

**Chapter 4 - Creditable Coverage Period Determinations and the Late
Enrollment Penalty Guidance
Issued: December 21, 2009
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This guidance update is effective beginning with contract year 2025. All enrollments with an effective date on or after January 1, 2025, must be processed in accordance with the revised requirements. Organizations may, at their option, implement any new requirement consistent with this guidance prior to the required implementation date.

This guidance covers the enrollment and eligibility provisions set forth at 42 CFR § 423 Subpart B. It addresses the creditable coverage determination process and the Part D late enrollment penalty (LEP) policies for Part D plan sponsors.

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.

Organizations are required to provide information to individuals in accessible/alternate formats (for example, Large Print, Braille), upon request and thereafter, as outlined in Section 504 of the Rehabilitation Act of 1973 (and subsequent revisions). Such individuals must have an equal opportunity to participate in enrollment, paying premium bills, and communicating with the plan, as enrollees who do not request accessible/alternate formats.

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10 – Definitions and Acronyms

10.1 – Definitions

Attestation of Creditable Coverage – Provision of information about previous prescription drug coverage held by an individual prior to enrollment in a Part D plan.

Authorized Representative/Legal Representative – An individual who is legally able to act on behalf of the beneficiary, as allowed by applicable state laws, in order to execute an enrollment or disenrollment request. A representative may be appointed by the individual (consistent with the standards under applicable law) or may be authorized under law without a specific or explicit appointment.

Base Beneficiary Premium – A monthly amount paid for a Part D plan that is equal to the beneficiary premium percentage multiplied by the national average monthly bid amount as established in federal law. This amount can be adjusted, as appropriate, to include such items as the Part D late enrollment penalty (LEP) and an income-related monthly adjustment amount (IRMAA).

Cancellation of Enrollment Request – An action initiated by the individual to cancel an enrollment request. To be valid, the cancellation request must be received by the Part D sponsor before the enrollment effective date.

Creditable Coverage – Coverage that equals or exceeds the actuarial value of Medicare’s defined standard prescription drug coverage under Part D in effect at the start of each plan year.

Effective Date (Enrollment and Disenrollment) – The date that an individual’s coverage in a plan begins or ends.

Full-Benefit Dual Eligible Individual – An individual who, for any month:

- Has coverage under a Part D or MA-PD plan, and
- Is determined eligible by the State for medical assistance for full benefits under title XIX of the Social Security Act (the Act) for the month under any eligibility category covered under the State plan or comprehensive benefits under a demonstration under section 1115 of the Act (This does not include individuals under Pharmacy Plus program demonstrations or under a section 1115 demonstration that provides pharmacy-only benefits to these individuals) or is determined by the state to be eligible for medical assistance under section 1902(a)(10)(C) of the Act (medically needy) or section 1902(f) of the Act (States that use more restrictive eligibility criteria than are used by the SSI program) for any month if the individual was eligible for medical assistance in any part of the month.

Incarceration/Incarcerated – The status of an individual who is in the custody of a penal authority and confined to a correctional facility (e.g., a jail or prison, or a mental health institution) as a result of a criminal offense. This includes individuals who are confined to Institutions for Mental Disease (IMDs) (e.g., state hospitals, psychiatric hospitals, or the psychiatric unit of a hospital), as a result of violations of the penal code. Such individuals reside outside of the service area for the purposes of plan eligibility, even if the correctional facility is located within the plan service area. It does not include individuals who are confined to IMDs for other reasons (e.g., because of court orders unrelated to penal violations). Normal service area rules apply to these individuals.

Initial Enrollment Period (IEP) – The period during which an individual is first eligible to enroll in a Part D plan.

Lawfully Present Individual – Refer to 8 CFR § 1.3 (Lawfully present aliens for purposes of applying for Social Security benefits) for a definition of an alien who is considered lawfully present in the United States. An individual who is not lawfully present in the United States is not eligible for any federal public benefit, including payment of Medicare benefits. (8 U.S.C. 1611).

Low Income Subsidy (LIS) (Extra Help) – A Medicare program to help people with limited income and resources pay Medicare prescription drug costs like premiums, deductibles, and coinsurance.

Medicare Advantage Prescription Drug Plan (MA-PD) – A Medicare Advantage plan that includes Medicare Part D qualified prescription drug coverage.

Missing Attestation – An attestation is considered missing if an individual fails to provide creditable coverage information to a Part D sponsor within the required timeframes.

Monthly Beneficiary Premium - (or Part D Premium) - The monthly amount paid to a Medicare Part D sponsor by or on behalf of enrollees for prescription drug coverage under the sponsor's Part D plan. The monthly beneficiary premium equals the base beneficiary premium and other adjustments, as appropriate, such as an increase for supplemental prescription drug benefits, a Part D LEP or IRMAA.

Part D Enrollment Gap – A period of 63 continuous days or longer after the end of the individual's initial enrollment period when a Medicare Part D eligible individual is not enrolled in a Part D plan and does not have other creditable coverage.

Part D Late Enrollment Penalty (LEP) – An amount added to the Part D base beneficiary premium of an individual, except as described in 42 CFR § 423.780(e), who has a break in creditable prescription drug coverage of at least 63 consecutive days after the end of the individual's initial enrollment period, during which the individual was eligible to enroll in a Part D plan, was not covered under any creditable prescription drug coverage, and was not enrolled in a Part D plan.

Part D Plan (or Medicare Part D plan) – A prescription drug plan, an MA-PD plan, a PACE Plan offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage.

Part D Plan Sponsor (or Part D sponsor) – A PDP sponsor, MA organization offering an MA-PD plan, a PACE organization offering a PACE plan including qualified prescription drug coverage, and a cost plan offering qualified prescription drug coverage.

Partial-Benefit Dual Eligibles or Other Low-Income Subsidy (LIS) Eligible Individuals – For purposes of Medicare Part D benefits, individuals who are determined eligible for the Part D LIS who are not full-benefit dual eligible individuals. This includes individuals deemed eligible for LIS by virtue of having Qualified Medicare Beneficiary program (QMB)-only, Specified Low-Income Medicare Beneficiary program (SLMB)-only, Qualified Individual program (QI), Supplemental Security Income (SSI)-only; as well as those who apply and are determined eligible for LIS.

PDP sponsor – A nongovernmental entity that is certified under this part as meeting the requirements and standards of this part that apply to entities that offer prescription drug plans. This includes fallback entities.

Service Area – The CMS-approved geographic area where the plan provides coverage and the geographic area in which all plan enrollees generally must reside (exceptions may apply, for example in continuation areas). Facilities in which individuals are incarcerated are not included in the service area.

10.2 – Acronyms

AEP: Annual Enrollment Period

BEQ: Batch Eligibility Query

CMS: Centers for Medicare & Medicaid Services

DTRR: Daily Transaction Reply Report

IEP: Initial Enrollment Period

LEP: Late Enrollment Penalty

LEPD: Late Enrollment Penalty Data File

LIS: Low Income Subsidy (Extra Help)

MA: Medicare Advantage

MAPD: Medicare Advantage Prescription Drug

MARx: Medicare Advantage Prescription Drug System

MARx UI: Medicare Advantage Prescription Drug System User Interface

MCMG: Medicare Communications and Marketing Guidelines

MMCM: Medicare Managed Care Manual

MPDBM: Medicare Prescription Drug Benefit Manual

MPWR: Monthly Premium Withholding Report Data File

NUNCMO: Number of Uncovered Months

PCUG: Plan Communication User Guide

PDP: Prescription Drug Plan

PPO: Premium Payment Option

RDS: Retiree Drug Subsidy

RRB: Railroad Retirement Board

SSA: Social Security Administration

TRC: Transaction Reply Code

UI: User Interface

20 – Creditable Coverage and the Assessment of the Part D Late Enrollment Penalty

42 CFR §§ 423.46 and 423.56

Federal law¹ requires that individuals be assessed a Part D late enrollment penalty (LEP) in certain circumstances. This penalty is:

- A monthly amount added to the individual's Part D premium; and
- Based on the total number of full calendar months the individual:
 - Went without Part D coverage, but was eligible to enroll in it; and
 - Did not have other coverage which met the standards to be creditable prescription drug coverage (also called creditable coverage).

NOTE: People who qualify for Extra Help under Part D will not be charged a Part D LEP when they join a Medicare drug plan. See § 30.1.4 for more information.

20.1 – What is Creditable Prescription Drug Coverage

Creditable coverage meets Medicare's minimum standards since it is expected to pay, on average, at least as much as Medicare's standard prescription drug coverage.

