

(2) *MA plans that may receive passive enrollments.* CMS may implement passive enrollment described in paragraph (g)(1)(iii) of this section only into MA–PD plans that meet all the following requirements:

(i) Operate as a fully integrated dual eligible special needs plan or highly integrated dual eligible special needs plan.

(ii) Have substantially similar provider and facility networks and Medicare- and Medicaid-covered benefits as the plan (or plans) from which the beneficiaries are passively enrolled.

(iii) Have an overall quality rating from the most recently issued ratings, under the rating system described in §§ 422.160 through 422.166, of at least 3 stars or is a low enrollment contract or new MA plan as defined in § 422.252.

(iv) Not have any prohibition on new enrollment imposed by CMS.

(v) Have limits on premiums and cost-sharing appropriate to full-benefit dual eligible beneficiaries.

(vi) Have the operational capacity to passively enroll beneficiaries and agree to receive the enrollments.

(3) *Passive enrollment procedures.* Individuals will be considered to have elected the plan selected by CMS unless they—

(i) Decline the plan selected by CMS, in a form and manner determined by CMS, or

(ii) Request enrollment in another plan.

(4) *Beneficiary notification.* The MA organization that receives the passive enrollment must provide to the enrollee:

(i) In the case of a passive enrollment described in paragraphs (g)(1)(i) and (ii) of this section, a notice that describes the costs and benefits of the plan and the process for accessing care under the plan and clearly explains the beneficiary's ability to decline the enrollment or choose another plan. This notice must be provided to all potential passively-enrolled enrollees, in a form and manner determined by CMS, prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical).

(ii) In the case of a passive enrollment described in paragraph (g)(1)(iii) of this section, two notices that de-

scribe the costs and benefits of the plan and the process for accessing care under the plan and clearly explain the beneficiary's ability to decline the enrollment or choose another plan.

(A) The first notice described in paragraph (g)(4)(ii) of this section must be provided, in a form and manner determined by CMS, no fewer than 60 calendar days prior to the enrollment effective date.

(B) The second notice described in paragraph (g)(4)(ii) of this section must be provided, in a form and manner determined by CMS, no fewer than 30 days prior to the enrollment effective date.

(5) *Special election period.* In the case of a passive enrollment described in this paragraph, individuals will be provided with a special enrollment period described in at § 423.38(c)(10) of this chapter.

[63 FR 35071, June 26, 1998; 63 FR 52612, Oct. 1, 1998; 63 FR 54526, Oct. 9, 1998; 64 FR 7980, Feb. 17, 1999; 65 FR 40316, June 29, 2000; 70 FR 4716, Jan. 28, 2005; 70 FR 52026, Sept. 1, 2005; 74 FR 1541, Jan. 12, 2009; 77 FR 22166, Apr. 12, 2012; 83 FR 16722, Apr. 16, 2018; 84 FR 15828, Apr. 16, 2019]

§ 422.62 Election of coverage under an MA plan.

(a) *General: Coverage election periods—*

(1) *Initial coverage election period for MA.* The initial coverage election period is the period during which a newly MA-eligible individual may make an initial election. This period begins 3 months before the month the individual is first entitled to both Part A and Part B and ends on the later of—

(i) The last day of the month preceding the month of entitlement; or

(ii) If after May 15, 2006, the last day of the individual's Part B initial enrollment period.

(2) *Annual coordinated election period.*

(i) For 2002 through 2010, except for 2006, the annual coordinated election period for the following calendar year is November 15 through December 31.

(ii) For 2006, the annual coordinated election period begins on November 15, 2005 and ends on May 15, 2006.

(iii) Beginning in 2011, the annual coordinated election period for the following calendar year is October 15 through December 7.

(iv) During the annual coordinated election period, an individual eligible to enroll in an MA plan may change his or her election from an MA plan to Original Medicare or to a different MA plan, or from Original Medicare to an MA plan. If an individual changes his or her election to Original Medicare, he or she may also elect a PDP.

