

## **Retroactive Disenrollment Tip Sheet**

### **Under what circumstances a request for retroactive disenrollment may be considered:**

Often an individual seeks a retroactive disenrollment from a Medicare Advantage (MA) plan because they did not understand how MA plans work or did not realize they were signing up for an MA plan. Under these circumstances, it may be months before a beneficiary even realizes s/he is enrolled in an MA plan. Often Medicare beneficiaries will seek assistance from SHIPs because providers are refusing to see them, they start to receive bills for out of plan services, or they are notified of loss of retiree benefits due to MA plan enrollment.

The Medicare Managed Care Manual (MMCM), Chapter 2, §60.5 discusses Retroactive Disenrollments.

### **What is the first step?**

The initial action is to make sure the beneficiary has appropriate health coverage as soon as possible. This may mean explaining how an MA plan works, disenrolling from the MA plan, or enrolling in new coverage (if enrollment periods permit). When an individual disenrolls from an MA plan, the effective date is the first of the month following the disenrollment action or enrollment in a new plan.

Once disenrollment is confirmed, the counselor should evaluate the beneficiary's specific facts and circumstances to see if a request for retroactive disenrollment is appropriate.

### **What are the criteria for retroactive disenrollment?**

CMS has provided guidance regarding when retroactive disenrollment is appropriate. The different bases for these disenrollments are:

#### **1. If an enrollment was never legally valid**

MMCM, Chapter 2, §40.6 discusses this basis for retroactive disenrollment.

If the beneficiary did not intend to enroll in the MA plan, the enrollment is not valid.

Evidence of lack of intent to enroll includes:

- Request by the member for cancellation of enrollment before the effective date.
- Enrolling in a supplemental insurance program immediately after enrolling in the MA plan; or
- Receiving non-emergency or non-urgent out of plan services immediately after the effective date of coverage under the plan.

**2. If a valid request for disenrollment was properly made, but not processed or acted upon (including system error and plan error)**

This situation may arise when an individual disenrolls from an MA plan via enrollment in a PDP or other MA-PD and the request was not processed either by the plan or due to a system error. A member may only disenroll from an MA plan during an applicable enrollment period.

The member may disenroll by:

- Giving or faxing a signed written notice to the MA organization or employer, where applicable;
- Submitting a request via the internet to the MA organization (if the MA plan offers such an option); or
- Calling 1-800-Medicare.

**Under MMCM, Chapter 2, §10 both plan error and system error are defined:**

**MA Organization Error** – An error or delay in election processing made under the full control of the MA organization personnel and one that the organization could have avoided.

**System Error** – A “system error” is an unintended error or delay in election processing that is clearly attributable to a specific Federal government system (e.g., the Rail Road Benefit (RRB) system), and is related to Medicare entitlement information or other information required to process an election.

Examples of these errors are when an individual

- has submitted a written request to a plan that is not processed
- has called 1-800-Medicare and the request is not processed
- has enrolled in a different plan yet their Medicare record is not updated with CMS or the plan

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

Typically a member needs to notify the plan of their move date and is able to disenroll if they move to an area outside of the plan’s service area. See MMCM, Chapter 2, §50.2.1.1 for general rules and §50.2.1.2 for effective dates.

**4. Contract violation**

MMCM, Ch.2, § 30.4.2- “In the event an individual is able to demonstrate to CMS that the MA organization...substantially violated a material provision of its contract...in relation to the individual, or the MA organization (or its agent)

materially misrepresented the plan when marketing the plan, the individual may disenroll from the MA plan and elect Original Medicare or another MA plan. The Special Enrollment Period will begin once CMS determines that a violation has occurred.”

§ 30.4.2 also states that CMS may process a retroactive disenrollment in these types of situations.

Note: a beneficiary’s failure to understand the MA “lock-in” rule alone does not necessarily mean s/he meets the criteria for retroactive disenrollment.

### **If a retroactive disenrollment is granted, what type of coverage does the beneficiary have during the timeframe affected?**

When retroactive disenrollments are granted, individuals are treated as if they were in Original Medicare during the period of enrollment and are responsible for the Medicare coinsurance for services rendered during that timeframe.

If an individual was in a different MA plan prior to the time in question, a request can be made for reinstatement (discussed in MMCM, Chapter 2, § 60.3.2) into the previously held plan. If a request is made for reinstatement into a previously held MA plan, it is important that both suppliers and providers whom the beneficiary has seen during the time in question have a contract with the previously held MA plan. If they do not, the individual will have out of plan costs for those services. Sometimes other considerations (i.e. retiree coverage, drug coverage) may outweigh out of plan costs. In these circumstances a SHIP counselor can assist the beneficiary in identifying factors for a cost benefit analysis present in an individual’s particular situation.

Retroactive disenrollments and reinstatements are made at the discretion of CMS and are not automatic.

### **How do I submit a retroactive disenrollment request?**

Contact the CMS Regional Office and ask to speak with the CMS Beneficiary Caseworker for the MA plan at issue. Inform the Caseworker that you will be submitting a retroactive disenrollment request, and try to set up a protocol for submission of future requests. Currently, CMS is directing retroactive disenrollment requests to the specific MA plans. Send a letter and authorization to assist the beneficiary (if appropriate) to the MA plan and copy CMS on the request. Outline how the situation fits the CMS criteria and any other relevant facts. Make sure you ask for reinstatement into a previously held plan if needed.

**The beneficiary is not sure if s/he has used any in plan services; is there a way that I can check?**

If the individual appears to meet the criteria for retroactive disenrollment, you should verify whether they received any in plan services during the period at issue, including prescription drugs. Sometimes beneficiaries will not remember or know this information.

The beneficiary can contact the MA organization and verify if they received any in plan services and the dates of service. If the MA plan cannot provide this information, they will normally refer a beneficiary to the Medical Group directly to verify any use of in plan services.

If there is evidence of in plan usage, find out if the in plan providers are the same providers that the beneficiary used before the MA plan enrollment began.

If the beneficiary began using in plan providers after joining the MA plan *and* continued to see his/her former out of plan providers, informal negotiation (i.e. asking for a reduction in the amount owed or setting up a payment plan) on any outstanding claims may be an alternate route to a retroactive disenrollment request.

**Counselor Follow up:**

Stay in contact with any providers that are billing the client regarding the status of a retroactive disenrollment request that is granted. Providers can resubmit claims to Medicare.

If CMS denies retroactive disenrollment, there is no official avenue of appeal, except to ask for informal reconsideration, especially if there are additional information or documents that could help the client. CMS denies retroactive disenrollment if the criteria is not met or if the case may be better suited for the MA appeals process.

If the retroactive disenrollment is denied and the MA organization is not liable for the charges, determine if the provider is willing to work with the beneficiary on any balance due (i.e., payment plan over time or a write off/reduction for low-income individuals who cannot afford to pay the full amount of services).

**Related resources:**

CMS: [Medicare Health Plan Enrollment and Disenrollment](#)

CMS: [Medicare Managed Care Manual](#), Chapter 2

HAP: [Quick Guide to SEPs](#)