Certain types of prescription drug coverage **may** be considered creditable, such as drug coverage from a former employer or union, TRICARE, Veterans Affairs, the Federal Employee Health Benefits Program, or the Indian Health Service. Each entity that offers prescription drug coverage is required to determine if the coverage they offer is creditable—for more information on this, see § 20.2.

Individuals may have prescription drug coverage that is not considered creditable. These forms of prescription drug coverage are considered non-creditable coverage.

20.2 – Disclosure of Creditable Coverage Status to Part D-Eligible Individuals and CMS

NOTE: The below disclosure requirements to notify CMS and the individual of creditable coverage status **do not** apply to Part D, Medicare Advantage Prescription Drug (MA-PD), Programs of All-Inclusive Care for the Elderly (PACE), and certain cost plans.

Entities, other than those listed above, that offer prescription drug coverage to Part D-eligible individuals must:

- Determine if the prescription drug coverage offered is creditable or non-creditable coverage;

¹ Section 1860D-13(b) of the Social Security Act.

- Disclose to CMS, on an annual basis²³, the creditable coverage status of the prescription drug benefit offered; and
- Disclose to all Part D-eligible individuals whether the non-Part D prescription drug coverage they are enrolled in, or seeking to enroll in, is creditable coverage or not, so that such Part D-eligible individuals can make an informed decision about enrolling in Part D.

Entities disclose this information to Part D-eligible individuals at the following times:

- Prior to an individual's Initial Enrollment Period (IEP) for Part D;
- Prior to the effective date of enrollment, and upon any change that affects whether the drug coverage is creditable;
- Prior to the Annual Election Period (AEP); and
- Upon request by the individual.

20.3 – Part D Sponsor Identifies Gaps in Individual's Part D Enrollment

At the time of an individual's enrollment in a Part D plan, the Part D sponsor is responsible for determining whether an individual has/had a gap in Part D enrollment, which may subject them to a Part D LEP.

An individual is subject to the Part D LEP when they have had:

- A Part D enrollment gap of 63 continuous days or longer at any time after their IEP; and
- No other creditable prescription drug coverage during the gap in Part D enrollment.

Individuals who have a Part D enrollment gap of 63 continuous days or longer (and no other creditable coverage for that time period) can be subject to the Part D LEP (see § 20.6 for exceptions). The penalty increases each time an individual meets the criteria outlined above. There is no limit (cap) on the Part D LEP. However, Part D sponsors only review the timelines outlined in § 30.1 when determining the Part D enrollment gap period.

Example:

Mr. Green enrolled in a Part D plan during his Part D IEP. Later, he dropped Part D coverage. Mr. Green then re-enrolled in a Part D plan one year (12 months) after dropping his coverage. He did not have other creditable prescription drug coverage during that one-year break. He was assessed a Part D LEP for this 12-month gap. Mr. Green again dropped Part D coverage, and re-enrolled in a Part D plan two years later. He again did not have other creditable prescription drug coverage for that two-year (24 months) period. When Mr. Green re-enrolled in a Part D plan, he was subject to the Part D LEP based on 36 uncovered months, which is the total amount of uncovered months based on both prior periods that he did not have creditable coverage (12 months + 24 months).

² <https://www.cms.gov/medicare/employers-plan-sponsors/creditable-coverage>

³ <https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995/pa-listing-items/cms-10198>

NOTE: In general, an individual is eligible for Part D if they are entitled to benefits under Medicare Part A or enrolled in Medicare Part B, live within the service area of a Part D plan, and are a U.S. citizen or lawfully present in the U.S. Therefore, if an individual is not entitled to benefits under Part A or enrolled in Part B, or, they live outside of a service area of a Part D plan or are not a U.S. citizen or lawfully present in the U.S., such individual is not subject to the penalty during that time.

Refer to § 30.3.4 for information on individuals in the U.S. Territories and the assessment of the Part D LEP.

20.4 – How the Part D LEP is Calculated

42 CFR § 423.286

Each year, CMS calculates the Part D LEP based on the national base beneficiary premium amount. The Part D LEP is 1 percent of that amount for each full calendar month the person was determined to be eligible to enroll in Part D, but did not enroll, and did not have other creditable coverage. The Part D LEP amount is rounded to the nearest 10 cents. The amount of the penalty adjusts each year because the national base beneficiary premium amount changes annually.

Example:

Mr. Jones did not enroll in Part D when he was first eligible—the end of his Part D IEP was on July 31, 2022. He did not have prescription drug coverage from any other source. He enrolled in a Medicare prescription drug plan during the AEP and his coverage started January 1, 2023. The Part D sponsor determined that Mr. Jones had a five-month Part D enrollment gap following the end of his Part D IEP and reported 5 uncovered months to CMS (that is, August, September, October, November, and December of 2022).

Since Mr. Jones was without creditable prescription drug coverage from August 1, 2022 – December 31, 2022, his penalty in 2023 is 5 percent (1 percent for each of the five months) of the national base beneficiary premium for 2023. The 2023 national base beneficiary premium was \$32.74, so his penalty amount for 2023 is \$1.63 (5 percent x \$32.74). The penalty is rounded to the nearest \$.10, so he will be charged a Part D LEP of \$1.60 each month.

20.5 – How the Part D LEP is Paid

42 CFR § 423.293

The Part D LEP is added to the monthly base beneficiary premium (which may also include IRMAA and other adjustments). If the plan has a zero-dollar (\$0) premium, the Part D sponsor still bills the individual the Part D LEP, unless the individual qualifies for Extra Help. Individuals pay the Part D LEP the same way they pay their plan premium. Therefore, if an individual pays their premiums through withholding of their Social Security benefit, the Part D LEP is included in that amount.

NOTE: The Social Security Administration (SSA) will only permit withholding of premiums (including the Part D LEP) if the monthly amount does not exceed \$300. For more information on Part D LEP billing adjustments and the SSA threshold amount, see § 80.

Individuals who do not pay the Part D LEP may be disenrolled for non-payment of premiums. This is because the Part D LEP is considered part of the Part D premium. For more information on disenrollment for non-payment of premiums, see § 60.3.1 of the Medicare Advantage and Part D Enrollment Guidance on this topic.

20.6 – How Long the Part D LEP is Paid

Generally, the Part D LEP is assessed for as long the individual has Part D coverage, even if they change Part D plans. Any penalty that has been previously assessed will not be billed once an individual is eligible for:

- Low-Income Subsidy (LIS) (also known as Extra Help); or
- A subsequent IEP (for example, a person has Medicare based on a disability, and later turns 65, which results in a subsequent IEP). However, if an individual has a lapse in coverage for 63 continuous days or longer after the end of their subsequent IEP, a new Part D LEP can be assessed for that period.

If an individual is assessed a Part D LEP and drops Part D coverage, they do not continue to pay the penalty. However, if the individual re-enrolls in Part D coverage, they would be assessed the prior penalty, and may be subject to a higher penalty for the most recent Part D enrollment gap, if they did not have other creditable coverage during that Part D enrollment gap. (see example at § 20.3).

NOTE: Please refer to §§ 30, 40, and 50 for further information on system resets for individuals who become eligible for LIS or have a subsequent IEP.

30 – Process for Making a Part D Enrollment Gap Determination

42 CFR § 423.46

All Part D sponsors determine if there is a Part D enrollment gap, and the length of that gap, for all new plan enrollees, except as noted in § 30.3.

Follow the step-by-step process outlined in § 30.2 to determine if the individual has a Part D enrollment gap and may be subject to a Part D LEP.

30.1 – Policy for Calculating the Part D Enrollment Gap

42 CFR §§ 423.4, 423.30, and 423.46

The Part D sponsor determines whether an individual who enrolls in their Medicare drug plan had, or will have, a break in creditable prescription drug coverage for a period of 63 continuous days or longer from the time they were eligible for Part D but not enrolled in it.

