

disenrollment request through other mechanisms as determined by CMS.

(b) *Responsibilities of the PDP sponsor.* The PDP sponsor must—

(1) Submit a disenrollment notice to CMS within timeframes CMS specifies;

(2) Provide the enrollee with a notice of disenrollment as CMS determines and approves; and

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

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

(1) There never was a legally valid enrollment; or

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

§ 423.38 Enrollment periods.

(a) *Initial enrollment period for Part D—Basic rule.* The initial enrollment period is the period during which an individual is first eligible to enroll in a Part D plan.

(1) *In 2005.* An individual who is first eligible to enroll in a Part D plan on or prior to January 31, 2006, has an initial enrollment period from November 15, 2005 through May 15, 2006.

(2) *February 2006.* An individual who is first eligible to enroll in a Part D plan in February 2006 has an initial enrollment period from November 15, 2005 through May 31, 2006.

(3) *March 2006 and subsequent months.* (i) Except as provided in paragraph (a)(3)(ii) and (a)(3)(iii) of this section, the initial enrollment period for an individual who is first eligible to enroll in a Part D plan on or after March 2006 is the same as the initial enrollment period for Medicare Part B under § 407.14 of this chapter.

(ii) *Exception.* For those individuals who are not eligible to enroll in a Part D plan at any time during their initial enrollment period for Medicare Part B, their initial enrollment period under this Part is the 3 months before becoming eligible for Part D, the month of eligibility, and the three months following eligibility to Part D.

(iii) An individual who becomes entitled to Medicare Part A or enrolled in Part B for a retroactive effective date has an initial enrollment period under

this Part beginning with the month in which notification of the Medicare determination is received and ending on the last day of the third month following the month in which the notification was received.

(b) *Annual coordinated election period—(1) For 2006.* This period begins on November 15, 2005 and ends on May 15, 2006.

(2) *For 2007 through 2010.* The annual coordinated election period for the following calendar year is November 15 through December 31.

(3) *For 2011 and subsequent years.* Beginning with 2011, the annual coordinated election period for the following calendar year is October 15 through December 7.

(c) *Special enrollment periods.* A Part D eligible individual may enroll in a PDP or disenroll from a PDP and enroll in another PDP or MA-PD plan (as provided at § 422.62(b) of this chapter), as applicable, under any of the following circumstances:

(1) The individual involuntarily loses creditable prescription drug coverage or such coverage is involuntarily reduced so that it is no longer creditable coverage as defined under § 423.56(a). Loss of creditable prescription drug coverage due to failure to pay any required premium is not considered involuntary loss of the coverage.

(2) The individual was not adequately informed, as required by standards established by CMS under § 423.56, that he or she has lost his or her creditable prescription drug coverage, that he or she never had creditable prescription drug coverage, or the coverage is involuntarily reduced so that it is no longer creditable prescription drug coverage.

(3) The individual's enrollment or non-enrollment in a Part D plan is unintentional, inadvertent, or erroneous because of the error, misrepresentation, or inaction of a Federal employee, or any person authorized by the Federal government to act on its behalf.

(4)(i) Except as provided in paragraph (ii), the individual is a full-subsidy eligible individual or other subsidy-eligible individual as defined in § 423.772, who is making an allowable onetime-per-calendar-quarter election between January through September.

(ii) An individual described in paragraph (i) is not eligible for this special enrollment period if he or she has been notified that he or she has been identified as a “potential at-risk beneficiary” or “at-risk beneficiary” as defined in § 423.100 and such identification has not been terminated in accordance with § 423.153(f)).

(5) The individual elects to disenroll from a MA-PD plan and elects coverage under Medicare Part A and Part B in accordance with § 422.62(c) of this chapter.

(6) The PDP sponsor’s contract is terminated by the PDP sponsor or by CMS, as provided under § 423.507 through § 423.510, or the PDP plan is no longer offered in the area when the individual resides.

(7) The individual is no longer eligible for the PDP because of a change in his or her place of residence to a location outside of the PDP region(s) in which the PDP is offered.

(8) The individual demonstrates to CMS, in accordance with guidelines issued by CMS, that the PDP sponsor offering the PDP substantially violated a material provision of its contract under this part in relation to the individual, including, but not limited to any of the following:

(i) Failure to provide the individual on a timely basis benefits available under the plan.

(ii) Failure to provide benefits in accordance with applicable quality standards.

