

§ 423.36

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if CMS determines that the further enrollment is warranted.

(d) *Automatic enrollment rules*—(1) *General rule.* CMS must automatically enroll full-benefit dual eligible individuals who fail to enroll in a Part D plan into a PDP offering basic prescription drug coverage in the area where the individual resides that has a monthly beneficiary premium that does not exceed the low-income premium subsidy amount (as defined in §423.780(b)). In the event that there is more than one PDP in an area with a monthly beneficiary premium at or below the low-income premium subsidy amount, individuals must be enrolled in such PDPs on a random basis.

(2) Individuals enrolled in an MSA plan or one of the following that does not offer a Part D benefit. Full-benefit dual eligible individuals enrolled in an MA Private Fee For Service (PFFS) plan or cost-based HMO or CMP that does not offer qualified prescription drug coverage or an MSA plan and who fail to enroll in a Part D plan must be automatically enrolled into a PDP plan as described in paragraph (d)(1) of this section.

(e) *Declining enrollment and disenrollment.* Nothing in this section prevents a full-benefit dual eligible individual from—

(1) Affirmatively declining enrollment in Part D; or

(2) Disenrolling from the Part D plan in which the individual is enrolled and electing to enroll in another Part D plan during the special enrollment period provided under §423.38.

(f) *Effective date of enrollment.* Enrollment of full-benefit dual eligible individuals under this section must be effective as follows:

(1) January 1, 2006 for individuals who are full-benefit dual eligible individuals as of December 31, 2005;

(2) The first day of the month the individual is eligible for Part D under §423.30(a)(1) for individuals who are Medicaid eligible and subsequently become newly eligible for Part D under §423.30(a)(1) on or after January 1, 2006; and

(3) For individuals who are eligible for Part D under §423.30(a)(1) and subsequently become newly eligible for Medicaid on or after January 1, 2006,

enrollment is effective as soon as practicable after being identified as a newly full-benefit dual eligible individual, in a process to be determined by CMS.

§ 423.36 Disenrollment process.

(a) *General rule.* An individual may disenroll from a PDP during the periods specified in §423.38 by enrolling in a different PDP plan, submitting a disenrollment request to the PDP in the form and manner prescribed by CMS, or filing the appropriate 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 and subsequent years*. For coverage beginning 2007 or any subsequent year, the annual coordinated election period is November 15th through December 31st for coverage beginning the following calendar year.

(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, at any time 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) The individual is a full-benefit dual eligible individual as defined under section 1935(c)(6) of the Act.

(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—

(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