

HI 00805.384 Exceptional Conditions Special Enrollment Period (SEP) for Formerly Incarcerated Individuals

A. Background

Section 1862(a)(2) and (3) of the Social Security Act generally prohibits Medicare payment for covered services while the recipient is incarcerated, as the incarcerated individual is provided healthcare through their penal institution (see HI 00620.070C). Further, section 202(x)(1)(A) of the Act prohibits the payment of Old-Age, Survivors, and Disability Insurance (OASDI) benefits to individuals who are incarcerated (see GN 02612.001).

For example, if an individual turns 65 and qualifies for Medicare while incarcerated (meaning the individual is in custody of penal authorities as described in this POMS) and is not yet receiving OASDI benefits, that individual is not automatically enrolled in Medicare Part A. If these formerly incarcerated individuals do not enroll or reenroll into Medicare, they may go months without health insurance coverage upon their release.

For example, upon their release such individuals would only be able to enroll in Medicare during the General Enrollment Period (GEP) which could result in a significant delay in coverage. Further, delaying enrollment means that they may incur a premium surcharge for premium Part A and/or a premium surcharge for Part B for the rest of their lives.

These instructions provide an SEP for these individuals. These only provide provisions for incarcerated individuals released on or after January 1, 2023 a special enrollment opportunity. Individuals released prior to January 1, 2023 are not covered under the regulations.

B. Eligibility

Definition: For the purposes of these instructions, incarcerated refers to individuals who are in custody including, but not limited to:

- individuals who are under arrest;

- incarcerated, imprisoned;
- escaped from confinement;;
- under supervised release;
- on medical furlough;
- required to reside in mental health facilities;
- required to reside in halfway houses;
- required to live under home detention;- , or
- confined completely or partially in any way under a penal statute or rule.

To be eligible for this SEP, an individual would have to:

- Demonstrate that they are eligible for Medicare, **and**
- Due to being incarcerated (as defined above), failed to enroll or reenroll in Medicare premium Part A or Part B during another enrollment period in which they were eligible to enroll while they were incarcerated **and**
- There must be a record that the individual has been officially released from incarceration, as defined above, on or after January 1, 2023, either through the appropriate discharge documents or data available to SSA.

C. Evidence

Use normal processing instructions for handling of verification of inmate's official release documents.

D. Duration

1. This SEP duration would begin the day of the individual's release from incarceration, as defined above, as it is on or after January 1, 2023,
2. The duration end date will be the last day of the 12th month after the individual is released from incarceration.

For Example: Mrs. Q was incarcerated when she turned 65 and therefore missed her IEP. She was released from jail on March 1, 2023. Mrs. Q has until March 31, 2024, to enroll under the SEP for Formerly Incarcerated Individuals.

Note: You count the 12 months starting with the first of the month of release. In the example above you count starting from March 1, 2023 until the last day of the 12 month which will be March 31, 2024.

E. Calculation of Premium Surcharge

There will be no premium surcharge if enrolled pursuant to this SEP.

F. Effective Date

Individuals have the option of choosing an entitlement date:

Option 1: (default) Individuals enrolling in this SEP will have a prospective entitlement to begin the first day of the month following the month of enrollment.

Option 2:

- Individuals enrolling in this SEP can opt for a retroactive entitlement date retroactive to the first day of the month of their release from incarceration, so long as it their enrollment is on or after January 1, 2023. If the application is filed within the first full 6 months of the SEP, the effective date is retroactive to the date of their release from incarceration.
- If the application is filed in the last 6 months of the SEP, the coverage effective date is retroactive to the 6th month before the month of enrollment.

Example 1: Bob Miller is incarcerated in July 2016 at the age of 59. He turns 65 in March 2022 but fails to enroll in his IEP while incarcerated. Mr. Miller is released from incarceration on June 12, 2023. His exceptional condition SEP begins the day he is released and will run until June 30, 2024. Mr. Miller provides the appropriate documentation of his release, and enrolls on July 22, 2023. His effective date options are:

- Option 1 – Prospective (default): Effective date to begin the first of the month after the month of enrollment. If Mr. Miller chooses this option, and enrolls the day he is released from incarceration, his coverage would be effective August 1, 2023.
- Option 2 - Retroactive: Effective date retroactive to June 1, 2023 (or the earliest date of eligibility, if later than the month of release). If Mr. Miller chooses this option, he will be responsible for paying Medicare premiums back to the date of coverage.

Example 2: Carla Bennings is incarcerated in February 2020 at the age of 67. At the time of her incarceration she was enrolled in Part A and B. During incarceration, she was terminated from Part B for failure to pay premiums. She did not attempt to reenroll

in Part B while in prison. She was released from prison on April 15, 2023 and files for SEP on November 4, 2023. Her effective date options are:

- Option 1 - Prospective (default): Effective date to begin the first of the month after the month of enrollment. If Ms. Bennings chooses this option, and enrolls the day she is released from incarceration, her coverage would be effective December 1, 2023
- Option 2 – Retroactive: Effective date retroactive to May 1, 2023 since it can only be 6 months retroactive. If Ms. Bennings chooses this option, she will be responsible for paying Medicare premiums back to the date of coverage.

G. Processing

See HI 00805.277 Processing SEP Enrollments for processing instructions.

H. References

GN 02607.840 Retirement, Survivors, and Disability Insurance (Title II) Reinstatement Policies for Prisoners

HI 00805.277 Processing SEP Enrollments