

### **§ 149.315**

plan year exceed the applicable cost threshold.

(c) For employment-based plans for which a provider in the normal course of business does not produce a claim, such as a staff-model health maintenance organization, the information required in a claim must be produced and provided to the Secretary, as set out in this regulation and applicable guidance.

### **§ 149.315 Reimbursement conditioned upon available funds.**

Notwithstanding a sponsor's compliance with this part, reimbursement is conditioned upon the availability of program funds.

### **§ 149.320 Universe of claims that must be submitted.**

(a) Claims submitted for an early retiree, as defined in §149.2, must include claims below the applicable cost threshold for the plan year.

(b) Claims must not be submitted until claims are submitted for amounts that exceed the applicable cost threshold for the plan year for the early retiree.

(c) Sponsors must not submit claims for health benefits for an early retiree to the extent the sponsor has already submitted claims for the early retiree that total more than the applicable cost limit for the applicable plan year.

### **§ 149.325 Requirements for eligibility of claims.**

A claim may be submitted only if it represents costs for health benefits for an early retiree, as defined in §149.2, has been incurred during the applicable plan year, and has been paid.

### **§ 149.330 Content of claims.**

Each claim on its face must include the information specified in, and meet, the definition of claim or medical claim found at §149.2.

### **§ 149.335 Documentation of costs of actual claims involved.**

(a) A submission of claims consists of a list of early retirees for whom claims are being submitted, and documentation of the actual costs of the items and services for claims being sub-

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mitted, in a form and manner specified by the Secretary.

(b) In order for a sponsor to receive reimbursement for the portion of a claim that an early retiree paid, the sponsor must submit prima facie evidence that the early enrollee paid his or her portion of the claim.

### **§ 149.340 Rule for insured plans.**

With respect to insured plans, the claims and data specified in the subpart may be submitted directly to the Secretary by the insurer.

### **§ 149.345 Use of information provided.**

The Secretary may use data and information collected under this section only for the purpose of, and to the extent necessary in, carrying out this part including, but not limited to, determining reimbursement and reimbursement-related oversight and program integrity activities, or as otherwise allowed by law. Nothing in this section limits the Office of the Inspector General's authority to fulfill the Inspector General's responsibilities in accordance with applicable Federal law.

### **§ 149.350 Maintenance of records.**

(a) The sponsor of the certified plan (or a subcontractor, as applicable) must maintain and furnish to the Secretary, upon request the records enumerated in paragraph (b) of this section. The records must be maintained for 6 years after the expiration of the plan year in which the costs were incurred, or longer if otherwise required by law.

(b) The records that must be retained are as follows—

(1) All documentation, data, and other information related to this part.

(2) Any other records specified by the Secretary.

(c) The Secretary may issue additional guidance addressing record-keeping requirements, including (but not limited to) the use of electronic media.

(d) The sponsor must require its health insurance issuer or employment-based plan, as applicable, to maintain and produce upon request records to satisfy subparagraph (a) of this regulation.

(e) The sponsor is responsible for ensuring that the records are maintained and provided according to this subpart.

**Subpart F—Appeals**

**§ 149.500 Appeals.**

(a) An adverse reimbursement determination is final and binding unless appealed pursuant to paragraph (e) of this section.

(b) Except as provided in paragraph (c) of this section, a sponsor may request an appeal of an adverse reimbursement determination.

(c) A sponsor may not appeal an adverse reimbursement determination if the denial is based on the unavailability of funds.

(d) An adverse reimbursement determination is a determination constituting a complete or partial denial of a reimbursement request.

(e) If a sponsor appeals an adverse reimbursement determination, the sponsor must submit the appeal in writing to the Secretary within 15 calendar days of receipt of the determination pursuant to guidance issued by the Secretary.

**§ 149.510 Content of request for appeal.**

The request for appeal must specify the findings or issues with which the sponsor disagrees and the reasons for the disagreements. The request for appeal may include supporting documentary evidence the sponsor wishes the Secretary to consider.

**§ 149.520 Review of appeals.**

(a) In conducting review of the appeal, the Secretary reviews the appeal, the evidence and findings upon which the adverse reimbursement determination was made, and any other written evidence submitted by the sponsor or the Secretary’s designee and will provide a ruling on the appeal request.

(b) In conducting the review, the Secretary reviews the determination at issue, the evidence and findings upon which it was based, any written documents submitted to the Secretary by the sponsor and the Secretary’s designee, and determines whether to uphold, reverse or modify the Secretary’s initial reimbursement determination.

(c) A decision by the Secretary under this provision is final and binding.

(d) Regardless of the Secretary’s decision, additional reimbursement is contingent upon the availability of funds at the time of the Secretary’s determination.

(e) The Secretary informs the sponsor and the applicable Secretary’s designee of the decision. The Secretary sends a written decision to the sponsor or the applicable Secretary’s designee upon request.

**Subpart G—Disclosure of Data Inaccuracies**

**§ 149.600 Sponsor’s duty to report data inaccuracies.**

A sponsor is required to disclose any data inaccuracies upon which a reimbursement determination is made, including inaccurate claims data and negotiated price concessions, in a manner and at a time specified by the Secretary in guidance.

**§ 149.610 Secretary’s authority to reopen and revise a reimbursement determination.**

(a) The Secretary may reopen and revise a reimbursement determination upon the Secretary’s own motion or upon the request of a sponsor:

- (1) Within 1 year of the reimbursement determination for any reason.
- (2) Within 4 years of a reimbursement determination for good cause.
- (3) At any time, in instances of fraud or similar fault.

(b) For purposes of this section, the Secretary does not find good cause if the only reason for the revision is a change of legal interpretation or administrative ruling upon which the determination to reimburse was made.

(c) A decision by the Secretary not to revise a reimbursement determination is final and binding (unless fraud or similar fault is found) and cannot be appealed.

**Subpart H—Change of Ownership Requirements**

**§ 149.700 Change of ownership requirements.**

(a) *Change of ownership consists of:* (1) *Partnership.* The removal, addition, or