

Retroactive Disenrollment: Case Examples

There are four situations that allow for retroactive disenrollment from a Medicare Advantage plan. These four situations, along with the supporting elements needed to meet the criteria for retroactive disenrollment, are explained below. Case examples are also included to illustrate when retroactive disenrollment may be appropriate.

1. Enrollment was never legally valid.

- a. The beneficiary did not intend to enroll.
- b. Evidence of lack of intent.

Beneficiary believes he enrolled in a PDP and not an MA-PD:

Mr. Cole enrolled in Health Assure, believing that he was only enrolling to obtain Medicare Part D prescription drug coverage. Mr. Cole did not understand that Health Assure's Part D plan was part of an entire MA package, and instead believed it was a stand alone private Part D plan. Mr. Cole did not intend to enroll in the Health Assure MA plan.

Evidence of Mr. Cole's lack of intent is demonstrated by his continued use of out of plan providers immediately after enrolling in Health Assure.

Beneficiary has a language barrier:

Mr. Basie only speaks Spanish and did not understand how enrollment into an MA plan would change his Medicare benefits. As a result, Mr. Basie continued to see providers that do not contract with Frontier Health Plan, and has received some claim denials from Medicare due to this MA enrollment.

Mr. Basie's lack of intent is clear from his inability to understand the ramifications of enrollment as well as his continued use of non-contracting providers.

Beneficiary enrolled in Medigap without knowing she is already enrolled in an MA plan:

Ms. Vaughn's Options MA plan became effective three months ago. Previously, Ms. Vaughn was enrolled in her employer's Options group plan. Ms. Vaughn received a notice stating that her group plan was ending. However, she does not recall receiving or filling out any paperwork for Options MA.

Ms. Vaughn enrolled in a Medigap/Medicare Supplement plan. She has not received any Options services since her Options MA plan became effective.

Evidence of Ms. Vaughn's lack of intent to enroll in Options MA is her enrollment in a Medigap.

2. A valid request for disenrollment was properly made, but not processed or acted upon.

- a. Effort to disenroll was made during a valid enrollment period.
- b. Effort to disenroll was made through the proper channels (typically the MA organization or 1-800-Medicare).
- c. Disenrollment was not processed due to an error by the MA plan or Medicare.

CMS or plan error led to a delay in their disenrollment:

Mr. Lateef is a Medicare beneficiary who is currently enrolled in an MA plan called Plan for Tomorrow. During the Annual Enrollment Period, he decided to disenroll from Plan for Tomorrow and enroll in traditional Medicare as his primary insurance. Mr. Lateef called 1-800-Medicare and spoke to a representative who informed him that he would be disenrolled from Plan for Tomorrow MA. Mr. Lateef subsequently used services outside of his plan's network. Two months later, when Mr. Lateef went to a hospital to receive an ultrasound, he was told that he was still enrolled in Plan for Tomorrow MA. Mr. Lateef called 1-800-Medicare again. Mr. Lateef was told that his prior effort for disenrollment was taking a while to reflect on Medicare's records. The representative further advised Mr. Lateef that if Medicare rejected any claims, the claims should be resubmitted to Medicare at a later time.

As of today, Mr. Lateef is still a Plan for Tomorrow MA member. Due to no error of Mr. Lateef's, his disenrollment was not processed.

CMS or plan error led to a rejection of the disenrollment:

Same facts as above, but in addition-

Mr. Lateef made a final effort to disenroll from Plan for Tomorrow MA directly. Mr. Lateef contacted Plan for Tomorrow MA and spoke to a representative who informed him that he could not disenroll from Plan for Tomorrow MA until next year because the enrollment period had passed.

Mr. Lateef took the proper steps to voluntarily disenroll from Plan for Tomorrow MA during one of the enrollment periods. Even though Mr. Lateef contacted Medicare to disenroll from Plan for Tomorrow MA, he was never disenrolled and is still a Plan for Tomorrow MA member.

Beneficiary disenrolled from one MA plan by enrolling in a different MA plan, CMS or plan error prevented the change from being processed:

Mr. Lateef enrolled in Advantage Plan for Today directly with the plan during an enrollment period. However his Medicare record still shows enrollment in Plan for Tomorrow MA, his previously held Medicare Advantage plan.

Due to an error processing his enrollment, Mr. Lateef's disenrollment from Plan for Tomorrow MA is not reflected on his record, nor is his enrollment in Advantage Plan for Today.

3. The reason for disenrollment is related to a permanent move out of the plan service area.

- a. The member has permanently moved from the service area.
- b. The member is not in a continuation area for the plan and the plan does not offer an applicable visitor/traveler program.
- c. The member notifies the plan of this move.

Beneficiary has moved from their MA plan service area:

Mr. and Mrs. Jamal were enrolled in Twilight Medicare Advantage. Mr. and Mrs. Jamal moved to a different County outside of the service area of Twilight Medicare Advantage. Once they moved, they realized that remaining enrolled in Twilight Medicare Advantage would not be practical. They called Twilight Medicare Advantage to request disenrollment. Twilight Medicare Advantage representatives informed the Jamal's that they needed to fill out disenrollment forms; however, the disenrollments would not be effective until the first of the following year since the enrollment period was over.

4. Contract violation.

- a. Demonstration that the MA violated its contract or misrepresented the plan while marketing it.
- b. Material misrepresentation.
- c. CMS must find a violation.

*Use of this basis for retroactive disenrollment is rare due to the requirement that CMS finds a contractual violation or a material misrepresentation in marketing. How an agent presents this material or how an agent acts may be difficult to prove due to a potential conflict in the recollection of events by the insurance agent and by the Medicare beneficiary. **Often, it is useful to invoke this basis along with an assertion that the enrollment was never legally valid.***

Marketing misconduct led to the enrollment of a Medicare beneficiary in an MA plan:

Ms. Simone was invited to an informational lunch regarding Primo MA Plan. She enjoyed her meal and remembers filling out a sign-in sheet with her name, address and some other information. She was explicitly told that if she enrolled in Primo MA Plan she could see any physician who accepts Medicare.

Two months later, after several visits, her physician informed her that she is a member of Primo MA Plan. Ms. Simone was told to find a physician who would accept the plan.

Ms. Simone is able to *state* that the agent misrepresented the plan to her, but she can *illustrate* her lack of intent due to receiving out of plan services after enrolling.