

CMS Response to Public Comments Received for CMS-10137

The Centers for Medicare and Medicaid Services (CMS) received one comment from a Part D sponsor related to CMS-10137. This is the response to the comment.

Comment:

A Part D sponsor commented on the attestation on page 26 of the Part D application that reads in part “Applicant does not have any covered persons who also served as covered persons for an entity that nonrenewed a contract pursuant to 42 CFR § 423.507(a), or that terminated its contract with CMS by mutual consent pursuant to 42 CFR § 423.508, or unilaterally, pursuant to 42 CFR § 423.510, since January 1, 2017.” The commenter believed that the date was in error, as the nonrenewal and termination clauses cited provide that organizations with such covered persons cannot contract with CMS for two years following nonrenewal or termination.

Response:

CMS appreciates the comment and notes that the commenter was correct when it noted that the nonrenewal and termination provisions cited in the attestation only entail a two-year ban on contracting. However, CMS inadvertently omitted the nonrenewal and CMS-initiated termination provisions (42 CFR §§ 423.507(b) and 509, respectively). CMS does not approve applications from organizations employing covered persons (defined in 42 CFR §423.503(b)(4)) who were also covered persons for organizations that terminate or nonrenew a contract pursuant to 423.507(b) or 423.509 for 38 months following termination or nonrenewal (42 CFR § 423.503(b)(3) & (4)). CMS corrected the oversight by adding the two nonrenewal and termination provisions associated with the 38-month ban. January 1, 2017 is the appropriate date for applicants subject to the 38-month ban. CMS does not automatically deny applicants who attest “yes” to this attestation – rather, it reviews the applicant’s history to determine whether the two year or 38-month ban applies.