

§ 407.23

42 CFR Ch. IV (10–1–24 Edition)

(1) Be signed by the individual or someone acting in his or her behalf; and

(2) Be filed with SSA or CMS during the initial enrollment period, a general enrollment period, or a special enrollment period as provided in § 407.20.

§ 407.23 Special enrollment periods for exceptional conditions.

(a) *General rule.* Beginning January 1, 2023, in accordance with the Secretary's authority in sections 1837(m) and 1838(g) of the Act, the following SEPs, as defined under § 406.24(a)(4) of this subchapter, are provided for individuals who missed a Medicare enrollment period (as specified in § 407.21, § 407.15 or § 407.20 of this subchapter) due to exceptional conditions as determined by the Secretary and established under paragraphs (b) through (f) of this section. SEPs are provided for exceptional conditions that took place on or after January 1, 2023 except as specified in paragraph (e) of this section.

(b) *Special enrollment period for individuals impacted by an emergency or disaster.* An SEP exists for individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by a Federal, State, or local government entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they (or their SSA-authorized representative as defined at 42 CFR 405.910), their legal guardian, or the person who makes healthcare decisions on behalf of that individual, reside (or resided) in an area for which a Federal, State or local government entity newly declared a disaster or other emergency. The individual (or the individual's authorized representative, legal guardian, or the person who makes healthcare decisions on behalf of that individual) must demonstrate that they reside (or resided) in the area during the period covered by that declaration.

(2) *SEP duration.* The SEP begins on the earlier of the date an emergency or disaster is declared or, if different, the start date identified in such declaration. The SEP ends 6 months after the end date identified in the declaration, the end date of any extensions or the date when the declaration has been de-

termined to have ended or has been revoked, if applicable.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(c) *Special enrollment period for individuals affected by a health plan or employer misrepresentation.* An SEP exists for individuals whose non-enrollment in SMI is unintentional, inadvertent, or erroneous and results from misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, agents or brokers of health plans, or any person authorized to act on behalf of such entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they can demonstrate (by documentation or written attestation) the both of the following:

(i) He or she did not enroll in SMI during another enrollment period in which they were eligible based on information received from an employer or GHP, agents or brokers of health plans, or any person authorized to act on such organization's behalf.

(ii) An employer, GHP, agent or broker of a health plan, or their representative materially misrepresented information or provided incorrect information relating to enrollment in SMI.

(2) *SEP duration.* This SEP begins the day the individual notifies SSA of the employer or GHP misrepresentation, or the incorrect information provided and ends 6 months later.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(d) *SEP for formerly incarcerated individuals.* An SEP exists for Medicare eligible individuals who are released from the custody of penal authorities as described in § 411.4(b) of this subchapter on or after January 1, 2023.

(1) *SEP parameters.* An individual is eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in SMI due to being in custody of penal authorities, and there is a record of release either through discharge documents or data available to SSA.

(2) *SEP duration*. The SEP starts the day of the individual's release from the custody of penal authorities and ends the last day of the 12th month after the month in which the individual is released from the custody of penal authorities.

(3) *Entitlement*—(i) *General rule*. Entitlement begins the first day of the month following the month of enrollment, so long as the date is on after January 1, 2023.

(ii) *Special rule*. An individual has the option of requesting entitlement for a retroactive period of up to 6 months provided the date does not precede release from incarceration and the individual pays the monthly premiums for the period of coverage (as required under § 406.31). If the application is filed within the first 6 months of the SEP, the effective date is retroactive to the date of their release from incarceration. If the application is filed in the last 6 months of the SEP, the coverage effective date is retroactive to 6 months after the date of release from incarceration.

(e) *Special enrollment period for termination of Medicaid coverage*. An SEP exists for individuals whose Medicaid eligibility is terminated.

(1) *SEP parameters*. An individual is eligible for this SEP if they can demonstrate that—

(i) They are eligible for Part B under § 407.4(a); and

(ii) Their Medicaid eligibility is being terminated on or after January 1, 2023, or after the last day of the Coronavirus Disease 2019 public health emergency (COVID-19 PHE) as determined by the Secretary, whichever is earlier.

(2) *SEP duration*. If the termination of Medicaid eligibility occurs—

(i) After the last day of the COVID-19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023.

(ii) On or after January 1, 2023, the SEP starts when the individual is notified of termination of Medicaid eligibility and ends 6 months after the termination of eligibility.

(3) *Entitlement*—(i) *General rule*. Entitlement begins the first day of the month following the month of enrollment, so long as the date is the month following the last month of the COVID-

19 PHE or on or after January 1, 2023, whichever is earlier.

(ii) *Special COVID-19 PHE rule*. An individual whose Medicaid eligibility is terminated after the end of the COVID-19 PHE, but before January 1, 2023 (if applicable), has the option of requesting that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage (as required under part 408 of this subchapter).

(iii) *Other special rule*. After January 1, 2023, an individual has the option of requesting entitlement for a retroactive period back to the date of termination from Medicaid provided the individual pays the monthly premiums for the period of coverage (as required under § 406.31 of this subchapter).

(4) *Effect on previously accrued late enrollment penalties*. Individuals who otherwise would be eligible for this SEP, but enrolled during the COVID-19 PHE prior to January 1, 2023, are eligible to have late enrollment penalties collected under § 408.22 of this subchapter reimbursed and ongoing penalties removed.

(f) *Special enrollment period for other exceptional conditions*. An SEP exists for other exceptional conditions as CMS may provide.

(1) *SEP parameters*. An individual is eligible for the SEP if both of the following apply:

(i) The individual demonstrates that they missed an enrollment period in which they were eligible because of an event or circumstance outside of the individual's control which prevented them from enrolling in SMI.

(ii) It is determined that the conditions were exceptional in nature.

(2) *SEP duration*. The SEP duration is determined on a case by case basis, but will be no less than 6 months.

(3) *Entitlement*. Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

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