or its contractors explaining [CMS'](#) determination, or [CMS](#) or its contractors may, on their own, submit the written statement to the [hearing](#) officer. Failure of [CMS](#) to submit a written statement does not result in any adverse findings against [CMS](#) and may not in any way be taken into account by the [hearing](#) officer in reaching a decision.

(4)Decision of the CMS hearing officer. The [CMS hearing](#) officer decides the case and sends a written decision to the [sponsor](#), explaining the basis for the decision.

(5)Effect of hearing officer decision. The [hearing](#) officer decision is final and binding, unless the decision is reversed or modified by the [Administrator](#) in accordance with [paragraph \(c\)](#) of this section.

(c)Review by the Administrator.

(1) A [sponsor](#) that has received a [hearing](#) officer decision upholding a [CMS](#) initial or reconsidered determination may request review by the [Administrator](#) within 15 days of receipt of the [hearing](#) officer's decision.

(2) The [Administrator](#) may review the [hearing](#) officer's decision, any written documents submitted to [CMS](#) or to the [hearing](#) officer, as well as any [other information](#) included in the record of the [hearing](#) officer's decision and determine whether to uphold, reverse or modify the [hearing](#) officer's decision.

(3) The [Administrator's](#) determination is final and binding.



(d) Reopening -

(1) Ability to reopen. CMS may reopen and revise an initial or reconsidered determination upon its own motion or upon the request of a sponsor:

(i) Within 1 year of the date of the notice of determination for any reason.

(ii) Within 4 years for good cause.

(iii) At any time when the underlying decision was obtained through fraud or similar fault.

(2) Notice of reopening.

(i) Notice of reopening and any revisions following the reopening are mailed to the sponsor.

(ii) Notice of reopening specifies the reasons for revision.

(3) Effect of reopening. The revision of an initial or reconsidered determination is final and binding unless-

(i) The sponsor requests reconsideration in accordance with

(ii) A timely request for a hearing is filed under paragraph (b) of this section;

(iii) The determination is reviewed by the Administrator in accordance with paragraph (c) of this section; or

(iv) The determination is reopened and revised in accordance with paragraph (d) of this section.

(4) Good cause. For purposes of this section, CMS finds good cause if -

(i) New and material evidence exists that was not readily available at the time the initial determination was made;

(ii) A clerical error in the computation of payments was made; or

(iii) The evidence that was considered in making the determination clearly shows on its face that an error was made.

(5) For purposes of this section, CMS does not find good cause if the only reason for reopening is a change of legal interpretation or administrative ruling upon which the initial determination was made.

(6) A decision by [CMS](#) not to reopen an initial or reconsidered determination is final and binding and cannot be appealed.

(2) <https://www.law.cornell.edu/cfr/text/42/423.890>

To further clarify the ability of the plan sponsors need to conduct reopening on previously filed plan years, the Centers for Medicare and Medicaid developed a frequently asked questions document that will address many of the common areas of inquiry. I have embedded that document here for your review.

How would an RDS Plan Sponsor disclose to CMS the correct, post-Reconciliation or post-final payment data, and the difference in subsidy caused by the corrected data, other than by requesting a reopening?

ANSWER: Such disclosure must include:

The Plan Sponsor's Name, Plan Sponsor ID, Application ID, and contact information; Indication that the Plan Sponsor wishes to disclose such data and subsidy discrepancy to CMS, and is not requesting a reconsideration or reopening at this time; A description of the specific facts and circumstances, including the specific reason(s) why the data submitted with the Reconciliation or final payment request was inaccurate or incomplete, and whether or not the Plan Sponsor believes the Covered Retiree List it agreed to before submitting its Reconciliation or final payment request was accurate; The gross costs, cost threshold reductions, cost limit reductions, and price concession amount that the Plan Sponsor now believes is correct. These amounts should reflect what the Plan Sponsor now believes to be its accurate retiree list.

The Plan Sponsor should also disclose:

The amount of subsidy it received for the application; the amount of subsidy the Plan Sponsor now believes is correct, based on the post-Reconciliation or post-final payment drug cost data (i.e., gross costs, cost threshold reductions, and cost limit reductions), price concession amount, and/or retiree coverage data, the Plan Sponsor now believes the subsidy should be based upon. After the Plan Sponsor discloses to CMS the data and subsidy discrepancy as stated above, CMS will notify the Plan Sponsor of any further action it may or must take, if any.

What must a Plan Sponsor initially do upon discovering that it agreed to inaccurate (as opposed to incomplete) retiree data and/or reported inaccurate cost data with its Reconciliation or final payment request for an RDS application?



ANSWER: When a Plan Sponsor, after submitting its Reconciliation payment request, or its final payment request using the RDS Secure Website Reconciliation process, discovers that it agreed to inaccurate (as opposed to incomplete) retiree data and/or reported inaccurate cost data for examples of what constitutes inaccurate data it must immediately determine whether the inaccurate data had the net effect of causing the Plan Sponsor to be paid too much or too little in subsidy for the application (or that the Plan Sponsor will be paid too much or too little, after CMS processes the Reconciliation or final payment request). If so, the Plan Sponsor must immediately disclose to CMS the correct gross costs, cost threshold reduction, cost limit reduction, and price concession amount in the aggregate, for the application. The Plan Sponsor also should immediately quantify the difference in subsidy caused by the corrected data, and should immediately report, in that same disclosure, that amount to CMS (regardless of the amount). The Plan Sponsor must disclose this information either by submitting a reopening request, or by otherwise disclosing the data to CMS. "

After the Plan Sponsor discloses to CMS the subsidy discrepancy using one of those two methods, CMS will notify the Plan Sponsor of any further action the Plan Sponsor must take, if any.

What must a Plan Sponsor do upon discovering that it agreed to incomplete (as opposed to inaccurate) retiree data and/or reported incomplete cost data with its Reconciliation or final payment request for an RDS application?

ANSWER: When a Plan Sponsor, after submitting its Reconciliation payment request, or its final payment request using the RDS Secure Website Reconciliation process, discovers that it agreed to incomplete (as opposed to inaccurate) retiree data and/or reported incomplete cost data and has reason to believe that the incomplete data had the net effect of causing the Plan Sponsor to be paid (or that it will be paid) too little in subsidy for the application, it is not required to quantify that difference in subsidy. It is permissible to not disclose the corrected data or the subsidy discrepancy to CMS.

The Plan Sponsor, however, may choose to quantify the difference, and attempt to acquire the difference in subsidy by requesting a reopening. After requesting a reopening, CMS will notify the Plan Sponsor whether it may acquire the difference in subsidy, and if so, what further steps the Plan Sponsor must take in order to do so.

As noted in my previous letter, RDS Services, LLC has benchmarked your previous plan payments from the Retiree Drug Subsidy program against known results of comparable size plans and types. The benchmarking process that RDS Services,

LLC conducts has indicated that there is an underpayment of the Retiree Drug Subsidy of approximately 10% or more.

I am excited to be working with your organization to recover this significant subsidy payment and look forward to hearing from you within the coming days.

Please call me with any questions.

Sincerely,

George Fox, LUTCF
National Sales Manager
RDS Services, LLC

Reference:

- 1- <https://www.law.cornell.edu/cfr/text/42/423.886>
- 2- <https://www.law.cornell.edu/cfr/text/42/423.890>