

§ 423.46

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.

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§ 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

(ii) CMS does not disapprove the distribution of the material or form.

(2) If the Part D sponsor is deemed by CMS to meet certain performance requirements established by CMS, the Part D sponsor may distribute designated marketing materials 5 days following their submission to CMS.

(3) Prior to distribution, the Part D sponsor submits and certifies that for certain types of marketing materials it followed all applicable marketing guidelines, or for certain other marketing materials that it used, without modification, proposed model language as specified by CMS.

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

(1) Promote the Part D plan.

(2) Inform Medicare beneficiaries that they may enroll, or remain enrolled in a Part D plan.

(3) Explain the benefits of enrollment in a Part D plan, or rules that apply to enrollees.

(4) Explain how Medicare services are covered under a Part D plan, including conditions that apply to such coverage.

(c) *Examples of marketing materials.* Examples of marketing materials include, but are not limited to—

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