

(2) *Payment method.* Payments under this section are based on a method that CMS determines.

(i) Payments during the coverage year. CMS establishes a payment method by which payments of amounts

under this section are made on a monthly basis during a year based on either estimated or incurred allowable reinsurance costs.

(ii) *Final payments.* CMS reconciles the payments made during the coverage year to final actual allowable reinsurance costs as provided in § 423.343(c).

(3) *Special rules for private fee-for-service Plans offering prescription drug coverage.* CMS determines the amount of reinsurance payments for private fee-for-service plans as defined by § 422.4(a)(3) of this chapter offering qualified prescription drug coverage using a methodology that—

(i) Bases the amount on CMS' estimate of the amount of the payments that are payable if the plan were an MA-PD plan described in section 1851(a)(2)(A)(i) of the Act; and

(ii) Takes into account the average reinsurance payments made under § 423.329(c) for populations of similar risk under MA-PD plans described in section 1851(a)(2)(A)(i) of the Act.

(d) *Low-income cost sharing subsidy payment amount—(1) General rule.* The low-income cost-sharing subsidy payment amount on behalf of a low-income subsidy eligible individual enrolled in a Part D plan for a coverage year is the amount described in § 423.782.

(2) *Payment method.* Payments under this section are based on a method that CMS determines.

(i) *Interim payments.* CMS establishes a payment method by which interim payments of amounts under this section are made during a year based on the low-income cost-sharing assumptions submitted with plan bids under § 423.265(d)(2)(iv) and negotiated and approved under § 423.272.

(ii) *Final payments.* CMS reconciles the interim payments to actual incurred low-income cost-sharing costs as provided in § 423.343(d).

**§ 423.336 Risk-sharing arrangements.**

(a) *Portion of total payments to a Part D sponsor subject to risk—(1) Adjusted al-*

*lowable risk corridor costs.* For purposes of this paragraph, the term adjusted allowable risk corridor costs means—

(i) The allowable risk corridor costs for the Part D plan for the coverage year, reduced by—

(ii) The sum of—

(A) The total reinsurance payments made under § 423.329(c) to the Part D sponsor of the Part D plan for the year; and

(B) The total non-premium subsidy payments made under § 423.782 to the Part D sponsor of the Part D plan for the coverage year.

(2) *Establishment of risk corridors.* (i) *Risk corridors.* For each year, CMS establishes a risk corridor for each Part D plan. The risk corridor for a plan for a coverage year is equal to a range as follows:

(A) *First threshold lower limit.* The first threshold lower limit of the corridor is equal to—

(1) The target amount for the plan; minus

(2) An amount equal to the first threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(A) of this section) of the target amount.

(B) *Second threshold lower limit.* The second threshold lower limit of the corridor is equal to—

(1) The target amount for the plan; minus

(2) An amount equal to the second threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(B) of this section) of the target amount.

(C) *First threshold upper limit.* The first threshold upper limit of the corridor is equal to the sum of—

(1) The target amount; and

(2) An amount equal to the first threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(A) of this section) of the target amount.

(D) *Second threshold upper limit.* The second threshold upper limit of the corridor is equal to the sum of—

(1) The target amount; and

(2) An amount equal to the second threshold risk percentage for the plan (as determined under paragraph (a)(2)(ii)(B) of this section) of the target amount.

(ii) *First and second threshold risk percentage defined.* (A) *First threshold risk percentage.* Subject to paragraph (a)(2)(iii) of this section, the first threshold risk percentage is for—

(1) 2006 and 2007, 2.5 percent;

(2) 2008 through 2011, 5 percent; and

(3) 2012 and subsequent years, a percentage CMS establishes, but in no case less than 5 percent.

(B) *Second threshold risk percentage.* Subject to paragraph (a)(2)(iii) of this section, the second threshold risk percentage is for—

(1) 2006 and 2007, 5.0 percent;

(2) 2008 through 2011, 10 percent

(3) 2012 and subsequent years, a percentage CMS establishes that is greater than the percent established for the year under paragraph (a)(2)(ii)(A)(3) of this section, but in no case less than 10 percent.

(iii) *Reduction of risk percentage to ensure two Plans in an area.* In accordance with § 423.265(e), 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 (b) of this section. Only a PDP sponsor may request a reduction of risk under this paragraph. An MA organization offering an MA-PD plan, a PACE program offering qualified prescription drug coverage, and a cost-based HMO or CMP offering qualified prescription drug coverage may not request a reduction of risk under this paragraph.

(3) *Plans at risk for entire amount of supplemental prescription drug coverage.* A Part D sponsor that offers a Part D plan that provides supplemental prescription drug benefits is at full financial risk for the provision of the supplemental benefits.

(b) *Payment adjustments—(1) No adjustment if adjusted allowable risk corridor costs within risk corridor.* If the adjusted allowable risk corridor costs for the Part D plan for the coverage year are at least equal to the first threshold lower limit of the risk corridor (specified in paragraph (a)(2)(i)(A) of this section) but not greater than the first threshold upper limit of the risk corridor (specified in paragraph (a)(2)(i)(C) of this section) for the Part D plan for the coverage year, CMS makes no payment adjustment.