(3) *Open enrollment period for individuals enrolled in MA*—(i) *For 2019 and subsequent years.* Except as provided in paragraphs (a)(3)(ii) and (iii) and (a)(4) of this section, an individual who is enrolled in an MA plan may make an election once during the first 3 months of the year to enroll in another MA plan or disenroll to obtain Original Medicare. An individual who chooses to exercise this election may also make a coordinating election to enroll in or disenroll from Part D, as specified in § 423.38(e) of this chapter.

(ii) *Newly eligible MA individual.* For 2019 and subsequent years, a newly MA eligible individual who is enrolled in a MA plan may change his or her election once during the period that begins the month the individual is entitled to both Part A and Part B and ends on the last day of the third month of the entitlement. An individual who chooses to exercise this election may also make a coordinating election to enroll in or disenroll from Part D, as specified in § 423.38(e) of this chapter.

(iii) *Single election limitation.* The limitation to one election or change in paragraphs (a)(3)(i) and (ii) of this section does not apply to elections or changes made during the annual coordinated election period specified in paragraph (a)(2) of this section, or during a special election period specified in paragraph (b) of this section.

(4) *Open enrollment period for institutionalized individuals.* After 2005, an individual who is eligible to elect an MA plan and who is institutionalized, as defined in § 422.2, is not limited (except as provided for in paragraph (d) of this section for MA MSA plans) in the number of elections or changes he or she may make. Subject to the MA plan being open to enrollees as provided under § 422.60(a)(2), an MA eligible institutionalized individual may at any time elect an MA plan or change his or her election from an MA plan to Original

Medicare, to a different MA plan, or from Original Medicare to an MA plan.

(5) *Annual 45-day period for disenrollment from MA plans to Original Medicare.* Through 2018, at any time from January 1 through February 14, an individual who is enrolled in an MA plan may elect Original Medicare once during this 45-day period. An individual who chooses to exercise this election may also make a coordinating election to enroll in a PDP as specified in § 423.38(d) of this chapter.

(b) *Special election periods (SEPs).* An individual may at any time (that is, not limited to the annual coordinated election period) discontinue the election of an MA plan offered by an MA organization and change his or her election from an MA plan to original Medicare or to a different MA plan under any of the following circumstances:

(1) CMS or the organization has terminated the organization's contract for the plan, discontinued the plan in the area in which the individual resides, or the organization has notified the individual of the impending termination of the plan, or the impending discontinuation of the plan in the area in which the individual resides.

(2) The individual is not eligible to remain enrolled in the plan because of a change in his or her place of residence to a location out of the service area or continuation area or other change in circumstances as determined by CMS but not including terminations resulting from a failure to make timely payment of an MA monthly or supplemental beneficiary premium, or from disruptive behavior.

(3) The individual demonstrates to CMS that—

(i) The organization offering the plan substantially violated a material provision of its contract under this part in relation to the individual, including, but not limited to the following:

(A) Failure to provide the beneficiary on a timely basis medically necessary services for which benefits are available under the plan.

(B) Failure to provide medical services in accordance with applicable quality standards; or

(ii) The organization (or its agent, representative, or plan provider) materially misrepresented the plan's provisions in communications as outlined in subpart V of this part.

(4) The individual is making an MA enrollment request into or out of an employer sponsored MA plan, is disenrolling from an MA plan to take employer sponsored coverage of any kind, or is disenrolling from employer sponsored coverage (including COBRA coverage) to elect an MA plan. This SEP is available to individuals who have (or are enrolling in) an employer or union sponsored MA plan and ends 2 months after the month the employer or union coverage of any type ends. The individual may choose an effective date that is not earlier than the first of the month following the month in which the election is made and no later than up to 3 months after the month in which the election is made.

(5) The individual is enrolled in an MA plan offered by an MA organization that has been sanctioned by CMS and elects to disenroll from that plan in connection with the matter(s) that gave rise to that sanction.