Upon receipt of the completed enrollment request, the Part D sponsor uses the Batch Eligibility Query (BEQ) or Medicare Advantage Prescription Drug System (MARx) User Interface (UI) to determine the individual's Part A and Part B entitlement dates and Part D eligibility date. As applicable, the sponsor determines the most recent date the individual had LIS, Part D, or Retiree Drug Subsidy (RDS) coverage to determine the Part D enrollment gap (see § 50 for submitting the number of uncovered months (NUNCMO) to CMS)

Individual most recently had:	Count the number of days since:
Prior Part D coverage	The last day the person was enrolled in the prior Part D plan
Prior RDS coverage	The last day the person had RDS coverage
LIS	The last day the person most recently had LIS
No prior Part D or RDS coverage	The first day following the end of the person's IEP
Subsequent IEP	The first day following the end of the individual's subsequent IEP

The last day of the Part D enrollment gap is the day before coverage in the Part D plan begins. Do not count any days for which the individual did not live in the service area of any Part D plan or was ineligible for enrollment in a Part D plan. This includes the timeframe for which an individual:

- Lived in a foreign country;
- Was incarcerated; or
- Was unlawfully present.

30.1.1 – End of the Individual's Part D IEP

42 CFR §§ 407.14 and 423.38

The Part D IEP is the period during which an individual is first eligible to enroll in a Part D plan.

Generally, the Part D IEP ends three months after the first month the individual is entitled to Part A or Part B benefits (or both). If the Part A and Part B coverage start dates are not the same, the Part D IEP is based on the earlier date.

For those not eligible to enroll in a Part D plan at any time during their IEP for Medicare premium Part A or Part B (such as those not living within the service area of any Part D plan, including those living in foreign countries), the Part D IEP is the three months before becoming eligible for Part D, the month of eligibility, and the three months following eligibility for Part D (see the Medicare Advantage and Part D enrollment guidance for more information about the Part D IEP).

Individuals newly eligible for Medicare will have a Part D IEP that is the seven-month period surrounding Medicare eligibility. For those eligible for Medicare based on age, the IEP for Part D starts three months before turning 65, includes the month the person turns 65, and ends three months after the month the person turns 65.

Example:

Mrs. Brown's 65th birthday is June 8, 2023 and she was automatically enrolled into Medicare. Her Part A coverage began on June 1, 2023. Her Part D IEP started on March 1, 2023 and ended September 30, 2023. The Part D sponsor calculates the number of days, since the end of the individual's IEP on September 30, 2023.

For individuals who had Medicare Part A and B coverage before January 1, 2006 (when Part D first began), use the following dates to determine the Part D enrollment gap:

Individual's Part A or Part B coverage start date was:	Part D IEP ended:
On or prior to January 31, 2006	May 15, 2006
February 2006	May 31, 2006

30.1.2 – End of Last Part D/RDS Enrollment

42 CFR §§ 423.46(a) and 423.56

If an individual had prior Part D or RDS plan coverage, the Part D sponsor only looks at the timeframe since the end of the Part D or RDS enrollment.

Example:

Mr. Jones enrolled in a Part D plan during his Part D IEP, and his plan coverage started June 1, 2021. He disenrolled from this plan effective December 31, 2021 and did not have other creditable coverage. A year later, he enrolled in another Part D plan and his plan coverage started January 2023. Mr. Jones' coverage gap starts January 1, 2022 and ends December 31, 2022. The Part D enrollment gap for Mr. Jones is 12 months.

30.1.3 – End of the Subsequent IEP

42 CFR § 423.46(a)

An individual who had Medicare prior to turning age 65 (e.g., based on disability or ESRD), will get another, or “subsequent” IEP when turning age 65. This subsequent IEP starts three months before turning age 65, includes the month the person turns 65, and ends 3 months after the month the individual turns age 65.

If an individual turns age 65 while enrolled in a Part D plan and has been paying a Part D LEP, their Part D LEP will end on the day before their subsequent IEP begins, which is three months prior to the month that the individual turns 65. Any prior Part D enrollment gap on the individual’s record (which is reported as the NUNCMO in the MARx system), will automatically be reset to “0.” If an individual remains enrolled in a Part D plan or has other creditable coverage without any gaps in enrollment in the future, their NUNCMO will remain at “0.”

Example:

Ms. Shervelle had Medicare based on disability and when she enrolled in her Part D plan, she had a Part D enrollment gap with a NUNMCO of six months on her record. She turned 65 on May 19, 2021. Her subsequent IEP began February 1, 2021 and ended August 31, 2021. Ms. Shervelle’s six uncovered months were reset to “0” as of February 1, 2021. She was no longer charged a Part D LEP by her Part D sponsor.

After a reset occurs, a Part D sponsor only counts the number of days from the end of the individual’s subsequent IEP when determining a future coverage gap.

Example:

Using the example above, Ms. Shervelle disenrolled from her Part D plan, effective June 30, 2021. Later, she enrolled in a new Part D plan, and her plan coverage started January 1, 2022. Ms. Shervelle’s Part D enrollment gap started September 1, 2021 (the day after her subsequent IEP ended) and ends on December 31, 2021. The Part D enrollment gap for Ms. Shervelle is four months. Ms. Shervelle’s previous six-month NUNCMO, and the period that she was not enrolled in a Part D plan during her subsequent IEP, do not count in determining her enrollment gap.

30.1.4 – Determining the Part D Enrollment Gap for LIS Individuals

42 CFR §§ 423.286(e) and 423.780(e)

Medicare beneficiaries who have LIS are not subject to a Part D LEP. Calculate the number of days of a Part D enrollment gap based on the following:

- If the individual has LIS at the time of enrollment, do not calculate the number of days. No Part D LEP applies.
- If the individual previously had LIS but is not eligible for LIS at the time of enrollment, calculate the number of days starting with the day after the individual’s LIS ended.
- The number of days in the enrollment gap ends on the day before the individual’s coverage in the Part D plan begins.
- Only count the number of days from the end of the most recent LIS period.

Example:

Mr. Ramir had LIS and was enrolled in a Part D plan. He lost his LIS effective December 31, 2021. His coverage in his Part D plan ended in April 2022. Later, he enrolled in a Part D plan, and his plan coverage started January 1, 2023. Mr. Ramir's Part D enrollment gap started May 1, 2022 and ends on December 31, 2022. The Part D enrollment gap for Mr. Ramir is eight months.

NOTE: If the individual did not have prior enrollment in a Part D plan but was in "deemed" LIS status for the entire time prior to the enrollment effective date, no Part D LEP applies.

30.2 – How to Determine the Part D Enrollment Gap during the Enrollment Process

42 CFR § 423.46(b)

Follow these steps to determine if the individual had a Part D enrollment gap and may be subject to a Part D LEP:

Step 1. Review the completed enrollment request and any information on prior prescription drug coverage voluntarily submitted by the individual with the enrollment request.



Step 2. Check the MARx UI/ BEQ to obtain the last date of Part D or RDS coverage, Part D IEP, Subsequent IEP, or LIS eligibility.



Step 3. Count the number of days of the Part D enrollment gap using the data from MARx UI/BEQ and any information submitted with the enrollment request, as outlined in § 30.1.



Step 4. Determine if the Part D enrollment gap is 63 continuous days or longer.

- If the Part D enrollment gap is less than 63 continuous days, submit "0" for the NUNCMO and set the creditable coverage flag to "Y" on the enrollment transaction. There is no Part D LEP assessed. No further action is needed.
- If the Part D enrollment gap is 63 continuous days or longer, and the NUNCMO has not been determined, (i.e., prior to attestation process completion), submit zero ("0") for the NUNCMO and set the creditable coverage flag to "Y" on the enrollment transaction.
- If there is a Part D enrollment gap of 63 continuous days or longer and the NUNCMO is known, (e.g., if the individual submits this information with the enrollment form), submit the appropriate NUNCMO and set the creditable coverage flag to "Y" or "N" on the enrollment transaction, as appropriate.



Step 5. After the enrollment is accepted, and the gap in creditable coverage is verified with the maximum NUNCMO calculation provided by CMS, prepare the attestation documents, if appropriate, to send to the individual following the attestation process outlined in § 40. Insert the timeframes for the Part D enrollment gap, as outlined in § 40.

Example:

Mr. Sanchez submits an enrollment request to a Part D sponsor on June 20, 2023 and his coverage starts July 1, 2023. As part of the enrollment process, the sponsor checks CMS' systems and sees that his IEP ended on April 30, 2023. Mr. Sanchez's Part D enrollment gap begins May 1, 2023 and ends on June 30, 2023. The Part D enrollment gap for Mr. Sanchez is 61 days. Since there were less than 63 continuous days for the Part D enrollment gap, he is not subject to the Part D LEP. The sponsor submits a "0" NUNCMO with creditable coverage flag "Y" on the enrollment transaction.

