



DATE: March 24, 2023

TO: Medicare Advantage Organizations
Part D Plan Sponsors
Medicare-Medicaid Plans

SUBJECT: Coronavirus Disease 2019 (COVID-19) Related Exercise of Enforcement Discretion Ending May 11, 2023

At the onset of the COVID-19 public health emergency (PHE), and the declaration of such by Secretary Azar, the Centers for Medicare & Medicaid Services (CMS) notified Medicare Advantage Organizations (MAOs), Part D sponsors, and Medicare-Medicaid Plans of a number of flexibilities they may implement during the COVID-19 PHE through a temporary policy of enforcement discretion to support efforts to curb the spread of the virus and to help ensure MA and Part D enrollees did not experience disruptions in care or disruptions in pharmacy and prescription drug access.

CMS issued subsequent guidance on January 14, 2022 in a memo titled, “Coronavirus Disease 2019 (COVID-19) Permissive Actions Extended in Contract Year 2022,” to inform MAOs, Part D sponsors, and Medicare-Medicaid Plans that CMS will continue certain flexibilities for the duration of the COVID-19 PHE.

On January 30, 2023, the Biden-Harris Administration announced it intends to end the national emergency and PHE related to the COVID-19 on May 11, 2023. On February 9, 2023, the Secretary of Health and Human Services informed governors that, based on current trends regarding COVID-19, the U.S. Department of Health and Human Services is planning for the COVID-19 PHE to end on May 11, 2023.¹

This memo is to inform MAOs, Part D sponsors, and Medicare-Medicaid plans that CMS is ending the temporary enforcement discretion policy to coincide with the ending of the COVID-19 national emergency and public health emergency declarations, effective May 11, 2023. After that date, MAOs, Part D sponsors, and Medicare-Medicaid Plans will need to comply with current statutory and regulatory program requirements, including the prohibition on mid-year benefit enhancements. CMS will no longer have a policy of relaxed enforcement discretion regarding the administration of MAOs’ benefit packages. Effective May 11, 2023, MAOs may not provide any expanded or additional benefits (including additional reductions in cost sharing) that are not included in the Contract Year 2023 approved benefit package.

¹ <https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html>

Per CMS regulations at § 422.111(d)(3), CMS expects MA organizations and MMPs to notify all enrollees at least 30 days before the effective date of any plan changes. Similarly, Part D sponsors must provide notice of any changes as required by § 423.128(g).

If you have any questions about this memorandum, please submit an inquiry at <https://dpap.lmi.org>