(i) Consistent with disclosure requirements at § 422.111(g), CMS may require the MA organization to notify current enrollees that if the enrollees believe they are affected by the matter(s) that gave rise to the sanction, the enrollees are eligible for a SEP to elect another MA plan or disenroll to original Medicare and enroll in a PDP.

(ii) The SEP starts with the imposition of the sanction and ends when the sanction ends or when the individual makes an election, whichever occurs first.

(6)(i) The individual is enrolled in a section 1876 cost contract that is not renewing its contract for the area in which the enrollee resides.

(ii) This SEP begins December 8 of the then-current contract year and ends on the last day of February of the following year.

(7) The individual is disenrolling from an MA plan to enroll in a Program of All-inclusive Care for the Elderly (PACE) organization or is enrolling in an MA plan after disenrolling from a PACE organization.

(i) An individual who disenrolls from PACE has a SEP for 2 months after the effective date of PACE disenrollment to elect an MA plan.

(ii) An individual who disenrolls from an MA plan has a SEP for 2 months after the effective date of MA disenrollment to elect a PACE plan.

(8) The individual terminated a Medigap policy upon enrolling for the first time in an MA plan and is still in a "trial period" and eligible for "guaranteed issue" of a Medigap policy, as outlined in section 1882(s)(3)(B)(v) of the Act.

(i) This SEP allows an eligible individual to make a one-time election to disenroll from his or her first MA plan to join original Medicare at any time of the year.

(ii) This SEP begins upon enrollment in the MA plan and ends after 12 months of enrollment or when the individual disenrolls from the MA plan, whichever is earlier.

(9) Until December 31, 2020, the individual became entitled to Medicare based on ESRD for a retroactive effective date (whether due to an administrative delay or otherwise) and was not provided the opportunity to elect an MA plan during his or her Initial Coverage Election Period (ICEP).

(i) The individual may prospectively elect an MA plan offered by an MA organization, provided—

(A) The individual was enrolled in a health plan offered by the same MA organization the month before their entitlement to Parts A and B;

(B) The individual developed ESRD while a member of that health plan; and

(C) The individual is still enrolled in that health plan.

(ii) This SEP begins the month the individual receives the notice of the Medicare entitlement determination and continues for 2 additional calendar months after the month the notice is received.

(10) The individual became entitled to Medicare for a retroactive effective date (whether due to an administrative delay or otherwise) and was not provided the opportunity to elect an MA plan during their initial coverage election period (ICEP). This SEP begins the month the individual receives the

notice of the retroactive Medicare entitlement determination and continues for 2 additional calendar months after the month the notice is received. The effective date would be the first of the month following the month in which the election is made but would not be earlier than the first day of the month in which the notice of the Medicare entitlement determination is received by the individual.

(11)(i) The individual enrolled in an MA special needs plan (SNP) and is no longer eligible for the SNP because he or she no longer meets the applicable special needs status.

(ii) This SEP begins the month the individual's special needs status changes and ends when the individual makes an enrollment request or 3 calendar months after the effective date of involuntary disenrollment from the SNP, whichever is earlier.

(12) The individual belongs to a qualified State Pharmaceutical Assistance Program (SPAP) and is requesting enrollment in an MA-PD plan.

(i) The individual may make one MA election per year.

(ii) This SEP is available while the individual is enrolled in the SPAP and, upon loss of eligibility for SPAP benefits, for an additional 2 calendar months after either the month of the loss of eligibility or notification of the loss, whichever is later.

(13)(i) The individual has severe or disabling chronic conditions and is eligible to enroll into a Chronic Care SNP designed to serve individuals with those conditions. The SEP is for an enrollment election that is consistent with the individual's eligibility for a Chronic Care SNP. Individuals enrolled in a Chronic Care SNP who have a severe or disabling chronic condition which is not a focus of their current SNP are eligible for this SEP to request enrollment in a Chronic Care SNP that focuses on this other condition. Individuals who are found after enrollment not to have the qualifying condition necessary to be eligible for the Chronic Care SNP are eligible for a SEP to enroll in a different MA plan.

