



MEDICARE ENROLLMENT & APPEALS GROUP

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TO: Prescription Drug Plan Sponsors, Medicare Advantage Organizations, §1876 Cost Plans and PACE Organizations

FROM: Arrah Tabe-Bedward
Director, Medicare Enrollment & Appeals Group

SUBJECT: Revisions to Enrollment Guidance for Individuals Who Are Incarcerated or Not Lawfully Present in the United States

The purpose of this memorandum is to inform Prescription Drug Plan (PDP) sponsors, Medicare Advantage (MA) organizations, §1876 cost plans, and PACE organizations that are PDP sponsors of enrollment and disenrollment policies for individuals who are incarcerated or not lawfully present in the United States.

Background:

On May 23, 2014, the Centers for Medicare & Medicaid Services (CMS) published “CMS-4159-F, Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs” which included a provision outlining the ineligibility of enrollment into, and CMS-effectuated involuntary disenrollment from, MA, Part D, and cost plans for confirmed incarcerated individuals (79 FR 29914) on the basis of their residence – i.e., confinement in the penal facility - being outside the plan’s service area. This provision shifts much of the operational processing to confirm permanent residence for incarcerated individuals from the plans to CMS.

In addition, CMS also codified new eligibility criteria for enrollment into MA, Part D, and cost plans to include United States citizenship or lawful presence status. Outlined in “CMS-4159-F2, Contract Year 2016 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs,” as published on February 12, 2015 (80 FR 7912), individuals will not be eligible to enroll in, or remain enrolled in, Medicare health or drug plans if they are not lawfully present in the U.S. This provision also includes CMS-effectuated disenrollments for plan members on this basis to align with the statutory requirements outlined in Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 which prohibit receipt of benefits under certain Federal programs, including benefits under Title VIII of the Act (Medicare), for individuals who are not U.S. citizens or nationals and lawfully present in the U.S.

CMS obtains official lawful presence and confirmed incarceration data from the Social Security Administration (SSA) and uses this information to make the determination as to whether the individual is eligible to enroll in a Medicare health or drug plan. Individuals ineligible for

enrollment on these bases, and those involuntarily disenrolled, will have Original Medicare coverage. However, Medicare doesn't pay for hospital or medical services while individuals are incarcerated or unlawfully present in the U.S., as required by law in section 1862(a)(2) and (3) of the Social Security Act and by PRWORA.

Applicability:

The policies outlined within this memorandum apply to PDP sponsors, MA organizations, §1876 cost plans and PACE organizations that are PDP sponsors.

CMS notes that PACE enrollment is not restricted to Medicare beneficiaries, so individuals who are incarcerated or not lawfully present would remain eligible for PACE in accordance with PACE enrollment and disenrollment requirements in 42 CFR Part 460 Subpart I. As Medicare doesn't pay for services for incarcerated or unlawfully present individuals, these individuals would not be eligible for enrollment into our Medicare enrollment system, and PACE organizations would not receive Medicare capitation payments for these individuals under 42 CFR §460.180. We intend to provide separate guidance on how PACE organizations must implement the enrollment and disenrollment policies described below.

Guidance:

Definitions (42 CFR §§ 417.1, 422.2, and 423.4)

Incarceration: A facility in which individuals are incarcerated is not within the service area of a §1876 cost, MA, or Part D plan. Individuals residing in Institutions of Mental Disease (IMDs) under the custody of penal authorities as a result of a criminal offense are considered incarcerated and do not reside within a plan's service area. However, individuals confined to IMDs for other reasons (e.g., because of court orders unrelated to penal violations) are not incarcerated for the purpose of determining residence in the plan's service area.

Lawful Presence: A lawfully present individual is defined in 8 CFR 1.3.

Eligibility (42 CFR §§ 417.422, 422.50, and 423.30)

An individual must reside within the plan's service area and be a U.S. citizen or be lawfully present in the U.S. in order to be eligible for Medicare plan enrollment. These eligibility criteria apply even if the individual would otherwise qualify for the Part D low income subsidy (LIS).

CMS determines eligibility for enrollment and will notify plans of an individual's ineligibility on these bases at the time of enrollment. Eligibility for enrollment is based on the incarceration or lawful presence status of the individual as of the effective date of enrollment. For example, if a period of unlawful presence status ends prior to the effective date of enrollment, the plan must not deny the enrollment request on this basis, even if the individual is unlawfully present at the time the enrollment request is received by the plan.

