

MEDICARE ENROLLMENT & APPEALS GROUP

DATE: June 22, 2022

TO: All Medicare Advantage Organizations, Part D Sponsors, and Medicare-Medicaid Plans

FROM: Jerry Mulcahy
Director

SUBJECT: Clarification of the Special Enrollment Period (SEP) for Government Entity-Declared Disaster or Other Emergency

On May 5, 2020, CMS announced that the COVID-19 pandemic could be used as an eligibility criterion for the "SEP for Individuals Affected by a FEMA-Declared Weather-Related Emergency or Major Disaster" (disaster SEP)¹. Consistent with the parameters for this disaster SEP in 2020, the SEP was available from the start of the incident period — defined as the effective date of the President's initial emergency declaration, March 1, 2020, and for four full calendar months thereafter, ending June 30, 2020. CMS did not extend the SEP beyond this period.

Since that time, CMS has stated publicly that individuals impacted by COVID-19, and unable to change plans while they were eligible for an election period, would have access to the SEP for Exceptional Circumstances, on a case-by-case basis, and may call 1-800-MEDICARE to make a request. In addition, all Medicare beneficiaries had the opportunity to join or change plans for plan year 2021 using the Annual Election Period (AEP) from October 15, 2020 to December 7, 2020 and again in the AEP in the fall of 2021 for plan year 2022. The effective dates for AEP enrollment actions were January 1, 2021 and January 1, 2022, respectively. Further, beneficiaries enrolled in an MA plan have an additional opportunity every year during the Medicare Advantage Open Enrollment Period from January 1 through March 31 to switch to a different MA plan or go back to Traditional Medicare and join a Medicare drug plan.

In June 2020, CMS published a final rule (85 FR 33796) that took effect January 1, 2021, that expanded the scope of the "disaster SEP" to cover individuals who missed an enrollment or disenrollment opportunity due to a disaster or other emergency declared by a Federal, state or local government entity and to last for the duration of the disaster plus an additional two months

¹ <https://www.cms.gov/files/document/special-enrollment-period-sep-individuals-affected-fema-declared-weather-related-or-other-major.pdf>

following the end date of the disaster². In other words, CMS expanded, the scope of the SEP which, as it existed prior to 2021, had only covered only FEMA-declared disasters, and had been limited to a maximum of four months after the FEMA declaration, regardless of the length of the disaster.

Since the January 1, 2021, effective date of the final rule, it has been CMS' position that eligibility for the current SEP for Government Entity-Declared Disaster or Other Emergency included in the final regulation requires a new disaster or emergency declaration on or after January 1, 2021. For disaster or emergency declarations that were originally issued before January 1, 2021, such as the ongoing COVID-19 public health emergency (PHE), any subsequent extensions or renewals, even if extended after January 1, 2021, do not serve as a basis for eligibility for the new disaster SEP.

However, as mentioned above, individuals impacted by COVID-19, such that they were unable to change plans while they were eligible for an election period, currently have access, on a case-by-case basis, to the SEP for Exceptional Circumstances, and may call 1-800-MEDICARE to make that request.

We advise Medicare Advantage organizations, Part D plan sponsors, and Medicare-Medicaid plans to take action to ensure the correct application of the criteria for SEPs. The criteria for new emergency declarations after January 1, 2021, can be found in regulation at 42 CFR § 422.62(b)(18) for MA and at § 423.38(c)(23) for Part D.

Plans should refer to the following sections in manual guidance for details on the SEP:

- Section 30.4.4.18 and 30.4.4.21 of [Chapter 2](#) (Medicare Advantage Enrollment and Disenrollment) of the Medicare Managed Care Manual.
- Section 30.3.8.16 and 30.3.8.19 of [Chapter 3](#) (Eligibility, Enrollment and Disenrollment) of the Medicare Prescription Drug Benefit Manual.

Beneficiaries who have questions about election periods or who believe they are eligible for the SEP for Exceptional Circumstances or other SEPs should be directed to 1-800-MEDICARE (1-800-633-4227) anytime, 24 hours a day, 7 days a week with any questions. TTY users should call 1-877-486-2048.

Questions about Part C or Part D enrollment policy should be submitted to <https://enrollment.lmi.org>. Medicare-Medicaid Plans should contact their Contract Management Team or the Medicare-Medicaid Coordination Office at MMCOCapsModel@cms.hhs.gov.

² <https://www.federalregister.gov/documents/2020/06/02/2020-11342/medicare-program-contract-year-2021-policy-and-technical-changes-to-the-medicare-advantage-program>