(ii) This SEP is available while the individual has the qualifying condition and ends upon enrollment in the Chronic Care SNP. This SEP begins

when the MA organization notifies the individual of the lack of eligibility and extends through the end of that month and the following 2 calendar months. The SEP ends when the individual makes an enrollment election or on the last day of the second of the 2 calendar months following notification of the lack of eligibility, whichever occurs first.

(14) The individual is enrolled in an MA-PD plan and requests to disenroll from that plan to enroll in or maintain other creditable prescription drug coverage.

(i) This SEP is available while the individual is enrolled in an MA-PD plan. The effective date of disenrollment from the MA plan is the first day of the month following the month a disenrollment request is received by the MA organization.

(ii) Permissible enrollment changes during this SEP are to disenroll from an MA-PD plan and elect original Medicare or to elect an MA-only plan, resulting in disenrollment from the MA-PD plan.

(15) The individual is requesting enrollment in an MA plan offered by an MA organization with a Star Rating of 5 Stars. An individual may use this SEP only once for the contract year in which the MA plan was assigned a 5-star overall performance rating, beginning the December 8th before that contract year through November 30th of that contract year.

(16) The individual is a non-U.S. citizen who becomes lawfully present in the United States.

(i) This SEP begins the month the individual attains lawful presence status and ends the earlier of when the individual makes an enrollment election or 2 calendar months after the month the individual attains lawful presence status.

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(17) The individual was adversely affected by having requested, but not received, required notices or information in an accessible format, as outlined in section 504 of the Rehabilitation Act of 1973 within the same timeframe that the MA organization or CMS provided the same information to individuals who did not request an accessible format.

(i) The SEP begins at the end of the election period during which the individual was seeking to make an enrollment election and the length is at least as long as the time it takes for the information to be provided to the individual in an accessible format.

(ii) MA organizations may determine eligibility for this SEP when the criterion is met, ensuring adequate documentation of the situation, including records indicating the date of the individual's request, the amount of time taken to provide accessible versions of the requested materials and the amount of time it takes for the same information to be provided to an individual who does not request an accessible format.

(18) Individuals affected by an emergency or major disaster declared by a Federal, state or local government entity are eligible for a SEP to make a MA enrollment or disenrollment election. The SEP starts as of the date the declaration is made, the incident start date or, if different, the start date identified in the declaration, whichever is earlier, and ends 2 full calendar months following the end date identified in the declaration or, if different, the date the end of the incident is announced, whichever is later. The individual is eligible for this SEP provided the individual—

(i) (A) Resides, or resided at the start of the SEP eligibility period described in this paragraph (b)(18), in an area for which a federal, state or local government entity has declared an emergency or major disaster; or

(B) Does not reside in an affected area but relies on help making healthcare decisions from one or more individuals who reside in an affected area; and

(ii) Was eligible for another election period at the time of the SEP eligibility period described in this paragraph (b)(18); and

(iii) Did not make an election during that other election period due to the emergency or major disaster.

(19) The individual experiences an involuntary loss of creditable prescription drug coverage, including a reduction in the level of coverage so that it is no longer creditable and excluding any loss or reduction of creditable cov-

erage that is due to a failure to pay premiums.

(i) The individual is eligible to request enrollment in an MA-PD plan.

(ii) The SEP begins when the individual is notified of the loss of creditable coverage and ends 2 calendar months after the later of the loss (or reduction) or the individual's receipt of the notice.

(iii) The effective date of this SEP is the first of the month after the enrollment election is made or, at the individual's request, may be up to 3 months prospective.

