

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

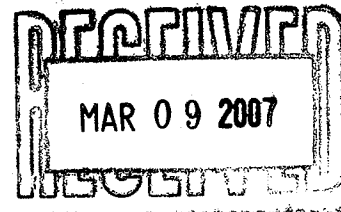


**CENTER FOR BENEFICIARY CHOICES**

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MAR - 8 2007

Refer to: FAEM



Mr. David Lipschutz  
California Health Advocates  
3435 Wilshire Blvd., Suite 2860  
Los Angeles, California 90010

Dear Mr. Lipschutz:

Thank you for your letter expressing your concerns regarding CMS' implementation of the new Medicare Advantage Limited Open Enrollment Period (L-OEP) created by Section 206 of the Tax Relief and Health Care Act of 2006, as described in a CMS memorandum dated February 7, 2007.

As your letter points out, we were required to reconcile the statutory language that describes the new L-OEP and the existing statutory language pertaining to enrollment in the Medicare Advantage (MA) and Part D programs. In implementing the new provision, we considered restricting enrollment during the L-OEP in the manner you suggest; that is, individuals already in Prescription Drug Plans (PDPs) could enroll only in an MA Private Fee-for-Service (PFFS) plan. However, in our view, such an interpretation would contradict the plain language of amended section 1851(e)(2) of the Social Security Act that "...the individual may elect under subsection (a)(1) to enroll in a Medicare Advantage plan that is not an MA-PD plan."

Thus, we believe that the appropriate interpretation of the statute is to permit any individual currently under original, fee-for-service Medicare to enroll either into an MA coordinated care plan or an MA PFFS plan during the L-OEP, rather than to preclude statutorily permissible elections. To reconcile the statutory prohibition on simultaneous enrollment in both a PDP and an MA coordinated care plan with the L-OEP MA enrollment opportunity, we have retained the existing process by which an individual enrolled in a PDP who elects enrollment in an MA coordinated care plan will be automatically disenrolled from the PDP. Further, in order to ensure that each individual beneficiary choosing to use the L-OEP to enroll in an MA coordinated care plan understands the consequences of their actions, we are requiring MA organizations to contact all prospective enrollees who are currently enrolled in a PDP, inform them about the consequences of their enrollment choice and confirm that they understand these

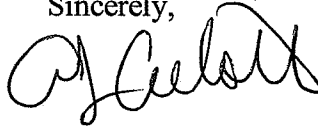
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consequences before completing the enrollment process. We believe this additional interactive step will ensure that beneficiaries are making informed enrollment decisions.

Plans may not enroll individuals who do not confirm their understanding of the consequences of their choice. In addition, as an added safeguard, CMS will establish a special enrollment period (SEP), available on a case-by-case basis, to allow individuals to return to their PDP (and disenroll from the MA coordinated care plan) if, despite the required confirmation process, they subsequently indicate that they were unaware that they would lose their prescription drug coverage as a result of their L-OEP election.

We recognize the potential for some confusion as this new provision takes effect. Thus, we intend to closely monitor the volume of enrollments under the L-OEP and any associated complaints or other casework. We welcome your assistance in identifying such instances and we appreciate your concern over this issue.

Sincerely,



Anthony J. Culotta  
Director  
Medicare Enrollment and Appeals Group

cc: Paul Precht, Medicare Rights Center  
Georgia Burke, National Senior Citizens Law Center  
Jeanne Finber, National Senior Citizens Law Center  
Patricia Nemo, Center for Medicare Advocacy, Inc.  
Vicki Gottlich, Center for Medicare Advocacy, Inc.  
Marc Steinberg, Families USA