

**§ 423.40**

**42 CFR Ch. IV (10–1–06 Edition)**

(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—

(i) 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 the following—

(A) Failure to provide the individual on a timely basis benefits available under the plan;

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

(C) The PDP (or its agent, representative, or plan provider) materially misrepresented the plan's provisions in marketing the plan to the individual.

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

**§ 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 de-

scribed 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 effective date is determined by CMS, which, to the extent practicable, is determined in a manner consistent with protecting the continuity of health benefits coverage.

**§ 423.44 Involuntary disenrollment by the PDP.**

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, a PDP sponsor may not—

(1) Involuntarily disenroll an individual from any PDP 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 involuntary disenrollment.* A PDP sponsor may disenroll an individual from a PDP it offers in any of the following circumstances:

(i) Any monthly premium is not paid on a timely basis, as specified under paragraph (d)(1) of this section; or

(ii) The individual has engaged in disruptive behavior, as specified under paragraph (d)(2) of this section.

(2) *Required involuntary disenrollment.* A PDP sponsor must disenroll an individual from a PDP it offers in any of the following circumstances:

(i) The individual no longer resides in the PDP's service area.

(ii) The individual loses eligibility for Part D.

(iii) Death of the individual.

(iv) The PDP sponsor's contract is terminated by CMS

or by a PDP or through mutual consent. The PDP sponsor must disenroll affected enrollees in accordance with the procedures for disenrollment set forth at § 423.507 through § 423.510.

(v) The individual materially misrepresents

information, as determined by CMS, to the PDP sponsor that the individual has or expects to receive reimbursement for third-party coverage.

(c) *Notice requirement.* (1) If the disenrollment is for any of the reasons specified in paragraphs (b)(1), (b)(2)(i), or (b)(2)(iv) of this section (that is, other than death or loss of Part D eligibility, the PDP sponsor must give the individual timely notice of the disenrollment with an explanation of why the PDP is planning to disenroll the individual.

(2) Notices for reasons specified in paragraphs (b)(1) through (b)(2)(i) and (b)(2)(iii) of this section must—

(i) Be provided to the individual before submission of the disenrollment notice to CMS; and

(ii) Include an explanation of the individual's right to file a grievance under the PDP's grievance procedures.

(d) *Process for disenrollment—(1) Monthly PDP premiums that are not paid timely.* A PDP sponsor may disenroll an individual from the PDP for failure to pay any monthly premium under the following circumstances:

(i) The PDP sponsor can demonstrate to CMS that it made reasonable efforts to collect the unpaid premium amount.

(ii) The PDP sponsor gives the enrollee notice of disenrollment that meets the requirements set forth in paragraph (c) of this section.

(iii) Reenrollment in the PDP. If an individual is

disenrolled from the PDP for failure to pay monthly PDP premiums, the PDP sponsor has the option to decline future enrollment by the individual in any of its PDPs until the individual has paid any past premiums due to the PDP sponsor.

(2) *Disruptive behavior.* (i) *Definition.* A PDP enrollee is disruptive if his or her behavior substantially impairs the plans ability to arrange or provide for services to the individual or other plan members. An individual cannot be considered disruptive if the behavior is related to the use of medical services or compliance (or noncompliance) with medical advice or treatment.

(ii) *Basis of disenrollment for disruptive behavior.* A PDP may disenroll an individual whose behavior is disruptive as defined in § 423.44(d)(2)(i) only after the PDP sponsor meets the requirements described in this section and after CMS has reviewed and approved the request.

(iii) *Effort to resolve the problem.* The PDP sponsor must make a serious effort to resolve the problems presented by the individual, including providing reasonable accommodations, as determined by CMS, for individuals with mental or cognitive conditions, including mental illness, Alzheimers disease, and developmental disabilities. In addition, the PDP sponsor must inform the individual of the right to use the PDP's grievance procedures. The individual has a right to submit any information or explanation that he or she may wish to the PDP.

