

As discussed in Norman J. Singer's *Statutes and Statutory Construction* (6th ed.), where two statutory provisions irreconcilably conflict, courts generally hold that the more recently enacted statutory provision prevails. Applying this principle, we believe that in enacting the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Congress intended implicitly to except from the uniform premium rule under Part C any non-uniformity resulting from a Part C organization's implementation of its endorsed program. We further note that in section 1860D–31(g)(7) of the Act Congress clearly indicated its intent to allow non-uniformity in benefits among a Part C plan's members as a result of a Part C organization's implementation of its endorsed program. Accordingly, as provided in § 403.814(c) of our regulations, a Part C organization would not be violation of the uniform premium rules under section 1854(c) of the Act and 42 CFR 422.100(d)(2) if it:

- Offers its endorsed program to members of its Part C plan who are discount card eligible individuals, to the exclusion of those members who are not discount card eligible individuals; or
- Collects an annual enrollment fee only from discount card enrollees who are not eligible for transitional assistance.

Section 1860D–31(a)(3) provides that discount card eligible individuals cannot be required to enroll in an endorsed program. In keeping with the voluntary nature of the Medicare discount drug card program, and as specified in § 403.814(a) of our regulations, a Part C organization or reasonable cost reimbursement plan may not require enrollment in any endorsed program, whether operated by the organization or another entity, as a condition of enrollment in any of its Part C or reasonable cost reimbursement plans.

In addition, a Part C or reasonable cost reimbursement organization may not require transitional assistance enrollees enrolled in its Part C or reasonable cost reimbursement plan to exhaust their transitional assistance prior to obtaining covered discount card drugs under any drug benefit offered by its Part C or reasonable cost reimbursement plan. We believe this policy is consistent with the Part C rules under 42 CFR 422.100(d)(2) and section 1876(g)(2) of the Act which require that any additional benefit offered by a Part C or reasonable cost reimbursement plan must be offered uniformly to all plan members. Requiring transitional assistance enrollees to utilize their transitional assistance prior to obtaining

covered discount card drugs under their Part C or reasonable cost reimbursement plan drug benefit would violate these uniformity of benefits rules because non-transitional assistance enrollees would be entitled to obtain covered discount card drugs under the Part C or reasonable cost reimbursement plan drug benefit while transitional assistance enrollees would be prohibited from doing so until they exhaust their transitional assistance. In other words, non-transitional assistance enrollees would receive more generous drug coverage under the Part C or reasonable cost reimbursement plan than transitional assistance enrollees. (Section 1860D–31(g)(7) of the Act waives the uniformity of benefits rule under Part C only for purposes of implementing the Medicare drug card program; that is, when non-uniformity directly results from implementation of the drug card statutory provisions. Because any requirement that transitional assistance enrollees first exhaust their transitional assistance would stem not from implementation of the Medicare drug discount card program but from the benefits package offered under a Part C plan, the uniformity of benefits waiver under section 1860D–31(g)(7) of the Act would not apply.) We also note that our prohibiting Part C organizations from requiring their transitional assistance enrollees to first exhaust their transitional assistance prior to utilizing their drug benefit under their Part C plan means Part C plans will not need to take transitional assistance into account in their annual ACR filings.

As discussed in II.A.6. of this document and provided in our regulations at § 403.811(b)(2)(iii), discount card enrollees may disenroll from their endorsed program and enroll in a new endorsed program during a special election period when enrolling in or disenrolling from a Part C or reasonable cost reimbursement plan offering an endorsed program, irrespective of whether the Part C or reasonable cost reimbursement plan offers an endorsed program of any kind. We will automatically disenroll card enrollees from their endorsed program when they enroll in or disenroll from a Medicare managed care plan offering an exclusive card program. Further, in accordance with our regulations at § 403.808(f)(3), any transitional assistance remaining available to a transitional assistance enrollee electing to switch to a new endorsed program following his or her enrollment in or disenrollment from a Part C or reasonable cost reimbursement plan

offering an endorsed program will follow the transitional assistance enrollee to his or her new endorsed program.

2. Special Rules for Applicants Seeking To Offer Exclusive Card Programs

a. Endorsement Requirements for Applicants Seeking To Offer Exclusive Card Programs

Applicants seeking to offer an exclusive card program must indicate their intent to do so on their applications. For Medicare managed care organizations seeking to offer an exclusive card program, if the Medicare managed care organization combines with one or more other entities eligible to meet the requirements of endorsement, the Medicare managed care organization must be the applicant, as required under § 403.814(b)(1) of our regulations. We require this because we want to ensure that our endorsed sponsor contract—and, ultimately, accountability for an endorsed program—is with the Medicare managed care organization itself, and not with any of the entities with which it combines to offer an endorsed program. If a Medicare managed care organization will not offer an exclusive card program, we will permit another entity with which the Medicare managed care organization combines to be the applicant.

We will not require Medicare managed care organizations operating more than one Medicare managed care plan to offer its exclusive card program to members of all of its Medicare managed care plans; rather, the Medicare managed care organization may limit enrollment in its exclusive card program to members of only certain Medicare managed care plans it operates. Members of the organization's other Medicare managed care plans are free to enroll in any other endorsed program, including any non-exclusive endorsed program offered by the Medicare managed care organization, provided they meet the eligibility criteria for the program.

Section 1860D–31(h)(9)(B) of the Act exempts exclusive card sponsors from certain requirements generally applicable to endorsed sponsors, including: (1) The requirement set forth in section 1860D–31(h)(3) of the Act and § 403.806(f)(1) and § 403.806(f)(2) of our regulations concerning minimum service areas; and (2) the pharmacy access standard under section 1860D–31(e)(1)(B) of the Act and § 403.806(f)(3) of our regulations.

Although a Medicare managed care organization may limit enrollment in its