(2) *Increase in payment if adjusted allowable risk corridor costs above upper limit of risk corridor—(i) Costs between first and second threshold upper limits.* If the adjusted allowable risk corridor costs for the Part D plan for the year are greater than the first threshold upper limit, but not greater than the second threshold upper limit, of the risk corridor for the Part D plan for the year, CMS increases the total of the payments made to the Part D sponsor offering the Part D plan for the year under this section by an amount equal to 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions described in paragraph (b)(2)(iii) of this section are met for the year) of the difference between the adjusted allowable risk corridor costs and the first threshold upper limit of the risk corridor.

(ii) *Costs above second threshold upper limits.* If the adjusted allowable risk corridor costs for the Part D plan for the year are greater than the second threshold upper limit of the risk corridor for the Part D plan for the year, CMS increases the total of the payments made to the Part D sponsor offering the Part D plan for the year under this section by an amount equal to the sum of—

(A) 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions specified in paragraph (b)(2)(iii) of this section are met for the year) of the difference between the second threshold upper limit and the first threshold upper limit; and

(B) 80 percent of the difference between the adjusted allowable risk corridor costs and the second threshold upper limit of the risk corridor.

(iii) *Conditions for application of higher percentage for 2006 and 2007.* The conditions specified in this paragraph are met for 2006 or 2007 if CMS determines for the year that—

(A) At least 60 percent of Part D plans to which this paragraph applies have adjusted allowable risk corridor costs for the Part D plan for the year that are more than the first threshold upper limit of the risk corridor for the Part D plan for the year; and

(B) Such plans represent at least 60 percent of Part D eligible individuals enrolled in any Part D plan.

(3) *Reduction in payment if adjusted allowable risk corridor costs below lower limit of risk corridor*—(i) *Costs between first and second threshold lower limits.* If the adjusted allowable risk corridor costs for the Part D plan for the coverage year are less than the first threshold lower limit, but not less than the second threshold lower limit, of the risk corridor for the Part D plan for the coverage year, CMS reduces the total of the payments made to the Part D plan for the coverage year under this section by an amount (or otherwise recovers from the Part D sponsor an amount) equal to 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit of the risk corridor and the adjusted allowable risk corridor costs.

(ii) *Costs below second threshold lower limit.* If the adjusted allowable risk corridor costs for the Part D plan for the coverage year are less than the second threshold lower limit of the risk corridor for the Part D plan for the coverage year, CMS reduces the total of the payments made to the Part D sponsor for the coverage year under this section by an amount (or otherwise recovers from the Part D sponsor an amount) equal to the sum of—

(A) 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit and the second threshold lower limit; and

(B) 80 percent of the difference between the second threshold upper limit of the risk corridor and the adjusted allowable risk corridor costs.

(c) *Payment methods.* CMS makes payments after a coverage year after obtaining all of the cost data information in paragraph (c)(1) of this section necessary to determine the amount of payment. CMS will not make payments under this section if the Part D sponsor fails to provide the cost data information in paragraph (c)(1) of this section.

(1) *Submission of cost data.* Within 6 months of the end of a coverage year, the Part D sponsor must provide the information that CMS requires.

(2) *Lump sum and adjusted monthly payments.* CMS at its discretion makes either lump-sum payments or adjusts monthly payments in the following payment year based on the relationship of the plan's adjusted allowable risk

corridor costs to the predetermined risk corridor thresholds in the coverage year, as determined under this section.

(d) *No effect on monthly premium.* No adjustment in payments made by reason of this section may affect the monthly beneficiary premium for qualified prescription drug coverage.

#### § 423.343 **Retroactive adjustments and reconciliations.**

(a) *Application of enrollee adjustment.* The provisions of § 422.308(f) of this chapter apply to payments to Part D sponsors under this section in the same manner as they apply to payments to MA organizations under section 1853(a) of the Act.

(b) *Health status.* CMS makes adjustments to payments made under § 423.329(a)(1) to account for updated health status risk adjustment data as provided under § 422.310(g)(2) of this chapter. CMS may recover payments associated with health status adjustments if the Part D sponsor fails to provide the information described in § 423.329(b)(3).

(c) *Reinsurance.* CMS makes final payment for reinsurance after a coverage year after obtaining all of the information necessary to determine the amount of payment.

(1) *Submission of cost data.* Within 6 months of the end of a coverage year, the Part D sponsor must provide the information that CMS requires.

(2) *Payments.* CMS at its discretion either makes lump-sum payments or adjusts monthly payments throughout the remainder of the payment year following the coverage year based on the difference between monthly reinsurance payments made during the coverage year and the amount payable in § 423.329(c) for the coverage year. CMS may recover payments made through a lump sum recovery or by adjusting monthly payments throughout the remainder of the coverage year if the monthly reinsurance payments made during the coverage year exceed the amount payable under § 423.329(c) or if the Part D sponsor does not provide the data in paragraph (c)(1) of this section.

(d) *Low-income cost-sharing subsidy.* CMS makes final payment for low-income cost-sharing subsidies after a