(20) The individual was not adequately informed of a loss of creditable prescription drug coverage, or that they never had creditable coverage. CMS determines eligibility for this SEP on a case-by-case basis, based on its determination that an entity offering prescription drug coverage failed to provide accurate and timely disclosure of the loss of creditable prescription drug coverage or whether the prescription drug coverage offered is creditable.

(i) The individual is eligible for one enrollment in, or disenrollment from, an MA-PD plan.

(ii) This SEP begins the month of CMS' determination and continues for 2 additional calendar months following the determination.

(21) The individual's enrollment or non-enrollment in an MA-PD plan is erroneous due to an action, inaction, or error by a Federal employee.

(i) The individual is permitted enrollment in, or disenrollment from, the MA-PD plan, as determined by CMS.

(ii) This SEP begins the month of CMS approval of this SEP on the basis that the individual's enrollment was erroneous due to an action, inaction, or error by a Federal employee and continues for 2 additional calendar months following this approval.

(22) The individual is eligible for an additional Part D Initial Election Period, such as an individual currently entitled to Medicare due to a disability and who is attaining age 65.

(i) The individual is eligible to make an MA election to coordinate with the additional Part D Initial Election Period.

(ii) The SEP may be used to disenroll from an MA plan, with or without Part D benefits, to enroll in original Medicare, or to enroll in an MA plan that does not include Part D benefits, regardless of whether the individual uses the Part D Initial Election Period to enroll in a PDP.

(iii) The SEP begins and ends concurrently with the additional Part D Initial Election Period.

(23) Individuals affected by a significant change in plan provider network are eligible for a SEP that permits disenrollment from the MA plan that has changed its network to another MA plan or to original Medicare. This SEP can be used only once per significant change in the provider network.

(i) The SEP begins the month the individual is notified of eligibility for the SEP and extends an additional 2 calendar months thereafter.

(ii) An enrollee is affected by a significant network change when the enrollee is assigned to, currently receiving care from, or has received care within the past 3 months from a provider or facility being terminated from the provider network.

(iii) When instructed by CMS, the MA plan that has significantly changed its network must issue a notice, in the form and manner directed by CMS, that notifies enrollees who are eligible for this SEP of their eligibility for the SEP and how to use the SEP.

(24) The individual is enrolled in a plan offered by an MA organization that has been placed into receivership by a state or territorial regulatory authority. The SEP begins the month the receivership is effective and continues until it is no longer in effect or until the enrollee makes an election, whichever occurs first. When instructed by CMS, the MA plan that has been placed under receivership must notify its enrollees, in the form and manner directed by CMS, of the enrollees' eligibility for this SEP and how to use the SEP.

(25) The individual is enrolled in a plan that has been identified with the low performing icon in accordance with § 422.166(h)(1)(ii). This SEP exists while the individual is enrolled in the low performing MA plan.

(26) The individual enrolls in Medicare premium-Part A or Part B using an exceptional condition SEP, as described in 42 CFR 406.27 and 407.23. The SEP begins when the individual submits their application for premium-Part A and Part B, or Part B only, if the individual is already entitled to Part A (or is enrolling in premium-free Part A within the timeframe for use of this SEP), and continues for the first 2 months beyond the premium-Part A and/or Part B entitlement date. The MA plan enrollment is effective the first of the month following the month the MA plan receives the enrollment request.

(27) The individual meets such other exceptional conditions as CMS may provide.

(c) *Special election period for individual age 65.* Effective January 1, 2002, an MA eligible individual who elects an MA plan during the initial enrollment period, as defined under section 1837(d) of the Act, that surrounds his or her 65th birthday (this period begins 3 months before and ends 3 months after the month of the individual's 65th birthday) may discontinue the election of that plan and elect coverage under original Medicare at any time during the 12-month period that begins on the effective date of enrollment in the MA plan.

(d) *Special rules for MA MSA plans—*(1) *Enrollment.* An individual may enroll in an MA MSA plan only during an initial coverage election period or annual coordinated election period described in paragraphs (a)(1) and (a)(2) of this section.