Example:

Mrs. Johnson submits an enrollment request to a Part D sponsor on November 5, 2022 and her coverage in the plan starts January 1, 2023. As part of the enrollment process, the sponsor checks CMS' systems and sees that Mrs. Johnson's prior Part D coverage ended on December 31, 2019. It appears that Mrs. Johnson's Part D enrollment gap begins January 1, 2020 and ends December 31, 2022. Because the Part D enrollment gap is longer than 63 continuous days, Mrs. Johnson may be subject to the LEP. When the Part D sponsor receives confirmation that the enrollment was accepted, and the gap in creditable coverage is verified with the maximum NUNCMO calculation provided by CMS, they will start the attestation process as outlined in §30.2. Because the actual NUNCMO was not known prior to the Part D sponsor submitting the enrollment transaction to CMS, the sponsor submits a "0" NUNCMO with creditable coverage flag "Y" on the enrollment transaction. The sponsor will go back and correct the NUMCMO at the end of the attestation process, as outlined in § 50.

30.3 – Exceptions to Completing and Reporting a Part D Enrollment Gap**Determination to CMS**

42 CFR § 423.46(b)

In the following instances, Part D sponsors do not proceed with the Part D enrollment gap determination.

30.3.1 – Determinations for Cancellations Prior to Effective Date

42 CFR § 423.36(b)

If an individual submits a valid cancellation request to the Part D sponsor prior to their plan coverage starting, do not proceed with determining any Part D enrollment gap.

Once the enrollment cancellation is processed, any NUNCMO information associated with that enrollment will automatically be removed from MARx.

30.3.2 – Determinations for Deceased Enrollees

42 CFR § 423.44(b)(2)(iii)

It is unnecessary to make determinations for deceased individuals. Do not start, continue, or complete a Part D enrollment gap determination if the sponsor receives information that the enrollee is deceased.

30.3.3 – PACE Plan Enrollees

42 CFR § 423.56(b)(10)

Follow § 30.1 for determining the Part D enrollment gap for Medicare-only individuals enrolled in PACE plans. Dually-eligible individuals (those with Medicare and Medicaid) are not subject to the Part D LEP; thus, it is unnecessary to determine the Part D enrollment gap for such individuals who are enrolled in PACE plans.

If a Medicare-only enrollee becomes eligible for Medicaid while the PACE organization is conducting a Part D enrollment gap determination, the organization no longer completes its determination.

If the organization has already submitted a NUNCMO to CMS, it submits a NUNCMO change transaction (TC 73) to report a “0” NUNCMO, as outlined in § 50.2.

If the current PACE enrollee had Medicaid but loses it while still enrolled in the PACE plan, the sponsor does not submit a new NUNCMO, as there is no gap in Part D enrollment.

30.3.4 – Individuals in the U.S. Territories

Individuals in the U.S. territories who are dually eligible (e.g., those in Puerto Rico (PR) who are eligible for Medicare and PR’s Medicaid plan, known as the Government Health Plan), are exempt from the Part D LEP in the same manner as those who are LIS-eligible in the States.

40 – Attestation of Creditable Prescription Drug Coverage

42 CFR § 423.46(b)

If the Part D enrollment gap is 63 continuous days or longer, the Part D sponsor obtains information about previous creditable coverage from the individual (or from third parties permitted to attest to such coverage on behalf of the individual). This is called the attestation process (outlined below). Individuals are not required to submit evidence of their prior creditable coverage as part of the attestation process.

If a coverage gap is 63 continuous days or longer, a penalty will be assessed for each full calendar month that the individual did not have creditable coverage.

The attestation process is as follows:

Step 1. Within seven days of receiving the transaction reply code (TRC) showing enrollment acceptance on the Daily Transaction Reply Report (DTRR), the Part D sponsor notifies the individual of the Part D enrollment gap and opportunity to provide an attestation of prior creditable coverage.



Step 2. Individual has 30 days (or additional timeframe as outlined in § 40.2.3), to complete the attestation.



Step 3. If the 30-day deadline is approaching and the Part D sponsor hasn't yet received a response from the individual, the sponsor can send an optional "Reminder Notice" as outlined in § 40.2.1.



Step 4. Upon receipt of the attestation, (including receipt after the 30-day due date), the Part D sponsor continues the attestation process, as outlined in § 50.2.

40.1 – Obtaining and Retaining Information about Creditable Coverage

42 CFR §§ 423.46(d) and 423.505(e)(1)(iv)

There are three ways for a Part D sponsor to obtain an attestation of creditable coverage from an individual:

1. Completed attestation document,
2. Telephonic attestation, or
3. Attestation from permitted third parties on behalf of the individual.

Part D sponsors must retain **all** information collected through the Part D enrollment gap determination and attestation processes in accordance with enrollment records retention requirements outlined in CMS' regulations at 42 CFR §§ 423.46(d) and 423.505(e)(1)(iv), and in related Medicare Advantage and Part D enrollment guidance.

40.2 – Attestation Documents

For the attestation process, the Part D sponsor provides notice of the Part D enrollment gap to the individual and provides an attestation form for the individual to complete and return to the sponsor. The Part D sponsor may send the attestation documents to the individual in hardcopy or electronically, in accordance with the [Medicare Communications and Marketing Guidelines \(MCMG\)](#). This notice should include:

1. A cover letter that includes the following information:
 - How Medicare defines creditable coverage and Part D enrollment gap;
 - The individual has a Part D enrollment gap;
 - The dates of the Part D enrollment gap;
 - The need to complete and return the attestation form (or contact the Part D sponsor to provide their attestation) within 30 days;
 - An explanation of what a Part D LEP is, and the risk that the individual may be subject to a Part D LEP if the individual does not respond to and/or complete the attestation timely;
 - Information on what an individual should have received from their prior non-Part D insurer to determine if their previous coverage was creditable;
 - How the individual can contact the Part D sponsor, Medicare, and other local resources such as the State Health Insurance Assistance Program (SHIP).
2. Attestation of prior prescription drug coverage that includes the following information:
 - Individual's name and contact information;
 - The dates of the Part D enrollment gap;
 - Request for individual's (or authorized representative's) signature attesting to their prescription drug coverage for Part D enrollment gap period (creditable, non-creditable, or had no coverage) including examples of coverage, (employer/union, Federal Employee Health Benefits (FEHB) Program, a State Pharmaceutical Assistance Program (SPAP), Veteran's Administration (VA), TRICARE, a Medicare

- Supplement Insurance (Medigap) policy, Indian Health Service, Program of All Inclusive Care for the Elderly (PACE), Federal/State Marketplace, or that, individual had Medicaid, received Extra Help, lived in an area affected by Hurricane Katrina at the time of the hurricane (August 2005) and joined a Medicare Part D plan before December 31, 2006, **or** was not eligible for Part D during the Part D enrollment gap period;
- Instructions for the individual to complete, sign, and return the attestation form to the sponsor, or call the sponsor to provide this information **within 30 days from the date on the attestation**;
 - Disclaimer language that the attestation provided is correct, and the risk that the individual may be subject to a Part D LEP if the individual does not respond to and/or complete the attestation timely;
 - If an authorized representative is signing the attestation form, disclaimer language that their signature certifies that:
 1. The representative is authorized under state law to complete and sign the attestation form; and
 2. Proof of representative's authorization, as required by state law, is available upon Medicare's request.
 - How the individual can contact the Part D sponsor

The Part D sponsor accepts an attestation if it is received **no more than 60 days past the return deadline** stated on the notice. The Part D sponsor **may not** request evidence of the prior creditable coverage when requesting the individual's attestation. The individual's signature on the attestation form (or verbal attestation) is all that is required.

NOTE: The Part D sponsor cannot send attestation documents to an individual before they are enrolled in the plan. However, if the individual includes information with the enrollment form or sends it to the Part D sponsor before the attestation process begins, the Part D sponsor **does not** have to send the attestation documents if the information submitted addresses all coverage gap periods identified by the Part D sponsor. See § 30.2 for applying this information in the determination of a Part D enrollment gap.

If an individual provides creditable coverage information to a Part D sponsor without submitting an enrollment request, the Part D sponsor returns the creditable coverage information to the individual, within 10 days, with a notice stating that the Part D sponsor:

- Cannot review creditable coverage information prior to receiving an enrollment request; and
- Will request creditable coverage information, where appropriate, after the Part D sponsor receives an enrollment acceptance from CMS, so the individual should retain this information for future need.

40.2.1 – Optional “Reminder Notice” Notification

If the individual has not yet responded to the attestation request, the Part D sponsor can send an optional reminder/final notice to notify the individual of the approaching deadline. If the Part D sponsor chooses to send the notice, it must be sent in enough time for the individual to respond by the initial deadline provided.