In addition, plans may not consider any evidence of lawful presence provided by the individual when determining eligibility for enrollment. Plans are not permitted to request documentation of U.S. citizenship or lawful presence status; CMS is the only source for plans to obtain this eligibility information. Individuals who dispute their lawful presence status should be referred to SSA.

Likewise, plans are not permitted to accept incarceration release papers to supersede the incarceration data within CMS systems. Individuals who contest their incarceration status, as indicated in CMS systems, should be referred to SSA to request that their record be updated.

Enrollment Processing

Plans will obtain an individual's incarceration and lawful presence status from the Batch Eligibility Query (BEQ) process or MARx online query (M232 screen), since eligibility must be verified via one of these sources for all enrollment requests. Only an enrollment request from a current enrollee of the MA, Part D, or cost plan who is requesting enrollment into another Medicare plan benefit package (PBP) offered by the same parent organization with no break in coverage (i.e., "switching plans") is exempt from this procedure.

The systems (BEQ or MARx online query) will indicate an incarceration status or unlawful presence status of a non-U.S. citizen, including the start date (and possibly an end date) of an incarceration or unlawful presence status or period, in order for plans to determine eligibility for enrollment. Individuals who are not incarcerated, or who are citizens or are lawfully present in the U.S., will not have any data reflected in the systems. The absence of such data indicates that CMS does not have any information indicating ineligibility on these bases at that time.

For those who are incarcerated or unlawfully present, as indicated in CMS systems, the plan will determine the individual to be ineligible for enrollment based on the start date of the incarceration or unlawful presence status shown in our systems. If an individual is ineligible for Medicare enrollment, the plan must deny the enrollment request, notify the individual of the denial, and not submit an enrollment transaction to CMS. In most cases, if an enrollment transaction is submitted to CMS for an incarcerated or unlawfully present individual, CMS will reject the enrollment and notify the plan with a Transaction Reply Code (TRC) on the daily Transaction Reply Report (TRR). However, under no circumstances should a plan submit to CMS an enrollment transaction for an individual reflected in CMS systems as ineligible due to incarceration or unlawful presence. Upon receipt of an enrollment rejection, the plan must issue a denial notice to the individual, if such notice has not previously been issued. Model notices for plan determined enrollment denials and CMS rejections have been updated to include these situations and will be available when the revised enrollment guidance materials are posted, as described below.

Involuntary Disenrollment (42 CFR §§ 417.460, 422.74, and 423.44)

Individuals who are ineligible for Medicare plan enrollment due to incarceration or unlawful presence may not remain enrolled in a Medicare health or drug plan. Beneficiaries will be defaulted to enrollment and coverage (subject to limits on the payment of claims) through Original Medicare. Currently, plans receive a TRC 155 (Incarceration Notification Received) to indicate that research is needed to determine if a member is incarcerated and resides out of the plan's service area. Under the new regulations and procedures described here, CMS will effectuate disenrollments upon receipt of confirmed incarceration data from SSA instead of relying solely on plans to investigate a member's potential out-of-area status due to incarceration. The disenrollment effective date for confirmed incarceration is the first of the month following the member's incarceration start date.

If the plan learns of a possible incarceration from a source other than CMS, the plan must investigate and, following current processes, determine if the member resides in the plan's service area and, if appropriate, involuntarily disenroll the member. 42 CFR §§ 417.460(f)(1)(i)(A), 422.74(d)(4)(v)(A) and 423.44(d)(5)(iii).

In some circumstances, CMS may receive confirmed incarceration data with both the start and end dates, indicating a closed period occurring in the past. While CMS expects this to be infrequent, CMS will disenroll the individual from the Medicare health and/or Part D plan(s) from the first of the month after the start date of the incarceration. We will also re-enroll the individual into the plan of which he or she was a member at the time eligibility is reestablished.

If an individual is enrolled in a Medicare health or Part D plan and is not lawfully present or loses lawful presence status, CMS will disenroll the individual from the plan. In this situation, the effective date is the first of the month following the notification by CMS.