(2) *Disenrollment.* (i) Except as provided in paragraph (d)(2)(ii) of this section, an individual may disenroll from an MA MSA plan only during—

(A) An annual election period; or

(B) The special election period described in paragraph (b) of this section.

(ii) *Exception.* An individual who elects an MA MSA plan during an annual election period and has never before elected an MA MSA plan may revoke that election, no later than December 15 of that same year, by submitting to the organization that offers the MA MSA plan a signed and dated

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request in the form and manner prescribed by CMS or by filing the appropriate disenrollment form through other mechanisms as determined by CMS.

[63 FR 35071, June 26, 1998; 63 FR 52612, Oct. 1, 1998, as amended at 65 FR 40317, June 29, 2000; 70 FR 4717, Jan. 28, 2005; 76 FR 21561, Apr. 15, 2011; 83 FR 16722, Apr. 16, 2018; 85 FR 33901, June 2, 2020; 88 FR 22328, Apr. 12, 2023; 88 FR 50044, Aug. 1, 2023]

§ 422.64 Information about the MA program.

Each MA organization must provide, on an annual basis, and in a format and using standard terminology that may be specified by CMS, the information necessary to enable CMS to provide to current and potential beneficiaries the information they need to make informed decisions with respect to the available choices for Medicare coverage.

[65 FR 40317, June 29, 2000]

§ 422.66 Coordination of enrollment and disenrollment through MA organizations.

(a) *Enrollment.* An individual who wishes to elect an MA plan offered by an MA organization may make or change his or her election during the election periods specified in § 422.62 by filing the appropriate election form with the organization or through other mechanisms as determined by CMS.

(b) *Disenrollment*—(1) *Basic rule.* An individual who wishes to disenroll from an MA plan may change his or her election during the election periods specified in § 422.62 in either of the following manners:

(i) Elect a different MA plan by filing the appropriate election with the MA organization.

(ii) Submit a request for disenrollment to the MA organization in the form and manner prescribed by CMS or file the appropriate disenrollment request through other mechanisms as determined by CMS.

(2) *When a disenrollment request is considered to have been made.* A disenrollment request is considered to have been made on the date the disenrollment request is received by the MA organization.

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(3) *Responsibilities of the MA organization.* The MA organization must—

(i) Submit a disenrollment notice to CMS within timeframes specified by CMS;

(ii) Provide enrollee with notice of disenrollment in a format specified by CMS; and

(iii) In the case of a plan where lock-in applies, include in the notice a statement explaining that he or she—

(A) Remains enrolled until the effective date of disenrollment; and

(B) Until that date, neither the MA organization nor CMS pays for services not provided or arranged for by the MA plan in which the enrollee is enrolled; and

(iv) File and retain disenrollment requests for the period specified in CMS instructions.

(4) *Effect of failure to submit disenrollment notice to CMS promptly.* If the MA organization fails to submit the correct and complete notice required in paragraph (b)(3)(i) of this section, the MA organization must reimburse CMS for any capitation payments received after the month in which payment would have ceased if the requirement had been met timely.

(5) *Retroactive disenrollment.* CMS may grant retroactive disenrollment in the following cases:

(i) There never was a legally valid enrollment.

(ii) A valid request for disenrollment was properly made but not processed or acted upon.

(c) *Election by default: Initial coverage election period*—(1) *Basic rule.* Subject to paragraph (c)(2) of this section, an individual who fails to make an election during the initial coverage election period is deemed to have elected original Medicare.

(2) *Default enrollment into MA dual eligible special needs plan*—(i) *Conditions for default enrollment.* During an individual's initial coverage election period, an individual may be deemed to have elected a MA special needs plan for individuals entitled to medical assistance under a State plan under Title XIX (including a fully integrated dual eligible special needs plan as defined in § 422.2) offered by the organization provided all the following conditions are met: