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**DATE:** October 15, 2020

**TO:** Medicare Advantage Organizations, Part D Plan Sponsors, and Medicare-Medicaid Plans

**SUBJECT: Waiver of Premiums Related to COVID-19 Permissive Actions – Questions and Answers<sup>1</sup>**

On May 22, 2020, the Centers for Medicare & Medicaid Services (CMS) issued an HPMS memorandum entitled “[Information Related to Coronavirus Disease 2019 - COVID-19](#)” that revises and expands on an earlier version of the same document (issued [March 10, 2020](#) and revised on [April 21, 2020](#)). The May 22 memo notifies Medicare Advantage (MA) organizations and Part D sponsors of permissive actions and flexibilities they may implement during the coronavirus disease 2019 (COVID-19) public health emergency to support efforts that can help curb the spread of the virus and to help ensure MA and Part D enrollees do not experience disruptions in care or in pharmacy and prescription drug access. In addition, we published related guidance in an HPMS memo titled “Updated Guidance for Medicare Advantage Organizations” on April 24, 2020; a set of questions and answers (also under the title “Updated Guidance for Medicare Advantage Organizations”) on May 13, 2020; and a set of questions and answers titled “Medical Loss Ratio and Expenditures Related to COVID-19 Permissive Actions – Questions and Answers” on July 10, 2020. The present document provides updated guidance to MA organizations and Part D sponsors regarding the waiver of premiums as a permissive action related to COVID-19.

The aforementioned HPMS memos are available here: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/HPMS/HPMS-Memos-Archive-Weekly>. Questions related to the guidance in this document may be sent to: <https://dpap.lmi.org/dpapmailbox/>

**Q1. Can an MA organization waive the Part B premium for an enrollee as a permissive action?**

A1. No. An MA organization cannot waive Part B premiums because Part B premiums are not collected by or owed to the MA organization; these premiums are collected by and owed to CMS. An MA organization also cannot make payments to cover a beneficiary’s Part B premium

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<sup>1</sup> The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

costs or otherwise reimburse enrollees for their Part B premium payments, as this would not be consistent with the statutory and regulatory provisions that prohibit MA organizations from providing cash or other monetary rebates as an inducement for enrollment or for any other reason or purpose.<sup>2</sup> Similar provisions apply to Part D plan sponsors, which are also therefore prohibited from paying the Part B premium for a beneficiary.<sup>3</sup> The only exceptions to this prohibition are the statutory and regulatory authorization for MA organizations to use the beneficiary rebate authorized under section 1854(b) of the Social Security Act (“the Act”) and § 422.266 to buy down Part B premiums, and in addition, for 2021, CMS is continuing to exercise its waiver authority to permit MA EGWPs to buy down Part B premiums for their enrollees, using a portion of the Part C payment.<sup>4</sup>

**Q2. Can an MA organization waive the Part C plan premium for an enrollee as a permissive action?**

A2. Yes. As stated in the set of questions and answers issued on May 13, 2020, this is within the scope of the April 21, 2020 HPMS Memo if offered to all plan enrollees uniformly and is limited to when the waiver or reduction in the MA plan’s premium is due to the COVID-19 outbreak. CMS clarifies that Part C premiums can only be waived for future months where payment of the premium is not yet due. MA organizations cannot retroactively waive Part C plan premiums or provide refunds of premium amounts that were properly paid by enrollees for coverage in months that precede the date when the premium waiver was effectuated by the plan. For example, if an MA organization has not yet notified its enrollees of the waiver of Part C premiums, it can only do so for future months in which the payment is not yet due (e.g., as of October, for November and December). Likewise, if an MA organization notified its members that it was waiving its premiums in June, for instance, but the June payment was already due, the waiver can only apply to July and future months. In that scenario, refunds for June and earlier months would not be permitted due to the prohibition on MA organizations giving cash or other monetary rebates “as an inducement for enrollment or otherwise.”

In the event that an enrollee has prepaid the Part C premium for a future month before it was due, and the MA organization waives the Part C plan premium for that month, the MA organization may consider the premium “incorrectly collected” and provide a refund to the enrollee for the prepaid premium in accordance with 42 CFR § 422.270.

As stated in the medical loss ratio (MLR) guidance published on July 10, 2020, the MLR denominator excludes Part C premium amounts that beneficiaries are not required to pay as a result of the MA organization waiving or reducing such premiums in connection with the COVID-19 outbreak. Consistent with that prior guidance, if an MA organization waives or reduces Part C premiums in connection with the COVID-19 outbreak, any premium amounts that

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<sup>2</sup> See §§ 1851(h)(4)(A) and 1854(d)(1) of the Act; 42 CFR §§ 422.262(d) and 422.2268(b)(1).

<sup>3</sup> See § 1860D-13(c)(1) of the Act; 42 CFR § 423.2268(b)(1)

<sup>4</sup> A detailed discussion of this policy appears in the CY 2021 Advance Notice, Part II, Section F (pages 30-31).

had been prepaid and which are refunded to enrollees are also excluded from the MLR denominator, as the refunded premiums represent amounts that beneficiaries are not required to pay.

**Q3. Can a Part D sponsor waive the Part D plan premium for an enrollee as a permissive action?**

A3. Yes. CMS is exercising its enforcement discretion to allow Part D sponsors to prospectively waive, in full or in part, Part D premiums when the waiver or reduction in the Part D premium is due to the COVID-19 outbreak. Part D sponsors that choose to implement this flexibility must waive premiums for all similarly situated plan enrollees uniformly, consistent with the uniformity requirements for qualified prescription drug coverage set forth in 42 CFR § 423.104(b). Part D sponsors cannot retroactively waive Part D premiums or provide refunds of premium amounts that were properly paid by enrollees for coverage in months that precede the date when the premium waiver was effectuated by the plan. For example, if a Part D sponsor has not yet notified its enrollees of the waiver of Part D premiums, it can only do so for future months in which the payment is not yet due (e.g., as of October, for November and December). Part D sponsors are prohibited from giving cash or other monetary rebates as an inducement for enrollment or otherwise.

In the event that a Part D sponsor prospectively waives the Part D premium, but the enrollee has already prepaid premiums for future months, the Part D sponsor may consider the premium “incorrectly collected” and provide a refund to the enrollee for the prepaid premiums.

Consistent with the July 10, 2020 guidance addressing the effect of waived Part C premiums in calculation of the MLR denominator, we clarify that premium amounts that Part D enrollees are not obligated to pay because they have been waived as a COVID-19 permissive action will not be considered “unpaid premium amounts that a Part D sponsor could have collected” for purposes of 42 CFR § 423.2420(c)(1)(iv). The MLR denominator excludes premium amounts that beneficiaries were not required to pay as a result of the Part D sponsor waiving or reducing Part D premiums in connection with the COVID-19 outbreak. Further, Part D sponsors may exclude from the MLR denominator prepaid premiums for future months that are prospectively waived or reduced and then refunded in connection with the COVID-19 outbreak, in addition to unpaid premiums that have been prospectively waived or reduced in connection with the COVID-19 outbreak.

Please note that waived Part D premiums will not be excluded from the target amount for purposes of risk corridor reconciliation.