

## CMS Response to Public Comments Received for CMS-10142

The Centers for Medicare and Medicaid Services (CMS) received comments from two plan sponsors related to CMS-10142. This is the reconciliation of the comments.

### Comment:

CMS proposed that any aggregate Medicare Advantage (MA) or Prescription Drug Plan (PDP) bid margin outside the range of 0 - 5.5 percent must be explained, supported and approved by CMS. The plan sponsor was supportive of the proposal to remove the non-Medicare business comparison test and replace it with a consistent margin range across the MA and PDP programs.

The plan sponsor recommends expanding the bid margin range to between 0 and 6.5 percent. The plan sponsor proposes a 1 percent increase at the top of the range to “ensure potential competitors remain incented to enter the market and innovate on behalf of Medicare beneficiaries such that the MA and PDP programs continue to thrive.”

The plan sponsor “urges CMS to allow this competitive market dynamic to continue by allowing for a sustainable margin of up to 6.5 percent without additional plan level review. A narrower range (i.e., 0 to 5.5 percent) could also create a disincentive for plans to add new or innovative benefits.”

Alternatively, if CMS does not agree with this proposal to increase the bid margin range to 6.5 percent, the plan sponsor proposes a two-step review process for MAOs or Part D sponsors with aggregate margins above 5.5 percent. For plans with an aggregate margin between 5.5 and 6.5 percent, the plan sponsor recommends that CMS permit the plan to justify the aggregate margin with reference to aggregate factors rather than immediately subject each individual bid margin to heightened scrutiny.

For MAOs or Part D sponsors with a margin greater than 6.5 percent or below 0 percent, the plan sponsor agrees that CMS should evaluate individual bid margins.

### Response:

CMS appreciates the comments on the proposed aggregate gain/loss margin requirements for CY 2023. We do not intend to increase the upper range above 5.5% for CY 2023. Please note that plans sponsors can still submit bids with aggregate gain/loss margins above the 5.5% upper threshold. In these instances, the plan sponsor must then provide documentation to support this higher margin as outlined in the draft bid instructions.

Comment:

Regarding the Related Party Proposed Changes CY2023, the plan sponsor “supports CMS's proposal to include related party contracts in the bid at the full contracted rate because it will simplify the bid process. MAOs will be able to design their plans knowing what costs can be included in their bids without having to wait to determine if each agreement meets the related party test.”

The plan sponsor requests written confirmation that related party expenses should be entered in the BPT at the contracted rate for both the base period and projection period.

Response:

CMS can confirm that related party expenses should be entered in the BPT at the contracted rate for both the base period and projection period and will clarify this in the final bid instructions.

Comment:

Regarding the Related Party instructions for Part D plans, the plan sponsor “suggests that Sections 13.4 through 13.9 of the Part D Bid Instructions (December 2021 Version) be modified so they are consistent with Sections 13.4 through 13.5 in the MA Bid Instructions (December 2021 Version). These sections of the MA Bid Instructions have been updated to reflect the proposed change to include related party contracts in the bid at the full contracted rate.”

Response:

CMS appreciates the comments on the proposed Part D bid instructions. These sections referenced in the Part D instructions are intentionally different from the MA bid instructions. Note that page 19 of the Part D instructions do state that “benefit costs and non-benefit expenses for related parties must be reported in the BPT consistent with the contractual arrangement with the related party.”

Comment:

Regarding the proposed bid level gain/loss margin instructions for CY2023, the plan sponsor “supports maintaining a 12 percent margin because lowering the margin would increase the number of plans subject to additional review, which will increase the bid filing burden for MAOs and CMS.”

Response:

CMS appreciates the comments on the proposed bid level high margin review. CMS disagrees that the change from 12 percent to the proposed 11.5 percent will substantially increase burden. CMS does not believe many more plans will be subject to the additional review and that those plans do not have a substantial burden increase based on the required documentation requirements.

