

**422.68 Effective dates of coverage and change of coverage.**

(a) *Initial coverage election period.* An election made during an initial coverage election period as described in § 422.62(a)(1) is effective as of the first day of the month of entitlement to both Part A and Part B.

(b) *Annual election periods.* For an election or change of election made during an annual election period as described in § 422.62(a)(2), coverage is effective as of the first day of the following calendar year.

(c) *Open enrollment periods.* For an election, or change in election, made during an open enrollment period, as described in § 422.62(a)(3) through (a)(6), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

(d) *Special election periods.* For an election or change of election made during a special election period as described in § 422.62(b), the effective date of coverage shall be determined by CMS, to the extent practicable, in a manner consistent with protecting the continuity of health benefits coverage.

(e) *Special election period for individual age 65.* For an election of coverage under original Medicare made during a special election period for an individual age 65 as described in § 422.62(c), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

[63 FR 35071, June 26, 1998, as amended at 65 FR 40317, June 29, 2000; 67 FR 13288, Mar. 22, 2002]

**§ 422.74 Disenrollment by the M+C organization.**

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, an M+C organization may not—

(1) Disenroll an individual from any M+C plan it offers; or

(2) Orally or in writing, or by any action or inaction, request or encourage an individual to disenroll.

(b) *Basis for disenrollment—(1) Optional disenrollment.* An M+C organization may disenroll an individual from an M+C plan it offers in any of the following circumstances:

(i) Any monthly basic and supplementary beneficiary premiums are not paid on a timely basis, subject to the grace period for late payment established under paragraph (d)(1) of this section.

(ii) The individual has engaged in disruptive behaviors specified at paragraph (d)(2) of this section.

(iii) The individual provides fraudulent information on his or her election form or permits abuse of his or her enrollment card as specified in paragraph (d)(3) of this section.

(2) *Required disenrollment.* An M+C organization must disenroll an individual from an M+C plan it offers in any of the following circumstances:

(i) The individual no longer resides in the M+C plan's service area as specified under paragraph (d)(4) of this section, is no longer eligible under § 422.50(a)(3)(ii), and optional continued enrollment has not been offered or elected under § 422.54.

(ii) The individual loses entitlement to Part A or Part B benefits as described in paragraph (d)(5) of this section.

(iii) Death of the individual as described in paragraph (d)(6) of this section.

(3) *Plan termination or reduction of area where plan is available.* (i) *General rule.* An M+C organization that has its contract for an M+C plan terminated, that terminates an M+C plan, or that discontinues offering the plan in any portion of the area where the plan had previously been available, must disenroll affected enrollees in accordance with the procedures for disenrollment set forth at paragraph (d)(7) of this section, unless the exception in paragraph (b)(3)(ii) of this section applies.

(ii) *Exception.* When an M+C organization discontinues offering an M+C plan in a portion of its service area, the M+C organization may elect to offer enrollees residing in all or portions of the affected area the option to continue enrollment in an M+C plan offered by the organization, provided that there is no other M+C plan offered in the affected area at the time of the organization's election. The organization may require an enrollee who chooses to continue enrollment to

agree to receive the full range of basic benefits (excluding emergency and urgently needed care) exclusively through facilities designated by the organization within the plan service area.

(c) *Notice requirement.* If the disenrollment is for any of the reasons specified in paragraphs (b)(1), (b)(2)(i), or (b)(3) of this section (that is, other than death or loss of entitlement to Part A or Part B) the M+C organization must give the individual a written notice of the disenrollment with an explanation of why the M+C organization is planning to disenroll the individual. Notices for reasons specified in paragraphs (b)(1) through (b)(2)(i) must—

(1) Be mailed to the individual before submission of the disenrollment notice to CMS; and

(2) Include an explanation of the individual's right to a hearing under the M+C organization's grievance procedures.

(d) *Process for disenrollment*—(1) *Monthly basic and supplementary premiums are not paid timely.* An M+C organization may disenroll an individual from the M+C plan for failure to pay any basic and supplementary premiums under the following circumstances:

(i) The M+C organization makes a reasonable effort to collect unpaid premium amounts by sending a written notice of nonpayment to the enrollee within 20 days after the date the delinquent charges were due—

(A) Alerting the individual that the premiums are delinquent;

(B) Providing the individual with an explanation of the disenrollment procedures and any lock-in requirements of the M+C plan; and

(C) Advising that failure to pay the premiums within the 90-day grace period will result in termination of M+C coverage;

(ii) The M+C organization only disenrolls a Medicare enrollee when the organization has not received payment within 90 days after the date it has sent the notice of nonpayment to the enrollee.

(iii) The M+C organization gives the individual a written notice of disenrollment that meets the requirement set forth in paragraph (c) of this section.

(iv) If the enrollee fails to pay the premium for optional supplemental benefits (that is, a package of benefits that an enrollee is not required to accept), but pays the basic premium and any mandatory supplemental premium, the M+C organization has the option to discontinue the optional supplemental benefits and retain the individual as an M+C enrollee.

(2) *Disenrollment for disruptive behavior*—(i) *Basis for disenrollment.* An M+C organization may disenroll an individual from the M+C plan if the individual's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continued enrollment in the plan seriously impairs the M+C plan's ability to furnish services to either the particular individual or other individuals enrolled in the plan.

(ii) *Effort to resolve the problem.* The M+C organization must make a serious effort to resolve the problems presented by the individual, including the use (or attempted use) of the M+C organization's grievance procedures. The beneficiary has a right to submit any information or explanation that he or she may wish to submit to the M+C organization.

(iii) *Consideration of extenuating circumstances.* The M+C organization must establish that the individual's behavior is not related to the use of medical services or to diminished mental capacity.