(iv) *Documentation.* The PDP sponsor must document the enrollee's behavior, its own efforts to resolve any problems, as described in paragraph (d)(2)(iii) of this section, and any extenuating circumstances. The PDP sponsor may request from CMS the ability to decline future enrollment by the individual. The PDP sponsor must submit this information and any documentation received by the individual to CMS.

(v) *CMS review of the proposed disenrollment.* CMS reviews the information submitted by the PDP sponsor and any information submitted by the individual (which the PDP sponsor has submitted to CMS) to determine if the PDP sponsor has fulfilled the requirements to request disenrollment for disruptive behavior. If the PDP sponsor has fulfilled the necessary requirements, CMS reviews the information and make a decision to approve or deny the request for disenrollment, including conditions on future enrollment, within 20 working days. During the review, CMS ensures that staff with appropriate clinical or medical expertise reviews the case before making a final decision. The PDP sponsor is required to provide a reasonable accommodation, as determined by CMS, for the individual in exceptional circumstances that CMS deems necessary. CMS notifies the PDP sponsor within 5 working days after making its decision.

**§ 423.46**

**42 CFR Ch. IV (10–1–06 Edition)**

(vi) *Exception for fallback prescription drug plans.* CMS reserves the right to deny a request from a fallback prescription drug plan as defined in § 423.855 to disenroll an individual for disruptive behavior.

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

(3) *Loss of Part D eligibility.* If an individual is no longer eligible for Part D, CMS notifies the PDP that the disenrollment is effective the first day of the calendar month following the last month of Part D eligibility.

(4) *Death of the individual.* If the individual dies,

disenrollment is effective the first day of the calendar month following the month of death.

(5) *Individual no longer resides in the PDP service area—Basis for disenrollment.* The PDP must disenroll an individual if the individual notifies the PDP that he or she has permanently moved out of the PDP service area.

(6) *Plan termination.* (i) When a PDP contract terminates as provided in § 423.507 through § 423.510, the PDP sponsor must give each affected PDP enrollee notice of the effective date of the plan termination and a description of alternatives for obtaining prescription drug coverage under Part D, as specified by CMS.

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

(7) *Misrepresentation of third-party reimbursement.* (i) If CMS determines an individual has materially misrepresented information to the PDP sponsor as described under § 423.44(b)(2)(v), the termination is effective the first day of the calendar month after the month in which the PDP sponsor gives the individual written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(ii) *Reenrollment in the PDP.* Once an individual is disenrolled from the PDP for misrepresentation of third party reimbursement, the PDP sponsor has the option to decline future enrollment by the individual in any of its PDPs for a period of time CMS specifies.

**§ 423.46 Late enrollment penalty.**

(a) *General.* A Part D eligible individual must pay the late penalty described under § 423.286(d)(3) if there is a continuous period of 63 days or longer at any time after the end of the individual's initial enrollment period during which the individual meets all of the following conditions:

(1) The individual was eligible to enroll in a Part D plan;

(2) The individual was not covered under any creditable prescription drug coverage; and

(3) The individual was not enrolled in a Part D plan.

(b) [Reserved]

**§ 423.48 Information about Part D.**

Each Part D plan must provide, on an annual basis, and in a format and using standard terminology that CMS may specify in guidance, the information necessary to enable CMS to provide to current and potential Part D eligible individuals the information they need to make informed decisions among the available choices for Part D coverage.

**§ 423.50 Approval of marketing materials and enrollment forms.**

(a) *CMS review of marketing materials.*

(1) Except as provided in paragraph (a)(2) and (a)(3) of this section, a Part D plan may not distribute any marketing materials (as defined in paragraph (b) of this section), or enrollment forms, or make such materials or forms available to Part D eligible individuals, unless—

(i) At least 45 days (or 10 days if using certain types of marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution, the Part D sponsor submits the material or form to CMS for review under the guidelines in paragraph (c) of this section; and