

42 C.F.R. § 413.234

Drug designation process.

(a) *Definitions.* For purposes of this section, the following definitions apply:

ESRD PPS functional category. A distinct grouping of drugs or biological products, as determined by CMS, whose end action effect is the treatment or management of a condition or conditions associated with ESRD.

New renal dialysis drug or biological product. An injectable, intravenous, oral or other form or route of administration drug or biological product that is used to treat or manage a condition(s) associated with ESRD. It must be approved by the Food and Drug Administration (FDA) on or after January 1, 2020, under section 505 of the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act, commercially available, have an HCPCS application submitted in accordance with the official Level II HCPCS coding procedures, and designated by CMS as a renal dialysis service under § 413.171. Oral-only drugs are excluded until January 1, 2025.

Oral-only drug. A drug or biological product with no injectable equivalent or other form of administration other than an oral form.

(b) *Drug designation process.* New renal dialysis drugs or biological products are included in the ESRD PPS bundled payment using the following drug designation process:

(1) If the new renal dialysis drug or biological product is used to treat or manage a condition for which there is an ESRD PPS functional category, the new renal dialysis drug or biological product is considered included in the ESRD PPS bundled payment and the following steps occur:

(i) The new renal dialysis drug or biological product is added to an existing ESRD PPS functional category.

(ii) Except as provided in paragraph (e) of this section, the new renal dialysis drug or biological product is paid for using the transitional drug add-on payment adjustment described in paragraph (c)(1) of this section.

(iii) The new renal dialysis drug or biological product is paid for using the add-on payment adjustment described in paragraphs (c)(3) and (g) of this section, referred to as the post- transitional drug add-on payment adjustment (TDAPA) add-on payment adjustment.

(2) If the new renal dialysis drug or biological product is used to treat or manage a condition for which there is not an ESRD PPS functional category, the new renal dialysis drug or biological product is not considered included in the ESRD PPS bundled payment and the following steps occur:

(i) An existing ESRD PPS functional category is revised or a new ESRD PPS functional category is added for the condition that the new renal dialysis drug or biological product is used to treat or manage;

(ii) The new renal dialysis drug or biological product is paid for using the transitional drug add-on payment adjustment described in paragraph (c)(2) of this section; and

(iii) The new renal dialysis drug or biological product is added to the ESRD PPS bundled payment following payment of the transitional drug add-on payment adjustment.

(c) *Transitional drug add-on payment adjustment.* A new renal dialysis drug or biological product is paid for using a transitional drug add-on payment adjustment, which is based on 100 percent of average sales price (ASP). If ASP is not available then the transitional drug add-on payment adjustment is based on 100 percent of wholesale acquisition cost (WAC) and, when WAC is not available, the payment is based on the drug manufacturer's invoice. Notwithstanding the provisions in paragraphs (c)(1) and (2) of this section, if CMS does not receive a full calendar quarter of ASP data for a new renal dialysis drug or biological product within 30 days of the last day of the 3rd calendar quarter after we begin applying the transitional drug add-on payment adjustment for the product, CMS will no longer apply the transitional drug add-on payment adjustment for that product beginning no later than 2-calendar quarters after we determine a full calendar quarter of ASP data is not available. If CMS stops receiving the latest full calendar quarter of ASP data for a new renal dialysis drug or biological product during the applicable time period specified in paragraph (c)(1) or (2) of this section, CMS will no longer apply the transitional drug add-on payment adjustment for the product beginning no later than 2-calendar quarters after CMS determines that the latest full calendar quarter of ASP data is not available.

(1) A new renal dialysis drug or biological product that is considered included in the ESRD PPS base rate is paid the transitional drug add-on payment adjustment for 2 years.

(i) Following payment of the transitional drug add-on payment adjustment, the new renal dialysis drug or biological product is paid the post-TDAPA add-on payment adjustment as set forth in paragraphs (c)(3) and (g) of this section.

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