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

(9) The individual is making an election within 3 months after a gain, loss, or change to Medicaid or LIS eligibility, or notification of such a change, whichever is later.

(10) The individual is making an election within 3 months after notification of a CMS or State-initiated enrollment action or that enrollment action’s effective date, whichever is later.

(11) The individual is making an enrollment request into or out of an employer sponsored Part D plan, is disenrolling from a Part D plan to take employer sponsored coverage of any

kind, or is disenrolling from employer sponsored coverage (including Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage) to elect a Part D plan.

(i) This special election period (SEP) is available to individuals who have (or are enrolling in) an employer or union sponsored Part D plan and ends 2 months after the month the employer or union coverage of any type ends.

(ii) 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.

(12) The individual is enrolled in a Part D plan offered by a Part D plan sponsor 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 the disclosure requirements at § 423.128(f), CMS may require the sponsor 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 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.

(13) The individual is enrolled in a section 1876 cost contract that is non-renewing its contract for the area in which the enrollee resides.

(i) Individuals eligible for this SEP must meet Part D plan eligibility requirements.

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

(14) The individual is disenrolling from a PDP to enroll in a Program of All-inclusive Care for the Elderly (PACE) organization or is enrolling in a PDP 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 a PDP.

(ii) An individual who disenrolls from a PDP has a SEP for 2 months after the

effective date of PDP disenrollment to elect a PACE plan.

(15) The individual moves into, resides in, or moves out of an institution, as defined by CMS, and elects to enroll in, or disenroll from, a Part D plan.

(16) The individual who is not entitled to premium free Part A and enrolls in Part B during the General Enrollment Period for Part B that starts January 1, 2023, is eligible to request enrollment in a Part D plan. The special enrollment period begins when the individual submits their Part B application and continues for the first 2 months of Part B enrollment. The Part D plan enrollment is effective the first of the month following the month the Part D sponsor receives the enrollment request.

(17) The individual belongs to a qualified State Pharmaceutical Assistance Program (SPAP) and is requesting enrollment in a Part D plan.

(i) The individual is eligible to make one enrollment 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.

(18) The individual is enrolled in a Part D plan and elects to disenroll from that Part D plan to enroll in or maintain other creditable prescription drug coverage.

(19)(i) The individual is enrolled in a section 1876 cost contract and an optional supplemental Part D benefit under that contract and elects a Part D plan upon disenrolling from the cost contract.

(ii) The SEP begins the month the individual requests disenrollment from the cost contract and ends when the individual makes an enrollment election or on the last day of the second month following the month the cost contract enrollment ended, whichever is earlier.

(20) The individual is requesting enrollment in a Part D plan offered by a Part D plan sponsor with a Star Rating of 5 Stars. An individual may use this SEP only once for the contract year in which the Part D plan was assigned a 5-star overall performance rating, beginning the December 8 before that con-

tract year through November 30 of that contract year.

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

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

(22) 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 Part D plan sponsor 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 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) Part D plan sponsors 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 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.

(23) 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 Part D 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 (c)(23), 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;

(ii) Was eligible for another election period at the time of SEP eligibility period described in this paragraph (c)(23); and

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

(24) The individual is using the SEP at § 422.62(b)(8) of this chapter to disenroll from a MA plan that includes Part D benefits.

(i) This SEP permits a one-time election to enroll in a Part D plan.

(ii) This SEP begins upon disenrollment from the MA plan and continues for 2 calendar months.

(25)(i) An individual using the MA Open Enrollment Period for Institutionalized Individuals (OEPI) to disenroll from a MA plan that includes Part D benefits plan is eligible for a SEP to request enrollment in a Part D plan.

(ii) The SEP begins with the month the individual requests disenrollment from the MA plan and ends on the last day of the second month following the month MA enrollment ended.

(26) An individual using the Medicare Advantage Open Enrollment Period (MA OEP) to elect original Medicare is eligible for a SEP to make a Part D enrollment election.

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

(ii) The individual may request enrollment in a Part D plan that begins the month the individual's special needs status changes and ends the earlier of when he or she makes an election or 3 months after the effective date of involuntary disenrollment from the SNP.

(28) The individual is found, after enrollment into a Chronic Care SNP, not to have the required qualifying condition.

(i) This individual is eligible to enroll prospectively in a Part D plan.