CMS will notify plans with specific TRC codes on the daily TRR for these actions and indicate the effective date of the involuntary disenrollment. Upon receipt of the disenrollment transaction due to incarceration, the plan is required to issue a disenrollment notice. For disenrollments due to unlawful presence, the plan is strongly encouraged to issue a disenrollment notice to the individual. New model notices are available for these involuntary disenrollments, including special messaging alerting the individual that Medicare does not pay for hospital or medical services under Original Medicare while the individual is incarcerated or unlawfully present.

As SSA confirms incarceration and provides due process for unlawfully present individuals prior to sending the data to CMS, we do not expect that there will be erroneous CMS-effectuated disenrollments sent to plans. However, in the event that an individual contests the CMS-effectuated involuntary disenrollment, plans should first check the BEQ or MARx online query to confirm that CMS systems reflect an incarcerated or unlawful presence status for the individual. If CMS systems reflect such a status, plans should refer individuals to SSA to review and, if necessary, update their records. Plans are not required to continue to provide coverage to such individuals while the issue is reviewed by SSA.

If, upon initial receipt of the individual's challenge, CMS systems indicate current eligibility and any past period of incarceration or unlawful presence does not overlap any portion of the individual's previous period of enrollment, plans should submit a reinstatement request to the Retroactive Processing Contractor (RPC) instead of referring the individual to SSA. In this case, the plan may continue to provide coverage to the individual while the request is with the RPC. Once the reinstatement is processed, the plan will receive notification of the individual's reinstatement from CMS via the TRR. At that time, services should resume and coverage should be seamless, as though the individual had never been disenrolled.

Special Enrollment Periods (SEP)

Once released from incarceration, individuals must contact SSA to have their records updated to permit payment of Medicare services and establish eligibility for enrollment into Medicare health and Part D plans. Once an individual regains eligibility for enrollment in a Medicare health or

drug plan, he or she may elect a new enrollment in an MA or Part D plan using the existing SEP for Change in Residence.

For individuals who gain lawful presence status in the U.S. and thus become eligible to enroll in an MA or Part D plan, CMS is adopting a new SEP under 42 CFR §§ 422.62(b)(4) and 423.38(c)(8)(ii) for exceptional circumstances. This SEP will begin the month of the start of the lawful presence status and ends when the individual makes an enrollment request or two months after the lawful presence status starts, whichever occurs first.

Although individuals may request enrollment in a cost plan at any time, as long as the cost plan is open for enrollment, they could use this new SEP (see § 30.3.8, SEPs for Exceptional Conditions, in the PDP Enrollment Guidance), or another Part D election period, in order to choose the cost plan's optional supplemental Part D benefit.

Related Policies and Processes

With respect to the Part D late enrollment penalty (LEP), individuals who are incarcerated or not lawfully present are ineligible for enrollment into a Part D plan and, therefore, according to 42 CFR 423.46, are not subject to the late enrollment penalty based on the months in which they were ineligible to be enrolled. However, once an individual regains Part D eligibility, the individual would be subject to the late enrollment penalty if he or she does not enroll in a Part D plan or obtain other creditable coverage within 63 days.

Timing of Policy Implementation:

CMS is currently developing systems changes and completing agreements with other Federal government agencies to provide lawful presence and confirmed incarceration status information to plans. CMS expects to receive data for incarceration and lawful presence status in early 2016, such that enrollment requests received during the Annual Election Period (AEP) for enrollments effective January 1, 2016, will not be subject to the new procedures announced in this memorandum. However, once CMS completes its internal implementation and the incarceration and lawful presence data is available, we will move quickly to alert plans and start effectuating the data transactions to plans. In the interim, plans are expected to follow existing manual guidance.

The above information will be incorporated into the MA, PDP sponsor, and cost plan guidance materials posted at the links below within 10 business days of this memorandum.

- MA and Cost Plan enrollment guidance: <http://www.cms.gov/Medicare/Eligibility-and-Enrollment/MedicareMangCareEligEnrol/index.html>
- PDP enrollment guidance: <http://www.cms.gov/Medicare/Eligibility-and-Enrollment/MedicarePresDrugEligEnrol/index.html>

Please direct any questions about MA, PDP, or cost plan guidance to the PDP mailbox at pdpenrollment@cms.hhs.gov and questions about Medicare-Medicaid Plan (MMP) guidance to the Medicare-Medicaid Coordination Office at MMCOEnrollment@cms.hhs.gov. Please copy your CMS Account Manager or, for MMPs, your contract management team, on any questions submitted to these mailboxes