

III. Copies of the Charter

To obtain a copy of the Panel's Charter, we refer readers to our Web site at <https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Dated: September 22, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-4181-N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2018. The calendar year 2018 AIC threshold amounts are \$160 for ALJ hearings and \$1,600 for judicial review.

DATES: This notice is applicable on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Liz Hosna (Katherine.Hosna@cms.hhs.gov), (410) 786-4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and

Protection Act of 2000 (BIPA), established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review at \$100 and \$1,000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review to be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of \$10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C/Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (§ 405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C/MA Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Medicare Part C appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, §§ 422.600 and 422.612 discuss the AIC threshold

amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration, except the MA organization, who is dissatisfied with the reconsideration determination, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals pursuant to 42 CFR 417.600(b). The Medicare Part C appeals rules also apply to health care prepayment plan appeals pursuant to 42 CFR 417.840.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D-4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted previously, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M and U. The regulations at § 423.562(c) prescribe that, unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, §§ 423.1970 and 423.1976 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review.

Section 423.1970(a) grants a Part D enrollee, who is dissatisfied with the independent review entity (IRE)

reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Sections 423.1976(a) and (b) allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council decision if, in part, the AIC meets the threshold amount established annually by the Secretary.

II. Provisions of the Notice—Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted

annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of \$10.

B. Calendar Year 2018

The AIC threshold amount for ALJ hearings will remain at \$160 and the AIC threshold amount for judicial review will rise to \$1,600 for CY 2018. These amounts are based on the 59.989 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 476.130 in July 2017. The AIC threshold amount for ALJ hearings changes to \$159.99 based on the 59.989 percent increase

over the initial threshold amount of \$100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of \$10. Therefore, the CY 2018 AIC threshold amount for ALJ hearings is \$160.00. The AIC threshold amount for judicial review changes to \$1,599.89 based on the 59.989 percent increase over the initial threshold amount of \$1,000. This amount was rounded to the nearest multiple of \$10, resulting in the CY 2018 AIC threshold amount of \$1,600.00 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2014 through 2018 threshold amounts.

	CY 2014	CY 2015	CY 2016	CY 2017	CY 2018
ALJ Hearing	\$140	\$150	\$150	\$160	\$160
Judicial Review	1,430	1,460	1,500	1,560	1,600

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 12, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-D-2165]

Oncology Pharmaceuticals: Reproductive Toxicity Testing and Labeling Recommendations; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Oncology Pharmaceuticals: Reproductive Toxicity Testing and Labeling Recommendations.” The

purpose of this guidance is to assist sponsors in reproductive toxicity assessments (mainly of embryo-fetal development) for oncology pharmaceuticals and to provide recommendations for product labeling on duration of contraception following cessation of therapy to minimize potential risk to a developing embryo/fetus. The guidance also clarifies FDA’s current thinking on when nonclinical studies for reproductive toxicology assessment may not be needed (*e.g.*, for pharmaceuticals intended for use in postmenopausal women only). The intended outcome of this guidance is to provide for more consistent labeling for oncology pharmaceuticals and to reduce the conduct of nonclinical studies that are not informative on product use.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 28, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov/> will be

posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov/>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-