40.2.2 – Complete Attestation

A submitted attestation form is considered complete if it contains all of the following:

- The signature of the individual, or the signature of the individual’s authorized representative (including the authorized representative’s name, address, phone number, and their relationship to the individual);
- A check mark in one or more of the boxes indicating that the individual did or did not have prior creditable prescription drug coverage; and
- The name and dates of the prior creditable prescription drug coverage, if the individual attests to having such coverage, or a reason as to why the individual was not eligible to enroll in a Part D plan for a specific time period, if applicable.

The dates the individual attests to may be different than the Part D enrollment gap dates the Part D sponsor received from CMS on the enrollment transaction. The entire Part D enrollment gap does not need to be accounted for in the attestation for it to be considered complete.

Example:

Mrs. Smith enrolled in a Part D plan effective November 1, 2021. According to the CMS maximum NUNCMO, Mrs. Smith had a coverage gap of nine months: February 1, 2021 to October 31, 2021. Mrs. Smith only attests to having creditable coverage from February 1, 2021 to July 31, 2021. Since there remains a Part D enrollment gap from August 1, 2021 to October 31, 2021, Mrs. Smith continues to have a Part D enrollment gap of three uncovered months (NUNCMO equals “3” months). The Part D sponsor accepts that information and continues to process the attestation.

40.2.3 – Incomplete Attestation

A submitted attestation is considered incomplete if it does not contain all of the elements listed in § 40.2.2.

Example:

Mr. Chester enrolled in a Part D plan effective May 1, 2021 and he has a Part D enrollment gap longer than 63 days continuous days. The sponsor notifies Mr. Chester of his Part D enrollment gap on May 5, 2021. Mr. Chester has until June 4, 2021 (30 days) to submit his attestation.

On May 28, 2021, Mr. Chester attests to having creditable coverage, but he does not provide the dates that he had it. Because the attestation is incomplete, the Part D sponsor follows up

with Mr. Chester on June 1, 2021 to receive the incomplete information. Mr. Chester contacts the sponsor and provides the missing information on June 6, 2021. The Part D sponsor accepts that information and continues to process the attestation. The sponsor reports its creditable coverage determination to CMS within 14 calendar days of the original deadline for submitting the completed attestation.

NOTE: A received attestation where the individual does not include information about the entire coverage gap is **not** considered incomplete solely for that reason.

40.2.4 – Missing Attestation

An attestation is considered missing if the individual does not respond to the attestation request by the 30-day deadline.

- The sponsor may send a reminder notice as outlined in § 40.2.1.
- The Part D sponsor should accept an attestation if it is received **no more than 60 days past the return deadline** stated on the notice and adjust the number of uncovered months previously reported.

In the case where an attestation is missing, it will be considered as a response of **not** having creditable coverage for the period in question.

NOTE: If an individual provides, or attempts to provide, their creditable coverage information after the 60-day timeframe outlined in this section, the Part D sponsor sends the individual a notice, within 10 days, that tells the individual the following:

- A request for information on the individual's prior prescription drug coverage was sent, including a deadline to provide that information;
- The information that the individual provided, or attempted to provide on *<insert date>* was after the stated deadline on the request;
- The information will not be used to consider the individual's uncovered months submitted to Medicare;
- The individual will receive a letter with the amount of any penalty assessed, and that they will be provided an opportunity to appeal the penalty;
- Contact information for the Part D sponsor.

There may be situations where an individual has attested to having prior creditable coverage (or provided a reason for not being eligible for Part D) for some of the time periods that they had a Part D enrollment gap, but they do not provide that information for all of the time periods that they had a Part D enrollment gap. The Part D sponsor would determine the attestation incomplete and try to obtain the missing information from the individual. If the individual does not provide the necessary information by the appropriate deadline, the Part D sponsor considers the item that is completed to meet the attestation request, and the part not completed to be missing (not attested for).

Example:

Mrs. Riva enrolled in a Part D plan effective January 1, 2023, and the Part D sponsor identifies a Part D enrollment gap from January 1, 2021 through December 31, 2022. The sponsor notified Mrs. Riva of her Part D enrollment gap and she responds within the 30-day deadline. Mrs. Riva indicates that she had creditable coverage through an employer from January 1, 2021 through December 31, 2021, and had creditable coverage from another source, but does not provide any information about the dates of coverage for that source. The Part D sponsor follows up with Mrs. Riva, asking for the missing information, but Mrs. Riva does not respond to the sponsor. The Part D sponsor accepts the information for the creditable coverage during 2021 and determines that Mrs. Riva did not have creditable coverage for the remaining Part D enrollment gap in 2022. Mrs. Riva has a Part D coverage gap of “12” uncovered months (NUNCMO equals 12 months). The sponsor submits the creditable coverage determination to CMS within 14 days of the original 30-day due date.

40.3 – Telephonic Attestation

Part D sponsors can accept a verbal creditable coverage attestation, rather than the individual signing and returning the attestation form. The Part D sponsor mails the notice and attestation form first, and then, at the sponsor’s option, can accept a telephonic attestation. Part D sponsors may not use telephonic attestation in lieu of mailing the attestation documents.

40.4 – Attestations from Third Parties

Part D sponsors may accept creditable coverage information (including the attestation) from permitted third parties that can attest to their enrollees’ creditable coverage history. Third parties include employers and union groups, etc.

There is not a specific form or format for third parties to provide creditable coverage information. Part D sponsors can determine the format and means for third parties to submit creditable coverage information to them. Documentation of creditable coverage from a third party may be separate attestations for each individual, or one attestation that outlines the type and dates of creditable coverage for specific enrollees.

NOTE: If an individual provides creditable coverage information (e.g., via a telephonic attestation, or via a completed attestation form) and a third party also attests to information about creditable coverage on behalf of the individual, the Part D sponsor uses the information most favorable to the individual. The information provided by the third party does not supersede the individual’s signed attestation unless it would eliminate or reduce the Part D LEP.

50 – Reporting, Adjusting, and Resetting NUNCMO

42 CFR § 423.46(b)

After the Part D sponsor determines the Part D enrollment gap and/or completes the attestation process in accordance with §§ 30 and 40, the sponsor reports its NUNCMO determination to CMS. (Refer to the MAPD Plan Communications User Guide ([PCUG](#)) for a complete listing of MARx transactions to add, change, or remove the NUNCMO for an enrolled individual.

Generally, the Part D sponsor reports the NUNCMO to CMS in one of two ways:

1. On the enrollment transaction (transaction code (TC) 61), if the Part D sponsor has the NUNCMO determination at the time it submits the enrollment transaction to CMS; or
2. On a NUNCMO change transaction (TC 73), when the NUNCMO determination is later adjusted.

NUNCMO reporting to CMS occurs within the following timeframes:

Sponsor Determines/Receives	Timeframe to Submit Appropriate Enrollment or Change Transaction to CMS
No Attestation Form needs to be sent to individual based on BEQ/MARx UI query	Within seven days of receiving completed enrollment request
Complete Attestation	Within 14 calendar days of Part D sponsor receiving a completed attestation
Incomplete Attestation	Within 14 calendar days after the 30-day deadline for an individual to respond to the attestation request
Missing Attestation	Within 14 calendar days after the 30-day deadline for an individual to respond to the attestation request
IRE Reconsideration Decision	Within 14 calendar days of receipt of reconsideration decision

50.1 – Reporting Uncovered Months on the Enrollment Transaction

When there is a Part D enrollment gap of less than 63 continuous days, the sponsor shall report to CMS that the individual had creditable coverage by taking the following action:

1. Set the creditable coverage flag to “Y”;
2. Set the number value equal to “0” NUNCMO; and
3. Set the enrollment effective date on the transaction to equal the enrollment effective date in the plan.

When there is a Part D enrollment gap of 63 continuous days or longer, and the Part D sponsor is not able to determine whether there is a break in creditable coverage since the last date of Part D or RDS coverage, Part D IEP, Subsequent IEP, or LIS eligibility, before the seven-day deadline for submitting the enrollment transaction to CMS, (i.e., prior to attestation process completion), the sponsor shall report to CMS that the individual had creditable coverage by taking the following action (see § 30.2, step 4):

1. Set the creditable coverage flag to “Y”;
2. Set the number value equal to “0” NUNCMO; and
3. Set the enrollment effective date on the transaction to equal the enrollment effective date in the plan.

