

§ 422.74

42 CFR Ch. IV (10-1-99 Edition)

(c) *Open enrollment periods.* For an election or change of election made during an open enrollment period as described in § 422.62(a)(3) through (a)(5), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

(d) *Special election periods.* For an election or change of election made during a special election period as described in § 422.62(b), the effective date of coverage shall be determined by HCFA, to the extent practicable, in a manner consistent with protecting the continuity of health benefits coverage.

(e) *Special election period for individual age 65.* For an election of coverage under original Medicare made during a special election period for an individual age 65 as described in § 422.62(c), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

§ 422.74 Disenrollment by the M+C organization.

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, an M+C organization may not—

(1) Disenroll an individual from any M+C plan it offers; or

(2) Orally or in writing, or by any action or inaction, request or encourage an individual to disenroll.

(b) *Basis for disenrollment—(1) Optional disenrollment.* An M+C organization may disenroll an individual from an M+C plan it offers in any of the following circumstances:

(i) Any monthly basic and supplementary beneficiary premiums are not paid on a timely basis, subject to the grace period for late payment established under paragraph (d)(1) of this section.

(ii) The individual has engaged in disruptive behaviors specified at paragraph (d)(2) of this section.

(iii) The individual provides fraudulent information on his or her election form or permits abuse of his or her enrollment card as specified in paragraph (d)(3) of this section.

(2) *Required disenrollment.* An M+C organization must disenroll an individual from an M+C plan it offers in any of the following circumstances:

(i) The individual no longer resides in the M+C plan's service area as specified in paragraph (d)(4) of this section, and optional continued enrollment has not been offered or elected pursuant to § 422.54.

(ii) The individual loses entitlement to Part A or Part B benefits as described in paragraph (d)(5) of this section.

(iii) Death of the individual as described in paragraph (d)(6) of this section.

(3) *Plan termination or reduction of service area or continuation area.* An M+C plan offered by an M+C organization that terminates with respect to all M+C individuals in the area where the individual resides or is terminated or reduces the service area or continuation area must comply with the process for disenrollment set forth at paragraph (d)(7) of this section.

(c) *Notice requirement.* If the disenrollment is for any of the reasons specified in paragraphs (b)(1) through (b)(2)(i) and (b)(3) of this section, that is, other than death or loss of entitlement to Part A or Part B, the M+C organization must give the individual a written notice of the disenrollment with an explanation of why the M+C organization is planning to disenroll the individual.

(1) The notice must be mailed to the individual before submission of the disenrollment notice to HCFA.

(2) The notice must include an explanation of the individual's right to a hearing under the M+C organization's grievance procedures.

(d) *Process for disenrollment—(1) Monthly basic and supplementary premiums are not paid timely.* An M+C organization may disenroll an individual from the M+C plan for failure to pay any basic or supplementary premiums if the M+C organization—

(i) Makes a reasonable effort to collect unpaid premium amounts by sending a written notice of nonpayment to the enrollee within 20 days after the date that the delinquent charges were due—

(A) Alerting the individual that the premiums are delinquent;

(B) Providing the individual with an explanation of the disenrollment procedures and any lock-in requirements of the M+C plan; and

(C) Advising that failure to pay the premiums within the 90-day grace period will result in termination of M+C coverage;

(ii) Only disenrolls a Medicare enrollee when the organization has not received payment within 90 days after the date it has sent the notice of non-payment to the enrollee; and

(iii) Gives the individual a written notice of disenrollment that meets the requirements set forth in paragraph (c) of this section.

(2) *Disenrollment for disruptive behavior*—(i) *Basis for disenrollment*. An M+C organization may disenroll an individual from the M+C plan if the individual's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continued enrollment in the plan seriously impairs the M+C plan's ability to furnish services to either the particular individual or other individuals enrolled in the plan.

(ii) *Effort to resolve the problem*. The M+C organization must make a serious effort to resolve the problems presented by the individual, including the use (or attempted use) of the M+C organization's grievance procedures. The beneficiary has a right to submit any information or explanation that he or she may wish to submit to the M+C organization.

(iii) *Consideration of extenuating circumstances*. The M+C organization must establish that the individual's behavior is not related to the use of medical services or to diminished mental capacity.

(iv) *Documentation*. The M+C organization must document the enrollee's behavior, its own efforts to resolve any problems, and any extenuating circumstances, as described in paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(v) *HCFA review of the M+C organization's proposed disenrollment*. (A) HCFA decides after reviewing the documentation submitted by the M+C organization and any information submitted by the beneficiary (which the M+C organization must forward to HCFA) whether

the M+C organization has met the disenrollment requirements.