(ii) This SEP begins when the MA organization notifies the individual of the lack of eligibility for the Chronic Care SNP and extends through the end of that month and the following 2 calendar months.

(iii) 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.

(29) The individual uses the SEP at § 422.62(b)(15) of this chapter to enroll in a MA Private Fee-for-Service plan without Part D benefits, or enrolls in a section 1876 cost plan, is eligible to request enrollment in a PDP or the cost plan's optional supplemental Part D benefit, if offered.

(i) This SEP begins the month the individual uses the SEP at § 422.62(b)(15) of this chapter and continues for 2 additional months.

(ii) [Reserved]

(30) An individual who uses the SEP at § 422.62(b)(23) of this chapter to disenroll from a MA plan is eligible to request enrollment in a PDP.

(i) This SEP begins the month the individual is notified of eligibility for the SEP at § 422.62(b)(23) of this chapter and continues for an additional 2 calendar months.

(ii) This SEP permits one enrollment into a PDP.

(iii) This SEP ends when the individual has enrolled in the PDP.

(iv) An individual may use this SEP to request enrollment in a PDP subsequent to having submitted a disenrollment to the MA plan or may simply request enrollment in the PDP, resulting in automatic disenrollment from the MA plan.

(31) The individual is enrolled in a plan offered by a Part D plan sponsor 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.

(32) The individual is enrolled in a plan that has been identified with the low performing icon in accordance with § 423.186(h)(1)(ii). This SEP exists while the individual is enrolled in the low performing Part D plan.

(33) The individual was involuntarily disenrolled from an MA-PD plan due to loss of Part B but continues to be entitled to Part A. This SEP begins when the individual is advised of the loss of Part B and continues for 2 additional months.

(34) The individual enrolls in Medicare premium-Part A or Part B using an exceptional condition SEP, as described in 42 CFR parts 406.27 and 407.23. The SEP begins when the individual submits their premium-Part A or Part B application and continues for the first 2 months of enrollment in premium Part A or Part B. The Part D plan enrollment is effective the first of the month following the month the Part D plan receives the enrollment request.

(35) The individual meets other exceptional circumstances as CMS may provide.

(d) *Enrollment period to coordinate with MA annual 45-day disenrollment period.* Through 2018, an individual enrolled in an MA plan who elects Original Medicare from January 1 through February 14, as described in § 422.62(a)(5) of this chapter, may also elect a PDP during this time.

(e) *Enrollment period to coordinate with MA open enrollment period.* For 2019 and subsequent years, an individual who makes an election as described in § 422.62(a)(3) of this chapter, may make an election to enroll in or disenroll from Part D coverage. An individual who elects Original Medicare during the MA open enrollment period may elect to enroll in a PDP during this time.

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§ 423.40 Effective dates.

(a) *Initial enrollment period.* (1) An enrollment made prior to the month of entitlement to Part A or enrollment in Part B is effective the first day of the month the individual is entitled to or enrolled in Part A or enrolled in Part B.

(2) Except as otherwise provided under § 423.34(f), an enrollment made during or after the month of entitlement to Part A or enrollment in Part B is effective the first day of the calendar month following the month in which the enrollment in Part D is made.

(3) If the individual is not eligible to enroll in Part D on the first day of the calendar month following the month in which the election to enroll in Part D is made, the enrollment in Part D is effective the first day of the month the individual is eligible for Part D.

(4) In no case is an enrollment in Part D effective before January 1, 2006 or before entitlement to Part A or enrollment Part B.

(b) *Annual coordinated election periods—(1) General rule.* Except as provided under paragraph (b)(2) of this section, for an enrollment or change of enrollment in Part D made during an annual coordinated election period as described in § 423.38(b), the coverage or change in coverage is effective as of the first day of the following calendar year.

(2) *Exception for January 1, 2006 through May 15, 2006.* Enrollment elections made during the annual coordinated election period between January 1, 2006 and May 15, 2006 are effective the first day of the calendar month following the month in which the enrollment in Part D is made.

(c) *Special enrollment periods.* For an enrollment or change of enrollment in Part D made during a special enrollment period specified in § 423.38(c), the coverage or change in coverage is effective the first day of the calendar month following the month in which the election is made, unless otherwise noted.

(d) *PDP enrollment period to coordinate with the MA annual disenrollment period.* Through 2018, an enrollment made from January 1 through February 14 by an individual who has disenrolled from an MA plan as described in § 422.62(a)(5) of