The Part D sponsor will then report a NUNCMO change transaction, if appropriate, once the attestation process and final NUNCMO determination is complete, as outlined in § 50.2.

Where there is a Part D enrollment gap of 63 continuous days or longer and the NUNCMO is known, **(e.g., if the individual submits this information with the enrollment form)**, the Part D sponsor shall take the following action:

1. Set the creditable coverage flag to “N” or “Y”, as appropriate;
2. Set the number value equal to the determined NUNCMO; and
3. Set the enrollment effective date on the transaction to equal the enrollment effective date in the plan.

50.2 – Reporting Uncovered Months Using a NUNCMO Change Transaction

To report a NUNCMO change after submitting the enrollment transaction to CMS, (including a NUNCMO change based on receipt of an untimely attestation (attestation received within 60 days after the initial 30-day due date), submit a NUNCMO change transaction (TC 73):

1. Set the creditable coverage flag to “N” or “Y” as appropriate;
2. Set the number value equal to the new NUNCMO; and
3. Set the enrollment effective date on the transaction to equal the enrollment effective date in the plan.

A Part D sponsor can make NUNCMO changes for periods that occur on or before the enrollment effective date in its plan.

The Part D sponsor submitting the change to the NUNCMO and any impacted plan will receive:

- A TRC on the Daily Transaction Reply Report (DTRR) regarding the new NUNCMO.

The Part D sponsor submitting the change to the NUNCMO, **and** any impacted Part D sponsors will receive:

- The recalculated Part D LEP amount on the Late Enrollment Penalty Data (LEPD) file

- for enrollees who are directly billed by the Part D sponsor; and,
- The recalculated Part D LEP amount on the Monthly Premium Withholding Report (MPWR) data file for enrollees in premium withhold status.

Refer to subsections below for specific scenarios for using a NUNCMO change transaction.

50.2.1 – Adjustments Due to Part D Sponsor Error

If a Part D sponsor discovers it has reported an incorrect NUNCMO to CMS, the sponsor can submit a NUNCMO change transaction (TC 73) as outlined in § 50.2.

Example:

An individual has been enrolled in 4 different Part D plans for the following timeframes:

Plan 1 – January 2014 – December 2014

Plan 2 – January 2015 – June 2015

Plan 3 – January 2016 – December 2016

Plan 4 – January 2017 – Present (current enrollment)

Plan #3 identifies an error that it made when reporting the NUNCMO to CMS. Plan #3 submitted a NUNCMO of “0” instead of a NUNCMO of “6” for the individual. Plans #3 and #4 are the impacted plans.

Role of Plan #3:

- Submits a NUNCMO change transaction (TC 73) as outlined in § 50.2, and then proceeds with notifying their prior enrollee as outlined in § 70.1 and billing the retroactive Part D LEP as outlined in § 80.

Role of Plan #4:

- Receives a TRC based on Plan #3’s submission to CMS as outlined in § 50.2, and then proceeds with notifying their enrollee as outlined in § 70.2 and billing the Part D LEP as outlined in § 80.

50.2.1.1 – Impact of Part D Sponsor Error or Receipt of Untimely Attestation on the Appeals Process

In the case of a Part D sponsor error, or receipt of an untimely attestation (attestation received within 60 days after the initial 30-day due date), where a previous Part D LEP was imposed or increased, and the Part D sponsor learns that the individual had already requested a reconsideration of this Part D LEP, the Part D sponsor alerts the Independent Review Entity (IRE) of their actions to adjust the NUNCMO due to a Part D sponsor error and provides the IRE with documentation of the change. (See §§ 60.1 and 70.1 for further information on the Part D LEP appeals process.) When the Part D sponsor alerts the IRE of the error or change in LEP, the Part D sponsor must indicate this on the returned IRE LEP Case File Request Form and the LEP Case File Transmittal Form. The Part D sponsor must include the date the LEP was rescinded

and the date the enrollee was notified of the rescission. If the rescission letter has been sent, the Part D sponsor must include this letter.

If the correction results in the removal of the Part D LEP, the IRE will then dismiss the case because there are no longer any uncovered months in dispute. If, however, the correction does not eliminate the Part D LEP, the IRE will then proceed with its review of the Part D LEP based on the new information that the Part D sponsor used to adjust the enrollee's NUNCMO.

50.2.2 – Adjustment Due to Change in Enrollment Effective Date

In limited circumstances, there may be a change to the NUNCMO because of a change in an individual's enrollment effective date. In such cases, the Part D sponsor reviews the individual's attestation to determine if additional information is needed to determine the Part D enrollment gap. Where necessary, the sponsor provides the individual with another opportunity to provide an attestation for any new Part D enrollment gap periods.

If the Part D sponsor determines that the NUNCMO should be adjusted, the sponsor follows the process outlined in § 50.2, notifies the individual as outlined in § 70.1, and bills or refunds any Part D LEP amounts, as outlined in § 80.

50.2.3 – Adjustments Due to IRE Reconsideration Decisions

The IRE reconsideration decisions may uphold, increase, decrease or eliminate the NUNCMO submitted by a Part D sponsor.

The CMS IRE will notify all impacted Part D sponsors of the reconsideration decision.

- If the individual is still enrolled in the Part D plan that imposed the NUNCMO, that Part D sponsor follows § 50.2, and proceeds with notifying the individual as outlined in § 70.1, and billing or refunding the individual as outlined in § 80, as appropriate.
- If an individual is no longer enrolled in the Part D plan that imposed the original NUNCMO that needs to be adjusted, all impacted Part D sponsors follow steps described in § 50.3.

NOTE: If the Part D sponsor that imposed the NUNCMO receives a notification of a partially or fully favorable Part D LEP reconsideration on behalf of a deceased enrollee, that Part D sponsor submits a plan change transaction as outlined in § 50.2 and sends the individual's estate notification in accordance with § 70.1.

In cases where the IRE provides a decision which requires a change that a Part D sponsor cannot make, such as when a plan is terminated, the current Part D sponsor must contact the MAPD Help Desk for assistance.

50.2.3.1 – Reporting Adjustments on Behalf of Current Enrollees for Prior Periods for IRE Reconsideration Decisions

When a NUNCMO needs to be adjusted based on an IRE reconsideration decision, the Part D sponsor that imposed the NUNCMO makes the adjustment; however, if that Part D sponsor does not make the adjustment within 21 calendar days, the individual's current sponsor makes the adjustment. A Part D sponsor can submit a NUNCMO change transaction for any enrollment period that occurred on or before the individual's effective date in its Part D plan.

The individual's current Part D sponsor submits a NUNCMO change transaction (TC 73) as outlined in § 50.2 and will receive a TRC regarding the adjustment and a recalculated Part D LEP amount, as outlined in § 50.2. Additionally, any impacted Part D sponsors will receive a recalculated Part D LEP amount in the LEPD and MPWR reports.

Example:

Mrs. Long enrolled in Plan A, and her coverage started January 1, 2022. The Plan A sponsor completed the attestation process and determined that she had five uncovered months. The Plan A sponsor notified Mrs. Long of the assessed Part D LEP. Mrs. Long requested a reconsideration of her penalty. While her request was pending with the IRE, Mrs. Long disenrolled from Plan A effective April 30, 2022 and enrolled in Plan B effective May 1, 2022. On June 5, 2022 the IRE issued a fully favorable decision for Mrs. Long and notified both Plan A and Plan B sponsors. On June 26, 2022 the Plan B sponsor saw that no change had been made to Mrs. Long's NUNCMO or Part D LEP. Plan B sponsor submits the NUNCMO change to CMS and notifies Mrs. Long of the removal of her Part D LEP and processes her refund for the time that she was enrolled in Plan B. The Plan A sponsor receives a recalculated Part D LEP amount in the LEPD and MPWR reports and refunds any Part D LEP collected when Mrs. Long was enrolled in Plan A, as outlined in § 80.

50.3 – Reporting NUNCMO for Disenrolled Individuals

A Part D sponsor completes its Part D enrollment gap determination and reports the correct NUNCMO for the period in question, even if an individual disenrolls from the plan, as a subsequent Part D sponsor only looks to the last Part D disenrollment to determine if there is a Part D enrollment gap. For more information on determining the Part D enrollment gap, see § 30.

Examples of cases where a Part D sponsor may need to report NUNCMO for disenrolled individuals include, but are not limited to, the following:

- An individual disenrolls from a Part D plan after coverage was effective, and the Part D sponsor did not determine or adjust the individual's NUNCMO, based on the attestation process prior to the effective date of the individual's disenrollment from its plan.
- An IRE reconsideration decision requires a NUNCMO adjustment (see also § 50.2.4) after the individual leaves the plan.