(B) HCFA makes the decision within 20 working days after receipt of the documentation and notifies the M+C organization within 5 working days after making its decision.

(vi) *Effective date of disenrollment*. If HCFA permits an M+C organization to disenroll an individual for disruptive behavior, the termination is effective the first day of the calendar month after the month in which the M+C organization gives the individual written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(3) *Individual commits fraud or permits abuse of enrollment care*. (i) *Basis for disenrollment*. An M+C organization may disenroll the individual from an M+C plan if the individual—

(A) Knowingly provides, on the election form, fraudulent information that materially affects the individual's eligibility to enroll in the M+C plan; or

(B) Intentionally permits others to use his or her enrollment card to obtain services under the M+C plan.

(ii) *Notice of disenrollment*. The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(iii) *Report to HCFA*. The M+C organization must report to HCFA any disenrollment based on fraud or abuse by the individual.

(4) *Individual no longer resides in the M+C plan's service area*—(i) *Basis for disenrollment*. Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual who moves out of a plan's service area if the M+C organization establishes, on the basis of a written statement from the individual, or other evidence acceptable to HCFA, that the individual has moved out of a plan's service area for over 12 months.

(ii) *Notice of disenrollment*. The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

(5) *Loss of entitlement to Part A or Part B benefits*. If an individual is no longer entitled to Part A or Part B benefits, HCFA notifies the M+C organization

that the disenrollment is effective the first day of the calendar month following the last month of entitlement to Part A or Part B benefits.

(6) *Death of the individual.* If the individual dies, disenrollment is effective the first day of the calendar month following the month of death.

(7) *Plan termination or area reduction.*

(i) If the plan terminates or is terminated or the service area or continuation area are reduced with respect to all M+C enrollees in the area in which they reside, the M+C organization must give each Medicare enrollee a written notice of the effective date of the plan termination or area reduction and a description of alternatives for obtaining benefits under the M+C program.

(ii) The notice must be sent before the effective date of the plan termination or area reduction.

(e) *Consequences of disenrollment—(1) Disenrollment for non-payment of premiums, disruptive behavior, fraud or abuse, loss of Part A or Part B.* An individual who is disenrolled under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or paragraph (b)(2)(ii) of this section is deemed to have elected original Medicare.

(2) *Disenrollment based on plan termination, area reduction, or individual moves out of area.* (i) An individual who is disenrolled under paragraph (b)(2)(i) or (b)(3) of this section has a special election period in which to make a new election as provided in § 422.62(b)(1) and (b)(2).

(ii) An individual who fails to make an election during the special election period is deemed to have elected original Medicare.

[63 FR 35071, June 26, 1998; 63 FR 52612, Oct. 1, 1998]

§ 422.80 Approval of marketing materials and election forms.

(a) *HCFA review of marketing materials.* An M+C organization may not distribute any marketing materials (as defined in paragraph (b)), or election forms, or make such materials or forms available to individuals eligible to elect an M+C plan, unless—

(1) At least 45 days before the date of distribution the M+C organization has submitted the material or form to

HCFA for review under the guidelines in paragraph (c); and

(2) HCFA has not disapproved the distribution of the material or form.

(b) *Definition of marketing materials.* Marketing materials include any informational materials targeted to Medicare beneficiaries which:

(1) Promote the M+C organization, or any M+C plan offered by the M+C organization;

(2) Inform Medicare beneficiaries that they may enroll, or remain enrolled in, an M+C plan offered by the M+C organization;

(3) Explain the benefits of enrollment in an M+C plan, or rules that apply to enrollees;

(4) Explain how Medicare services are covered under an M+C plan, including conditions that apply to such coverage;

(5) Examples of marketing materials include, but are not limited to:

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (e.g., physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements (evidence of coverage), member handbooks, and newsletters.

(vi) Letters to members about contractual changes; changes in providers, premiums, benefits, plan procedures etc.

(vii) Membership or claims processing activities (e.g., materials on rules involving non-payment of premiums, confirmation of enrollment or disenrollment, or annual notification information).

(c) *Guidelines for HCFA review.* In reviewing marketing material or election forms under paragraph (a) of this section, HCFA determines that the marketing materials:

(1) Provide, in a format (and, where appropriate, print size), and using