Comment:

Regarding the proposed changes for Related Party supporting documentation for CY2023, the plan sponsor “agrees that there should be a cut off for when related party documentation is required and proposes that it be 20 percent of contract revenue for MA bids. For Part D, the test should be allowed related party costs as a ratio of total allowed cost because of the high net to allowed ratio on those bids compared to MA. Implementing these proposed changes would reduce the number of plans that have to submit support and thereby reduce the burden for MAOs and CMS.”

Response:

CMS appreciates the comments. We do not intend to change the 10% threshold for MA or Part D for CY2023 but will take these comments into consideration and will attempt to incorporate changes into the final bid instructions that will further reduce the reporting burden for MAOs, possibly limiting the number of related parties for which the plan sponsor must provide additional support.

Comment:

Regarding supporting documentation item 38, the plan sponsor states “Based on our interpretation of these instructions, we believe this means MAOs are required to reprice the 2023 bid using the benefits that were offered in 2022 with updates to Medicare Fee-for Service (FFS) cost sharing levels (e.g., use the 2023 FFS Part A/B Deductibles in cases where the plan cost sharing ties to FFS Medicare cost sharing). Specifically, this repricing would be performed using the following assumptions: the maximum out-of-pocket Medicare Part A/B covered cost sharing (copays and coinsurance), Part A/B Mandatory Supplemental benefits for additional services (e.g., Dental, Vision, hearing), and premium levels - both Part D and total plan premium - would be set at the same levels offered in 2022.

A comparison of the worksheet 4 values in section IIC, lines a through u of the filed 2023 bid to the repricing scenario using the methodology described above would then reflect the full impact of Part A/B Mandatory Supplemental benefit changes for both reductions in cost sharing and additional non-Medicare-covered services when moving from the benefits offered in 2022 to those offered in 2023. Please confirm if our interpretation is correct.

Response:

CMS agrees with the plan sponsor’s interpretation.

Comment:

The plan sponsor requests that the final Bid instructions confirm that the related party support required in Section 13.5.2 of the instructions is for the projected period.

Response:

CMS appreciates the feedback. Please note that related party disclosures are required for both the base and projection period. We will clarify that the additional related party support mentioned in 13.5.2 is required only for the projection period.

Comment:

Regarding the proposed supporting documentation requirements for related parties, the plan sponsor states “The requirement of providing related party documentation when the aggregate related party costs exceed 10% of the revenue requirement does not take into account the magnitude and financial impact of each the individual related party cost that are part of the total related party expenses reported in Worksheet 4 (cell M100 plus cell M101).” The plan sponsor provided a few proposals that they believe would help remedy this concern.

1a. The requirements for providing support for related parties could be limited to the top five largest related party arrangements for each MAO.

1b. The threshold for providing supporting documentation for related party expenses could be based on the ratio of all costs within an individual related party arrangement to the total revenue requirement. The plan sponsor believes a reasonable threshold for this assessment of each individual arrangement would be 2%.

2. Additionally, the requirement for providing related party documentation also does not consider the MAOs investment into the related party organization. For example, an MAO’s investment and ownership of a related party may be very small, but the burden of collecting the documentation required can be very large. The plan sponsor agrees that disclosing each of these arrangements is appropriate, however would propose to only provide cost documentation if the organization has more than a 10% ownership and also meets the 2% of total required revenue outlined in #1.

Response:

CMS appreciates the comments. We do not intend to change the 10% threshold for MA or Part D for CY2023 but will take these comments into consideration and will attempt to incorporate changes into the final bid instructions that will further reduce the reporting burden for MAOs, possibly limiting the number of related parties for which the plan sponsor must provide additional support.

Comment:

The plan sponsor asks “In section 13 of Appendix B, the draft MA bid instructions refer to Worksheet 4 of the BPTs, which is focused on the projection period. Is the requirement for providing related party documentation that is described in section 13 of Appendix B only applicable and needed for the projection period? “

Response:

CMS appreciates the question. Please note that related party disclosures are required for both the base and projection period. We will clarify that the additional related party support mentioned in 13.5.2 is required only for the projection period.