

## Q&A

**QUESTION:** Are PDPs and MA-PDs responsible for payment of sales taxes imposed by a governmental entity on covered prescription drugs?

**ANSWER:** Yes. PDPs and MA-PDs are responsible, per their approved bids, for the payment of sales taxes imposed by a governmental entity on covered prescription drugs. A plan sponsor cannot refuse to pay a sales tax, nor can a plan sponsor require a provider or beneficiary to pay a sales tax on a dispensed covered drug, except as discussed below. This is consistent with our understanding of the industry standard, which is that the plan pays the sales tax on dispensed prescriptions whenever a state, county or local government imposes such taxes. Nothing in Part D suggests that a different approach should be used, and the Part D payment provisions are based on this understanding. Therefore, PDPs and MA-PDs are expected to pay these taxes, and reflect them in the Part D bids.

Because sales taxes are accounted for in plan sponsors' bids, beneficiaries are not responsible for payment of sales tax except to the extent that sales taxes may be factored in as a part of beneficiary cost-sharing in the plan's bid. For example, if a covered drug costs \$100, a plan bid might provide that with a 5% state sales tax, a beneficiary in the 25% coinsurance portion of the plan will be responsible for paying the \$25 plus 25% of the \$5.00 sales tax, \$1.25. A plan cannot require that the beneficiary pay more than the required percentage. Furthermore, sales tax cannot be added to a copayment. Finally, a sales tax cannot be added onto a beneficiary's premium beyond any sales taxes included in the bid.

As noted in the Preamble of the final Part D regulations, sales taxes are required to be reported to CMS as cost information so that CMS may carry out the payment provisions of Part D. *70 Fed. Reg. 4307 (2005)*. The Instructions for Completing the Medicare Prescription Drug Plan Bid Form for Contract Year 2006 also make clear that state sales taxes are expected to be a part of the bid, and paid by the plan sponsors. Specifically, the instructions state:

Allowed expenses are defined as ingredient cost plus dispensing fee, plus state sales tax where applicable, and are prior to application of any rebates recovered after the point of sale of the prescription.

*Instructions for Completing the Medicare Prescription Drug Plan Bid Form for Contract Year 2006, Pg 10.* Any sales tax levied at the point of sale is reported under the negotiated price section of a prescription drug event.