- The Part D sponsor realizes it made an error in determining or reporting an individual's NUNCMO after the individual leaves the plan.

To report NUNCMO information for an individual after the effective date of the individual's disenrollment, the Part D sponsor:

- Follows § 50.2, within the timeframes outlined in § 50 above;
- Notifies the former enrollee as outlined in § 70.2; and,
- Bills or refunds any Part D LEP as outlined in § 80, as appropriate.

If the individual is enrolled in a subsequent Part D plan, that Part D sponsor:

- Receives the Part D LEP adjustment information reports as outlined in § 50.2;
- Notifies their enrollee as outlined in § 70.2; and
- Bills or refunds any Part D LEP as outlined in § 80, as appropriate.

Example:

Mr. Jones enrolled in Plan A, and his coverage started January 1, 2021. During the month of February, Mr. Jones enrolls in another Part D plan. His enrollment in Plan A ends February 28, 2021. Mr. Jones' coverage in Plan B starts March 1, 2021. The Plan A sponsor completes the attestation process on March 10, 2021 and determines that Mr. Jones had three uncovered months. The Plan A sponsor submits a NUNCMO change transaction (TC 73) to report a NUNCMO of "3," receives the Part D LEP information from CMS, notifies Mr. Jones of the Part D LEP, and bills him for the Part D LEP, for the time that Mr. Jones was enrolled in Plan A. The Plan B sponsor receives information from CMS on the NUNCMO and Part D LEP, as outlined in § 50.2, notifies Mr. Jones of the Part D LEP amount, and bills Mr. Jones for the Part D LEP for the time that Mr. Jones is in Plan B.

50.4 – Resets of NUNCMO for LIS Eligibility or Subsequent IEP

If an individual is currently paying a Part D LEP and then becomes LIS-eligible or has a subsequent IEP, the Part D LEP is removed. In this case, the NUNCMO should automatically reset to "0", effective with the start of the individual's LIS eligibility or subsequent IEP as outlined in §§ 30.1.3 and 30.1.4.

The outcome of the reset action is two distinct periods of NUNCMO:

1. The original period with an end date; and
2. The new reset period where the NUNCMO value is reset to "0" going forward.

NOTE: If the CMS system does not reset due to a subsequent IEP or LIS eligibility status, the Part D sponsor contacts the MAPD Help Desk.

Part D sponsors are responsible for reviewing the appropriate CMS reports outlined in § 60.2 to ensure that the change is reflected accurately and proceed to notify the individual of the removal of the Part D LEP as outlined in § 70.1.

Individuals are responsible for any unpaid Part D LEP amount owed prior to the effective date of their LIS-eligibility or subsequent IEP, and the Part D sponsor proceeds to bill and collect the Part D LEP as outlined in § 80.

50.4.1 – Removal of LIS Eligibility Resets

If an individual was erroneously reported to be LIS-eligible, CMS will “undo” the Part D LEP reset and will re-establish the individual’s Part D LEP. All previous uncovered months will be applied retroactively, back to the date that the reset was done. All impacted Part D sponsors update their plan’s records, accordingly, ensuring that the individual’s Part D LEP information matches the data included in the DTRR record.

All impacted Part D sponsors notify the individual as outlined in § 70.1, and bill any retroactive Part D LEP amounts, as outlined in § 80. If the Part D LEP is new or increased, the respective Part D sponsors provide the individual with notification of their appeal rights. If the individual was previously paying the Part D LEP and, therefore, the Part D LEP is not new or increased, the individual would not be eligible for appeal rights.

50.4.2 – Resets Based on Subsequent Part D IEPs

When an individual has a subsequent IEP, CMS will automatically reset the NUNCMO and remove the penalty, as outlined in § 30.1.3.

Depending on the specific situation, the Part D sponsor takes one of the actions described below for an individual who has a subsequent IEP:

1. Current Enrollees:

Part D sponsors follow the process outlined in § 50.4.

2. New Enrollees with Prior NUNCMO Enrolling During Their Subsequent IEP:

For individuals who are newly enrolling in a Part D plan during their subsequent IEP, but had prior Part D coverage with uncovered months, the reset should already be reflected in CMS’ systems. The Part D sponsor reviews the information in § 50.4, and takes the following steps:

- Submit an enrollment transaction (TC 61) with the creditable coverage flag set to “Y.”
- Set the number value equal to “0” NUNCMO.
- Set the effective date of the transaction to equal the effective date of enrollment in the appropriate plan.

Example:

Mrs. Lake had Medicare before turning age 65. She is not currently enrolled in a Part D plan but had 12 uncovered months submitted by her previous plan. Mrs. Lake turns 65 on August 3, 2022. She enrolls in a Part D plan in September 2022 and her coverage starts on October 1, 2022. Because Mrs. Lake enrolled during her subsequent IEP, the Part D sponsor submits a NUNCMO of “0” with an effective date of October 1, 2022. The Part D sponsor also verifies

that the automatic reset of the prior NUNCMO occurred, and the sponsor notified Mrs. Lake that she no longer has a penalty.

3. Individuals with Prior NUNCMO Enrolling After Their Subsequent IEP:

For individuals who do not enroll in a Part D plan by the end of their subsequent IEP, and had a prior Part D LEP, the NUNCMO reset should already be reflected in CMS' systems. Upon enrollment in a Part D plan, the sponsor follows the process as with any other enrollment and determines the Part D enrollment gap as outlined in § 30, so that the Part D LEP for any uncovered months after the subsequent IEP can be assessed.

For any issue where the reset or undo is either incorrect, did not occur, or needs to be submitted, the sponsor should contact the MAPD Help Desk.

60 – CMS Sending Part D LEP Amount to Part D Sponsors

42 CFR §§ 423.286 and 423.128(b)

Only CMS can calculate an individual's Part D LEP amount. For information about how the Part D LEP is calculated, see § 20.4.

60.1 – Role of Part D Sponsors

The Part D sponsor:

- Explains how the NUNCMO was calculated and informs the individual how CMS calculates the Part D LEP.
- Exercises care when explaining the Part D LEP policy to the individual, since any explanation can be interpreted as official information.
- Never estimates the Part D LEP or informs an individual of this estimation prior to receiving the official amount of the Part D LEP from CMS.
- Informs the individual of the Part D LEP as outlined in § 70, after CMS provides the official information about the Part D LEP.
- Provides the individual with the new or increased Part D LEP and information and guidance on how to request a reconsideration (appeal) of the Part D LEP. Please see [Parts C and D Enrollee Grievances, Organization/Coverage Determinations and Appeals Guidance](#).

60.2 – Part D LEP Reports Provided to Part D Sponsors

CMS notifies Part D sponsors of an individual's Part D LEP in several reports.

Report	Purpose	Availability
DTRR	Shows all impacted Part D sponsors the Part D LEP amount and the NUNCMO that the Part D sponsor submitted in their most recent transaction to CMS.	Daily
LEPD	Provides NUNCMO and Part D LEP information for individuals who are directly billed by the Part D sponsor.	Monthly
MPWR	Provides a reconciliation of premiums withheld from SSA or Railroad Retirement Board (RRB) benefits. It includes Part C and Part D premiums and any Part D LEPs.	Monthly

NOTE: To see the individual's total NUNCMO submitted by all Part D sponsors on which the total Part D LEP amount is based, see the following MARx screens: M231 (Beneficiary Detail Premium Screen), M232 (Beneficiary Eligibility Screen), or the BEQ Response File.

60.3 – Annual Changes in Part D LEP Amounts

At the start of each calendar year, the Part D LEP amount will change based on the current year's national base beneficiary premium—see § 20.4 for further information on the national base beneficiary premium.

While there is no TRC associated with this change, Part D sponsors will see the adjustment in the following reports:

- December LEPD for the January 1 plan payment; and
- January MPWR for the February 1 plan payment.

Part D sponsors adjust their invoices accordingly to reflect the amount of the Part D LEP for the new calendar year and include notification of this new amount in the individual's premium bill or, if the sponsor chooses, via a separate notice as outlined in § 70.1.

NOTE: The reconsideration process is not available for adjustments to the Part D LEP based on the yearly change to the national base beneficiary premium.

