



CENTER FOR MEDICARE

DATE: September 28, 2017

TO: All Medicare Advantage Organizations, Prescription Drug Plans, Cost Plans, PACE Organizations and Demonstrations

FROM: Jerry Mulcahy
Director, Medicare Enrollment & Appeals Group

Jennifer R. Shapiro
Acting Director, Medicare Drug Benefit and C & D Data Group

Kathryn Coleman
Director, Medicare Drug and Health Plan Contract Administration Group

Vikki Ahern
Director, Medicare Parts C & D Oversight & Enforcement Group

SUBJECT: Emergencies and Major Disasters – Additional Opportunities to Join, Drop or Switch Medicare Health and Prescription Drug Plans & Other Guidance

Special Enrollment Period. CMS will provide all beneficiaries affected by a weather related emergency or major disaster a special enrollment period (SEP) that gives them an additional opportunity to change their Medicare health and prescription drug plans in the event they were unable to make an election during another qualifying election period. This includes both enrollment and disenrollment elections. Individuals will be considered “affected” and eligible for this SEP if they reside, or resided at the start of the incident period, in an area for which the Federal Emergency Management Agency (FEMA) has declared an emergency or a major disaster. In addition, the SEP is available to those individuals who don’t live in the affected areas but rely on help making healthcare decisions from friends or family members who live in the affected areas.

CMS defers to the information provided on the FEMA website – www.fema.gov/disasters - for a description of the areas declared eligible for individual and/or public assistance associated with a declaration of emergency or major disaster.

This enrollment opportunity is in addition to the Fall Open Enrollment Period and any other enrollment period for which the beneficiary may be eligible. We will examine the circumstances in the affected areas and may extend the SEP beyond December 31, if needed.

For enrollment requests received directly from applicants or through the Online Enrollment Center for which the individual does not attest to a specific election period, sponsors would need to determine eligibility for this SEP. To determine if an individual is eligible for this SEP, sponsors must first attempt to obtain proof that the individual resided in an affected county (e.g., driver's license, utility bills, etc.). If the individual is unable to provide such proof, the sponsor must accept the applicant's attestation that he or she resided in an affected county. For enrollment requests received during the Fall Open Enrollment Period where more than one enrollment effective date is possible, sponsors will need to determine the applicant's desired effective date. Enrollments made pursuant to this SEP are effective the first of the month following the sponsor's receipt of the enrollment request, which includes those received in December after the end of the Fall Open Enrollment Period.

Individuals may contact 1-800-MEDICARE to request enrollment using this SEP. Sponsors will receive the enrollments in the usual Online Enrollment Center (OEC) downloads. The enrollments will be processed using the "OTH" code and will have accompanying text from the "CMS use only" field indicating that it is related to the weather event. Sponsors would submit the enrollment transaction using the data in the enrollment request as they would any other enrollment request received through the OEC. In this case, as the "OTH" code indicates an SEP, the plan would use the "S" election type code in the enrollment transaction to CMS.

Disenrollment after Extended Absence from Service Area. The general rule is that MA plans must disenroll members if their temporary absence from the service area exceeds 6 months. If the MA plan offers a visitor/traveler program, this timeframe can be extended to up to 12 months (see 42 CFR 422.74(b)(2) and (d)(4)). PDP sponsors must disenroll members if their temporary absence from the service area exceeds 12 months (see 42 CFR 423.44(b)(2)(i) and (d)(5)).

If there are indications that an MA plan member is outside the service area temporarily, the plan cannot initiate disenrollment until six months (12 months if the MA plan offers a visitor/traveler program) have passed from the date the plan received the information regarding the member's temporary absence from the service area. PDP sponsors cannot initiate disenrollment based on a temporary absence from the service area until 12 months have passed from the date the plan sponsor received information regarding the member's absence from the service area.

Disenrollment for Failure to Pay Premiums. As outlined in guidance, sponsors that have a policy to disenroll members for failure to pay premiums may establish a policy of not disenrolling members for failure to pay the plan premium during the calendar year or increase the length of the grace period before disenrolling. For example, a sponsor may increase the grace period from 2 months to 6 months to ease the burden for individuals affected by a natural disaster; however, it must provide this extended grace period to everyone in the PBP, not only those in the area affected by the natural disaster, through the end of the calendar year. CMS is encouraging sponsors to take advantage of this flexibility for plans offered in areas for which FEMA has declared an emergency or a major disaster. Sponsors that choose to do so should notify their CMS account manager of the change in policy before implementing such changes.

Payment of Services by Non-Contracted Providers. Payment for services provided by non-contracted providers, including outside of a plan's service area, is governed by 42 CFR §422.214 which requires MAOs to pay (and non-contract health care providers to accept as payment in full) the amount the provider would have received for the service or services provided under Original Medicare payment rules less the plan allowed cost sharing collected directly from the MA enrollee. *See also* Sections 1853(a)(2) and (k)(1), and 1866(a)(1)(O).

Star Ratings. Plans need to contact CMS through the Star Ratings mailbox (PartCandDStarRatings@cms.hhs.gov) if they believe their operations and/or clinical care have had major issues as a result of the emergency or major disaster that would impact the data used for Star Ratings measures. Each plan's situation is unique, so each plan needs to provide a detailed description and justification for each measure for which they are claiming an impact. This justification must include information about why the plan thinks the measure is impacted and for how long. Areas potentially impacted would be those designated as emergency or major disaster areas by FEMA. In addition to contacting CMS, plans should also work closely with NCQA and their HEDIS auditors to discuss potential options, if necessary. For HEDIS measures all information should also be sent to Patrick Dahill at NCQA at Dahill@ncqa.org.

CMS will consider a variety of strategies to address issues related to emergency or major disaster declarations and the Star Ratings measures, including alternative sampling approaches, changing timeframes of measurement, and reversion to last year's score if a majority of enrollees are in the FEMA-designated areas and it is determined that alternative strategies will not be feasible.

Relief from Compliance Standards (e.g. enrollment processing). CMS will consider refraining from taking compliance actions in those instances where a plan sponsor's failure to comply was the direct result of the conditions on which the emergency or major disaster declaration is based and the plan sponsor could not have taken reasonable steps in advance to prevent the compliance failure. Plans should note as well their obligations under §§422.504(o) and 423.505(p) related to business continuity in the event of disruptions to business operations which would include natural or man-made disasters.

We also note that additional information regarding plan sponsor's obligations to beneficiaries in affected areas is on the CMS website – www.cms.gov/About-CMS/Agency-Information/Emergency/index.html.

Please direct general questions to your CMS Account Manager. For enrollment policy questions regarding the SEP, please submit your inquiry to PDPENROLLMENT@cms.hhs.gov