

CMS Response to Public Comments Received for CMS-10137

The Centers for Medicare and Medicaid Services (CMS) received two comments from a Part D sponsor related to CMS-10137. These are the responses to the comments.

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, 2018.” 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 mutual termination. They acknowledge that there is a 38 month restriction for organizations whose contracts were terminated by CMS (pursuant to 42 CFR §423.503(b)(3)), but believe that the attestation does not cite to the CMS-initiated termination and nonrenewal provisions of the regulation.

Response:

CMS appreciates the comment. However, we note that the commenter misquoted the current attestation. The attestation is currently “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 (b), or whose contract CMS terminated pursuant to 42 CFR § 423.509, 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, 2018.” It refers to CMS initiated terminations and nonrenewals both explicitly and by reference to the relevant provisions of the regulation (42 CFR §§ 423.507(b) and 423.509). 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. The purpose of the attestation is to allow CMS reviewers to examine the organization’s history to determine if the regulation restricting reentry to the program. CMS will therefore not modify the attestation or divide it into two separate attestations.

Comment:

One commenter suggested including seniors in the solicitation because “[i]ncluding seniors in the solicitation will allow CMS to gain a better picture of Part D coverage.”

Response:

CMS thanks the commenter for their suggestion, but we believe the commenter misunderstands the purpose of this solicitation. This solicitation is not intended to

gather information about the Part D program. Rather, it gathers information from current and potential Part D sponsors as part of the application process to determine if they are eligible to offer Part D coverage in 2022. While information from seniors and Part D beneficiaries can be valuable to assessing the performance of Part D plans and setting Part D policy, the Part D application process is not an appropriate venue for soliciting information from them.

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