(iv) *Documentation.* The M+C organization must document the enrollee's behavior, its own efforts to resolve any problems, and any extenuating circumstances, as described in paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(v) *CMS review of the M+C organization's proposed disenrollment.* (A) CMS decides after reviewing the documentation submitted by the M+C organization and any information submitted by the beneficiary (which the M+C organization must forward to CMS) whether the M+C organization has met the disenrollment requirements.

(B) CMS makes the decision within 20 working days after receipt of the documentation and notifies the M+C organization within 5 working days after making its decision.

(vi) *Effective date of disenrollment.* If CMS permits an M+C organization to disenroll an individual for disruptive behavior, the termination is effective the first day of the calendar month after the month in which the M+C organization gives the individual written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(3) *Individual commits fraud or permits abuse of enrollment card.*—(i) *Basis for disenrollment.* An M+C organization may disenroll the individual from an M+C plan if the individual—

(A) Knowingly provides, on the election form, fraudulent information that materially affects the individual's eligibility to enroll in the M+C plan; or

(B) Intentionally permits others to use his or her enrollment card to obtain services under the M+C plan.

(ii) *Notice of disenrollment.* The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(iii) *Report to CMS.* The M+C organization must report to CMS any disenrollment based on fraud or abuse by the individual.

(4) *Individual no longer resides in the M+C plan's service area.* (i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS, that the individual has permanently moved out of a plan's service area. If the individual has not moved from the M+C plan's service area, but has left the plan's service area for more than 6 months, the M+C organization must disenroll the individual.

(ii) *Special rule.* The M+C organization must disenroll an individual who is enrolled in the M+C plan, under the eligibility requirements at § 422.50(a)(3)(ii) or (a)(4), if the organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS, that the individual has permanently moved from the residence in which she or he resided at the time of enrollment in the M+C plan, to an area outside the

M+C plan service area (unless continuation of enrollment is elected under § 422.54). If the individual has not permanently moved from the residence in which she or he resided at the time of enrollment in the M+C plan, but has left the residence for over 6 months, the M+C organization must disenroll the individual.

(iii) *Notice of disenrollment.* The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(5) *Loss of entitlement to Part A or Part B benefits.* If an individual is no longer entitled to Part A or Part B benefits, CMS notifies the M+C organization that the disenrollment is effective the first day of the calendar month following the last month of entitlement to Part A or Part B benefits.

(6) *Death of the individual.* If the individual dies, disenrollment is effective the first day of the calendar month following the month of death.

(7) *Plan termination or area reduction.* (i) When an M+C organization has its contract for an M+C plan terminated, terminates an M+C plan, or discontinues offering the plan in any portion of the area where the plan had previously been available, the M+C organization must give each affected M+C plan enrollee a written notice of the effective date of the plan termination or area reduction and a description of alternatives for obtaining benefits under the M+C program.

(ii) The notice must be sent before the effective date of the plan termination or area reduction, and in the timeframes specified in § 422.506(a)(2).

(e) *Consequences of disenrollment*—(1) *Disenrollment for non-payment of premiums, disruptive behavior, fraud or abuse, loss of Part A or Part B.* An individual who is disenrolled under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or paragraph (b)(2)(ii) of this section is deemed to have elected original Medicare.

(2) *Disenrollment based on plan termination, area reduction, or individual moves out of area.* (i) An individual who is disenrolled under paragraph (b)(2)(i) or (b)(3) of this section has a special election period in which to make a new

election as provided in § 422.62(b)(1) and (b)(2).

(ii) An individual who fails to make an election during the special election period is deemed to have elected original Medicare.

[63 FR 35071, June 26, 1998; 63 FR 52612, Oct. 1, 1998, as amended at 65 FR 40318, June 29, 2000]

**§ 422.80 Approval of marketing materials and election forms.**

(a) *CMS review of marketing materials.* An M+C organization may not distribute any marketing materials (as defined in paragraph (b)), or election forms, or make such materials or forms available to individuals eligible to elect an M+C plan, unless—

(1) At least 45 days (or 10 days if using marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution the M+C organization has submitted the material or form to CMS for review under the guidelines in paragraph (c); and

(2) CMS has not disapproved the distribution of the material or form.

(b) *Definition of marketing materials.* Marketing materials include any informational materials targeted to Medicare beneficiaries which:

(1) Promote the M+C organization, or any M+C plan offered by the M+C organization;

(2) Inform Medicare beneficiaries that they may enroll, or remain enrolled in, an M+C plan offered by the M+C organization;

(3) Explain the benefits of enrollment in an M+C plan, or rules that apply to enrollees;

(4) Explain how Medicare services are covered under an M+C plan, including conditions that apply to such coverage;

(5) Examples of marketing materials include, but are not limited to:

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (*e.g.*, physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements (evidence of coverage), member handbooks and wallet card instructions to enrollees.

(vi) Letters to members about contractual changes; changes in providers, premiums, benefits, plan procedures *etc.*

(vii) Membership or claims processing activities (*e.g.*, materials on rules involving non-payment of premiums, confirmation of enrollment or disenrollment, or annual notification information).

(c) *Guidelines for CMS review.* In reviewing marketing material or election forms under paragraph (a) of this section, CMS determines that the marketing materials:

(1) Provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by CMS, the following information to Medicare beneficiaries interested in enrolling:

(i) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(ii) Adequate written description of any supplemental benefits and services.

(iii) Adequate written explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each.

(iv) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

(2) Notify the general public of its enrollment period (whether time-limited or continuous) in an appropriate manner, through appropriate media, throughout its service and continuation area.

(3) Include in the written materials notice that the M+C organization is authorized by law to refuse to renew its contract with CMS, that CMS also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the plan.