

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR MEDICARE

DATE: December 19, 2024

TO: Current and Prospective Prescription Drug Plan Sponsors

FROM: Vanessa S. Duran, Director
Medicare Drug Benefit and C & D Data Group

SUBJECT: Waiver for Certain Organizations Seeking to Offer Medicare Prescription Drug Plans to Federal Employee Health Benefit Program and to Postal Service Health Benefit Program Annuitants

CMS is issuing this memorandum to announce a waiver for certain organizations seeking to offer Part D coverage to federal and Postal Service annuitants and their family members who are eligible for Medicare Part D. Subject to the conditions set forth herein, CMS waives its licensure requirement for standalone Medicare Prescription Drug Plans (PDPs) operated by Federal Employee Health Benefit (FEHB) Program and Postal Service Health Benefit (PSHB) Program Carriers that exclusively offer Employer-Union Group Waiver Plans (EGWPs) to eligible annuitants and their family members enrolled in the Carrier's FEHB or PSHB plans. Specifically, pursuant to its authority under sections 1857(i) and 1860D-22(b) of the Social Security Act ("the Act"), CMS waives for such plans the requirement at 42 CFR §§ 423.401(a)(1) and 423.504(b)(2) that a PDP sponsor be licensed under state law in each state in which it offers a PDP as a risk bearing entity eligible to offer health insurance or health benefits coverage. For such plans, CMS also waives the condition set forth at § 20.2.1 of Chapter 12 of the Medicare Prescription Drug Benefit Manual ("the Manual") as part of an earlier waiver that a PDP sponsor offering EGWPs be licensed as a risk bearing entity in at least one state in their contract service area.

Background

The United States Office of Personnel Management ("OPM") operates the FEHB Program to provide employer-sponsored group health coverage to almost nine million federal employees, annuitants, and their family members. OPM administers the FEHB Program pursuant to its authority under 5 USC §§ 8901 – 8914, the FEHB regulations at 5 CFR Part 890, and the applicable Federal Acquisitions Regulations at 48 CFR Chapter 16. Federal annuitants and their family members can maintain FEHB coverage after the annuitant retires. They can continue to receive the same prescription drug benefits as active federal employees through their FEHB plans and are not required to enroll in Part D.

On January 25, 2023, OPM issued guidance to FEHB Carriers, allowing them to offer standalone PDPs

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to FEHB annuitants and their family members who are eligible for Part D under certain circumstances.¹ OPM also issued the guidance in preparation for implementing the Postal Service Reform Act of 2022 (PSRA), which created the PSHB Program that takes effect in 2025. Under the PSRA, PSHB Carriers will be required to provide prescription drug coverage for most Medicare-eligible Postal Service annuitants and their Medicare-eligible family members through a Part D plan. OPM is implementing this requirement by permitting the PSHB Part D coverage to be provided through either a Medicare Advantage Prescription Drug (MA-PD) plan or a PDP.

Considering the above statutory changes and OPM's guidance, an FEHB Carrier requested that CMS consider waiving its licensure requirement for FEHB Carriers seeking to offer PDP EGWPs exclusively to eligible FEHB enrollees pursuant to the new flexibilities announced by OPM.

Conditions of Waiver

CMS has determined that a waiver of the state licensure requirements for FEHB and PSHB Carriers seeking to offer PDP EGWPs exclusively to eligible individuals enrolled in their FEHB or PSHB plans would facilitate the offering of EGWPs to federal and Postal Service annuitants and their Medicare-eligible family members without jeopardizing the well-being of Part D beneficiaries or creating additional risk for the Part D program. CMS waives for such plans the requirement at 42 CFR §§ 423.401(a)(1) and 423.504(b)(2) that a PDP sponsor be licensed under state law in each state in which it offers a PDP as a risk bearing entity eligible to offer health insurance or health benefits coverage. For such plans, CMS also waives the condition set forth at § 20.2.1 of Chapter 12 of the Manual as part of an earlier waiver that a PDP sponsor offering EGWPs be licensed as a risk bearing entity in at least one state in their contract service area.

This waiver is only available to entities that meet the following conditions:

- The entity relying upon the waiver is contracted with OPM as an FEHB Carrier offering health benefits to federal employees, annuitants, and their eligible family members or as a PSHB Carrier offering health benefits to Postal Service employees, annuitants, and their eligible family members;
- The entity has been approved by OPM to enroll eligible individuals in a PDP EGWP offered by the entity;
- The waiver only applies to the extent that the entity offers or plans to offer PDP EGWPs exclusively to federal or Postal Service annuitants and their family members qualified to receive benefits under OPM rules who are eligible for Medicare Part D and receive health benefits through an FEHB or PSHB plan offered by the entity; and
- The entity has applied for and been approved to contract with CMS to offer PDP EGWPs exclusively to Part D-eligible individuals enrolled in employment-based retiree health coverage.

This licensing waiver does not apply to any Part D sponsors that are not FEHB or PSHB Carriers

¹ Office of Personnel Management, Carrier Letter 2023-02: FEHB and Medicare Part D Prescription Drug Coordination, January 25, 2023.

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contracting with OPM, nor does it apply with respect to any Part D plan offerings outside of the FEHB Program and PSHB Program by plan sponsors that are also FEHB and PSHB Carriers contracting with OPM. This waiver is limited to CMS purposes.

Organizations should send any questions regarding this waiver to EGWP_Policy@cms.hhs.gov .

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