



**CENTER FOR DRUG AND HEALTH PLAN CHOICE**

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DATE: February 17, 2009

TO: All MA Organizations and Part D Sponsors

FROM: Louis Polise  
Acting Director, Medicare Drug and Health Plan Contract Administration Group

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SUBJECT: Limited waiver available to Part C and D plans under CMS sanction to permit enrollment of employer group health plan retirees

The purpose of this memo is to alert Medicare Advantage (MA) organizations and prescription drug plan (PDP) sponsors that CMS may, upon request, grant a limited waiver of enrollment sanctions. This waiver may be granted for the purpose of allowing eligible or newly eligible (i.e. age-ins) members of employer group health plans the option of enrolling in either an individual plan or employer/union-only group waiver plan (EGWP) offered by an MAO or Part D sponsor under suspension.

When CMS imposes intermediate sanctions under section 1857(g) or section 1860D-12(b)(3)(E) of the Social Security Act (the Act), and 42 CFR §422.750 or 42 CFR §423.750, on either an MA organization offering MA plan(s) or a prescription drug plan (PDP) sponsor offering PDP plan(s), these sanctions are levied at the contract level. Sanctioned contracts may include MAOs offering MA employer EGWPs or MA individual market plans open to employer group health plan enrollment, as well as Part D sponsors offering PDP EGWPs or individual market PDPs open to employer group health plan enrollment. If an MAO or Part D sponsor offering EGWPs or individual market plans open to employer group health plan enrollment is under an enrollment sanction (see 42 CFR §422.705(a)(2) or 42 CFR §423.750(a)(2), those employer group health plan enrollees who are eligible or become eligible (i.e., age-in) for the employer group health plan cannot be enrolled in the sponsoring organization's EGWPs or individual market plans that otherwise would be open to employer group health plan enrollment.

Under its authority at sections 1857(i) and 1860D-22(b) of the Act, CMS may upon request grant a limited waiver of the enrollment sanction at 42 CFR §422.705(a)(2) or 42 CFR §423.750(a)(2) for the purpose of allowing current and newly eligible employer group health plan members the option of enrolling in an EGWP or an individual market MA plan or PDP open to employer group health plan enrollment offered by an MAO or Part D sponsor under suspension. Please note that this waiver can only be used when expressly approved by CMS. CMS will only grant this waiver when it determines that the approval of such a waiver is in the best interest of

beneficiaries who otherwise would be denied access to their employer group health plan. An MAO or Part D sponsor under intermediate sanction must submit a written request to CMS asking for approval to exercise this waiver and, if granted, CMS will advise the MAO or Part D sponsor regarding any limitations on the use of this waiver.

If you have additional questions about the application of this waiver please contact your CMS regional office account manager.