

practicable after the hearing. This decision is final and binding on the parties and, as provided in § 403.820(f)(11) of our regulations, is not subject to judicial review.

Endorsed sponsors whose endorsement we terminate must notify all of their card program enrollees in writing within 10 days of receiving our notice of termination.

5. Termination by Endorsed Sponsor

An endorsed sponsor may terminate its contract with us in the event that we substantially fail to perform our obligations related to this program, as provided in § 403.820(d). These obligations would include, but are not limited to, our operation of the drug card enrollment system, price comparison Web site, and reimbursement for transitional assistance, as well as payment of enrollment fees for beneficiaries eligible for transitional assistance and timely review of marketing materials. An endorsed sponsor entering into a contract with us has a reasonable business expectation that we will adequately support the operation of the discount card program and that it will not be held to the contract in the event that we are in significant breach of that contract. Accordingly, we are adopting this termination provision to promote the efficient administration of the Medicare drug discount card program, consistent with section 1102 of the Act.

The endorsed sponsor will be required to provide a notice of termination to us 90 days prior to its intended effective date and to its enrollees by mail 60 days prior to the same date. The notice will provide affected enrollees with a description of remaining endorsed discount card programs available in its own area and the process for enrolling in a new endorsed discount card program.

6. Termination by Mutual Consent

As provided in § 403.820(e) of our regulations, CMS and an endorsed sponsor may agree to terminate or modify an existing contract. If a contract is terminated by mutual consent, the endorsed sponsor must follow the enrollee notice procedures as required in the case of a termination of the contract by an endorsed sponsor. We have adopted the provision, as specified in § 403.820(e), for mutual modification or termination to address those circumstances when both parties may agree that a contract termination is in the best interests of the endorsed sponsor, taxpayers, Medicare beneficiaries, and the Medicare program, allowing us to terminate an

endorsed sponsor's endorsement contract before its term expires. This is also a contracting provision that we are adopting to promote the efficient administration of the Medicare drug discount card program, consistent with section 1102 of the Act.

G. Special Rules Concerning Medicare Managed Care Organizations

1. General Requirements for Medicare Managed Care Organizations

As discussed in section II.C.1 of this document and codified in §§ 403.804(b) and 403.804(c) of our regulations, section 1860D–31(h)(1)(A)(iv) of the Act provides that a Part C organization is eligible to be an endorsed sponsor if it meets the requirements for endorsement either individually or in combination with one or more other entities. Sections 403.804(b) and 403.804(c) of our regulations also make reasonable cost reimbursement plans eligible to be endorsed sponsors provided they meet the requirements for endorsement. Medicare managed care organizations—organizations offering coordinated care plans as described in section 1851(a)(2)(A) of the Act and reasonable cost reimbursement plans under section 1876(h) of the Act—qualifying for endorsement may offer their endorsed program to all discount card eligible individuals residing in their service area(s) or only to those discount card eligible individuals enrolled in one or more of the Medicare managed care organization's plan(s). All other Part C organizations qualifying for endorsement must offer their endorsed program to all discount card eligible individuals residing in their service area(s). Part C organizations and reasonable cost reimbursement contracts that offer an endorsed program to all discount card eligible individuals must meet the requirements for endorsement applicable to all other applicants endorsed sponsors. However, as discussed below in section II.G.2.a of this document, special rules apply to Medicare managed care organizations that limit enrollment in their endorsed program to members of one or more of their Medicare managed care plans.

Under section 1860D–31(g)(7) of the Act, any nonuniformity in benefits offered by a Part C organization to its Part C plan members resulting from implementation of the Medicare drug discount card program, including payment or waiver of any enrollment fee for an endorsed program and limiting transitional assistance to transitional assistance enrollees, will not be taken into account in applying the requirement, set forth in section

1854(f)(1)(D) of the Act that any additional benefits offered by a Part C organization be provided uniformly to all Part C plan members. Accordingly, as provided in § 403.814(c) of our regulations, a Part C organization will not be violation of this uniformity of benefits rule if it:

- Pays the annual enrollment fee, if any, for its Part C plan members choosing to enroll in an endorsed program—whether operated by the Part C organization or another endorsed sponsor—provided that any such benefit is reflected in the Part C plan's Adjusted Community Rate (ACR) filing;

- Waives the annual enrollment fee for its Part C plan members enrolling in its endorsed program, provided that any such benefit is reflected in the Part C plan's Adjusted Community Rate (ACR) filing;

- Provides transitional assistance to transitional assistance enrollees.

Although section 1860D–31 of the Act does not explicitly state that it is creating an exception to the uniform premium rule under section 1854(c) of the Act and 42 CFR 422.100(d)(2), it authorized Part C plans to offer non-uniform benefits that would be inconsistent with the rule. For the reasons set forth below, we believe that in doing so, Congress created a new implicit statutory exception to the uniform premium rule. Under the uniform premium rule, as implemented in regulations, a Part C organization must offer its Part C plan at a uniform premium, with uniform benefits and cost-sharing levels throughout the plan's service area (or segment of the plan's service area as provided in 42 CFR 422.304(b)(2)). Absent an exception to this rule, a Part C organization offering its endorsed program to members of its Part C plan as an optional supplemental benefit would be required to offer the benefit to all of its members within the plan's service area (or segment of the service area), and charge them the same annual enrollment fee. However, as discussed above in section G.1. of this document, a Part C organization is prohibited by statute from offering its endorsed program to members of its Part C plan(s) that are not eligible for the Medicare drug discount card program. Similarly, a Part C organization offering an endorsed program may not collect an annual enrollment fee from transitional assistance enrollees, but instead must collect this fee from CMS. Consequently, a Part C organization offering an endorsed program to members of its Part C plan(s) cannot comply with the requirements of section 1860D–31 without violating the uniform premium rule.