



## Update on Federal Regulations Regarding Use of Special Enrollment Periods for Lower-Income American Indians and Alaska Natives Enrolled in Medicare Part D<sup>1</sup>

May 4, 2018

This brief seeks to update Tribes and Tribal organizations on upcoming changes in federal regulations that will place restrictions of the use of the Medicare Part D special enrollment period (SEP) for lower-income American Indian and Alaska Natives (AI/ANs) and other lower-income individuals, effective June 15, 2018. Under current Medicare Part D regulations, these beneficiaries can enroll in, change, or disenroll from private prescription drug plans (PDPs) at any time.

- Impact of Rule (effective June 15, 2018):
- Restricts IHS beneficiaries (and others) who are dual-eligible or Low-Income Subsidy (LIS)-eligible to use the SEP no more than *once per calendar* quarter during the first nine months of the year (versus anytime currently).
- Restricts IHS beneficiaries (and others) who are dual-eligible or LIS-eligible and assigned to a PDP by Centers for Medicare and Medicaid (CMS) or a state to use the Part D SEP *no more than once and only within 3 months of the assignment effective date*.
- Blocks ability of IHS beneficiaries (and others) who are dual-eligible or LIS eligible and labeled as “at-risk” or “potentially at-risk” for substance abuse to use the Part D SEP until the plan lifts that designation (maximum of 24 months), meaning that the individual could not change plans.

### Background

In general, individuals can begin to enroll in Medicare Part D, which covers outpatient prescription drugs through PDPs, during the 7-month period that: 1) begins 3 months before the month they turn 65; 2) includes the month they turn 65; and, 3) ends 3 months after the month they turn 65. Outside of this initial enrollment period, most Medicare beneficiaries can enroll in PDPs only during the annual open enrollment period that runs from October 15 through December 7. However, some Medicare beneficiaries qualify for an SEP that allows enrollment in PDPs outside of the annual open enrollment period.<sup>2</sup> No specific SEP exists for AI/AN Medicare beneficiaries, but lower-income AI/ANs who are dually eligible for Medicaid (dual-eligible) or qualify for the low-income subsidy program<sup>3</sup> (LIS-eligible) currently can enroll in, change, or disenroll from PDPs at any time during the year.

<sup>1</sup> This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at [DonegMcD@Outlook.com](mailto:DonegMcD@Outlook.com).

<sup>2</sup> A list of circumstances that can trigger a Medicare Part D SEP is available at <https://www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances/join-plan-special-circumstances.html>.

<sup>3</sup> The LIS program (also called “Extra Help”) provides assistance to lower-income Medicare beneficiaries with paying Part D premiums, deductibles, and coinsurance. Eligibility for the LIS program is determined by income

### Change in Federal Regulations

On April, 16, 2018, the federal CMS issued a final rule<sup>4</sup> that, among other provisions, will revise federal regulations at 42 CFR 423.38(c) to limit use of the Medicare Part D SEP for dual-eligible and LIS-eligible beneficiaries by:

- Adding a new paragraph (c)(4)(i), under which most dual-eligible or LIS-eligible beneficiaries can use the Part D SEP once per once per calendar quarter during the first nine months of the year; and
- Adding a new paragraph (c)(10), under which dual-eligible or LIS-eligible beneficiaries assigned to a PDP by CMS or a state can use the Part D SEP upon notification or within 3 months of the assignment effective date, whichever is later.

In addition, the final rule will make the Medicare Part D SEP unavailable for dual-eligible or LIS-eligible beneficiaries if their current PDP labels them as “at-risk” or “potentially at-risk” for substance abuse, meaning that they could not change plans or disenroll from the plan. This restriction on using the Medicare Part D SEP will remain in place until the PDP removes the “at-risk” or “potentially at-risk” designation. If the PDP identifies a dual-eligible or LIS-eligible Medicare beneficiary as “potentially at-risk,” that designation will expire in 60 days if the plan does not subsequently designate the beneficiary as “at-risk.” If the PDP does subsequently designate the Medicare beneficiary as “at-risk,” that designation will remain in place until: 1) the plan removes the designation based on a future determination; or, 2) for an initial 12-month period, with the option for the plan to extend the period by 12 months upon reassessment after the initial period, whichever is sooner.

### Impact of Change

The change in federal regulations means that, after June 15, 2018, dual-eligible or LIS-eligible AI/AN Medicare beneficiaries who are enrolled in Part D:

- Generally will have the ability to use the Part D SEP to change their PDP only once per calendar quarter during the first nine months of the year, rather than at any time during year;
- If assigned to a PDP by CMS or a state, will have only a 3-month window after enrollment in the plan to use the Part D SEP; and,
- If labeled as “at-risk” or “potentially at-risk” for substance abuse by their PDP, will not have the ability to use the Part D SEP until the plan lifts that designation (maximum of 24 months).

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level and an asset test. For more information on the LIS program, see <https://www.medicare.gov/your-medicare-costs/help-paying-costs/save-on-drug-costs/save-on-drug-costs.html>.

<sup>4</sup> See CMS-4182-F, “Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program” (83 FR 16440), at <https://www.gpo.gov/fdsys/pkg/FR-2018-04-16/pdf/2018-07179.pdf>.