

Waiver Questions & Answers:

Question 1: Why is CMS considering using its authority under sections 1857(i) and 1860D-22(b) of the Social Security Act (the Act) to waive the enrollment restriction under the intermediate sanctions at 42 CFR 422.705(a)(2) and 42 CFR 423.705(a)(2) for employer group health plan enrollees and not individual enrollees?

Answer 1: Employers have contracts with Medicare Advantage Organizations (MAOs) and Part D sponsor to offer MA plan and/or PDP coverage under employer/union-only group waiver plans (EGWPs) or individual market MA plans and PDPs open to employer group health plan enrollment by retirees eligible for Medicare. To deny this coverage option could effectively deny these retirees access to their employer's contribution to their health care coverage. Under this waiver CMS will only allow enrollment of eligible employer group health plan members (including age-ins) in existing EGWPs and MA plans and PDPs open to employer group health plan enrollment. CMS is not permitting new employer group health plan contracts to be initiated during the intermediate sanction period. As noted in the waiver, CMS will only approve this waiver on a case by case basis when it determines it is in the best interest of eligible employer group health plan enrollees.

Question 2: When granted by CMS, what conditions apply to the waiver allowing a sanctioned MAO or Part D sponsor to continue enrolling employer group health plan members?

Answer 2: Among the conditions of this waiver, the organization or sponsor under intermediate sanction is prohibited from all marketing activity, including any marketing of employer group plans to employers. Also, the organization or sponsor under intermediate sanction by CMS may not enter into any new employer group health contracts.

Question 3: How will CMS monitor the use of this waiver?

Answer 3: CMS will only allow this waiver to be exercised when expressly authorized by CMS. In addition, CMS will monitor the enrollment activity of the sanctioned organization to ensure that only employer group health plan members are enrolled in an EGWP or individual market plan open to employer group health plan enrollment during the sanction period.