70 – Notifying the Individual of a Part D LEP

42 CFR §§ 423.32, 423.46, and 423.128(b)

Part D sponsors notify individuals of a new, changed, or removed Part D LEP. All notices that a sponsor sends in accordance with these requirements must also meet the requirements for communication materials set forth in the MCMG.

70.1 – Notifying the Individual of a New, Changed, or Removed Part D LEP

When a submitted NUNCMO results in a new, changed, or removed Part D LEP, the Part D sponsor notifies the individual of the Part D LEP and, where appropriate, provides information about how to request an appeal of that Part D LEP. This notice is provided to the individual within 10 calendar days of receiving all information needed to properly inform an enrollee of the Part D LEP, the new premium amount, and billing status (deduction from SSA or RRB benefits or direct bill). The notice includes the following:

1. A cover letter that includes the following information, as appropriate:

- Imposition of a new, changed, or removed Part D LEP;
- Effective date of the Part D LEP;
- The reason for the new, changed, or removed Part D LEP (e.g., NUNCMO determination, IRE reconsideration, subsequent IEP, LIS eligibility, Part D sponsor error, etc.) and the dates of the Part D enrollment gap that is the basis for the Part D LEP;
- The monthly Part D premium amount and the portion of that amount that is the Part D LEP;
- As applicable, any retroactive Part D LEP amounts due, and how they will be paid (billed, deducted from SSA or RRB benefits) **or** any Part D LEP amounts previously paid that are to be refunded to the individual;
- As applicable, notification if a third party (employer or union sponsoring the plan) has agreed to pay the Part D LEP or will stop paying the Part D LEP.
- Notification that if a third party has agreed to pay the Part D LEP, and the individual's employer or union sponsored coverage is terminated, the individual will be responsible for paying the Part D LEP;
- For a new or increased Part D LEP, the right to request a reconsideration (appeal) of the Part D LEP and the reconsideration filing deadline of 60 days from the date of the LEP letter;
- A statement that the individual pays the penalty while their reconsideration is under review.
- A statement that, by law, the individual is generally required to pay the penalty for as long as they have Part D coverage; and
- How the individual can contact the Part D sponsor.

2. LEP Reconsideration Notice (for new or increased Part D LEP) (See [Parts C and D Enrollee Grievances, Organization/Coverage Determinations and Appeals Guidance](#))

3. Reconsideration Request Form (for new or increased Part D LEP) (See [Parts C and D Enrollee Grievances, Organization/Coverage Determinations and Appeals Guidance](#))

NOTE: The Part D sponsor does not include the *LEP Reconsideration Notice* or the *Reconsideration Request Form* when notifying an individual of an adjustment due to an IRE reconsideration.

70.2 – Notification of Part D LEP Imposed by Prior Part D Sponsor

The Part D LEP amount that an individual is currently paying may change when an individual's prior Part D sponsor reports a NUNCMO change to CMS (see § 50). As a result, subsequent Part D sponsor(s) will have a change to the individual's Part D LEP amount which will require additional billing or a refund.

The subsequent Part D sponsor(s) notifies the individual of the Part D LEP amount owed or to be refunded to the individual. This notice is provided to the individual within 10 calendar days of receiving all information needed to properly inform an enrollee of the Part D LEP, the new premium amount, and billing status (deduction from SSA or RRB benefits or direct bill), and contains the requisite elements in § 70.1, as appropriate.

The subsequent Part D sponsor **does not** include the *LEP Reconsideration Notice* or the *Reconsideration Request Form* when notifying an individual of an LEP adjustment, as the previous Part D sponsor, which submitted the NUNCMO change, has the responsibility to provide the appeal rights.

The subsequent Part D sponsor(s) bills or refunds any Part D LEP in accordance with § 80.

70.3 – Notification of Existing Part D LEP

In cases where an individual enrolls in a new Part D plan, and has an existing Part D LEP, the sponsor may, but is not required to, notify the new enrollee of an existing Part D LEP. If a notice is sent, it includes the following:

- Part D sponsor received information that the prior Part D sponsor (s) imposed a Part D LEP;
- The Part D LEP is for <insert NUNCMO>;
- A statement that, by law, the individual is generally required to pay the penalty for as long as they have Part D coverage;
- Therefore, the individual's total monthly Part D premium amount is <insert amount> and the Part D LEP portion is <insert amount>.
- How the individual can contact the Part D sponsor.

The Part D sponsor **does not** include the *LEP Reconsideration Notice* and the *Reconsideration Request Form* when notifying an individual of an existing Part D LEP.

80 – Billing, Collecting, and Refunding the LEP

42 CFR §§ 423.286, 423.293, and 422.262

80.1 – Billing and Collecting the Part D LEP

The Part D LEP is part of the Part D premium. The Part D sponsor bills and collects it in the same manner as it does the non-LEP portion of its enrollees' premiums, except under the circumstance outlined in § 80.1.2 of this chapter.

Where a Part D sponsor has a zero-dollar (\$0) premium, and individuals enrolled in such plans have a Part D LEP, the Part D LEP is billed by the Part D sponsor and is permitted to be paid monthly.

80.1.1 – Enrollees in Direct Bill Status

The appropriate Part D sponsor bills any Part D LEP amount owed. This includes circumstances where the Part D LEP:

- Is imposed or adjusted for a current enrollee by a prior Part D sponsor; or
- Is imposed or adjusted for a former enrollee by a subsequent Part D sponsor.

For enrollees in direct bill status, the Part D sponsor bills the Part D LEP at the same time as, and as part of, the Part D plan premium. The Part D sponsor may:

- Itemize the invoice to show both the monthly premium and the Part D LEP amount; or
- Issue separate invoices for the monthly premium and Part D LEP reflecting the same payment due date for both.

Additionally, Part D sponsors may establish a quarterly or bi-monthly billing cycle but must afford the enrollee the option of monthly payment.

80.1.2 – Enrollees in Premium Withhold Status

The SSA will take the necessary actions to collect the Part D LEP amount from the enrollee who has elected the SSA premium withhold option. SSA accomplishes this by increasing the monthly withhold amount by the amount of the Part D LEP, unless this would cause the total monthly amount to be withheld to exceed \$300. When an individual's Part D LEP increases retroactively, causing the current month's premium amount to exceed \$300, SSA will not collect the retroactive arrearage. CMS will inform the sponsor to direct bill the accrued retroactive Part D LEP. If the individual is not at fault in creating the arrearage, then, per 42 CFR § 423.293(a)(4), the Part D sponsor allows the enrollee the option to pay the penalty in either a lump sum, or, by equal monthly payments spread over at least the same period for which the premiums were due, or another mutually acceptable payment arrangement between the individual and the Part D sponsor.

If the individual's prospective monthly premium amount remains at or below \$300, they will remain in SSA withhold status. SSA will continue to collect the monthly premium amount. Alternatively, if the individual's prospective monthly premium is above \$300, the payment option will be changed to direct-bill status.

80.1.3 – Billing Employer or Union Sponsors

If an employer or union sponsors prescription drug coverage for its members through a Part D plan, the Part D sponsor may bill the employer or union directly for any Part D LEP, if both parties agree.

80.1.4 – Billing the Part D LEP during the Reconsideration Process

If an individual requests a reconsideration of the Part D LEP and is awaiting a decision from the CMS' IRE, the Part D sponsor continues to bill (and SSA continues to withhold) the Part D LEP as part of the premium.

Unless otherwise authorized by CMS, the Part D sponsor adjusts the amount it bills after:

- The Part D sponsor receives the IRE reconsideration decision;
- The Part D sponsor submits a NUNCMO change transaction (TC 73) based on the reconsideration decision, within the timeframes outlined in § 50; and,
- CMS notifies the Part D sponsor of the new Part D LEP amount.

If the IRE determines that no Part D LEP is owed, the sponsor promptly ceases collection of the Part D LEP and proceeds to notify the individual, as outlined in § 70, and refunds the Part D LEP, as outlined in § 80.3.

80.2 – Failure to Pay the Part D LEP Portion of the Premium

If the Part D sponsor has a policy of involuntary disenrollment for failure to pay plan premiums, it includes enrollees who fail to pay the Part D LEP portion of their premium. Part D sponsors can choose to set a threshold amount for non-payment of premiums before it disenrolls an individual who fails to pay. For more information on disenrollment for non-payment of premiums, see the enrollment guidance appropriate for your plan type.

80.3 – Refunding the Part D LEP

When there is a change to the NUNCMO which reduces or removes the Part D LEP, the Part D sponsor that imposed the NUNCMO, as well as any impacted Part D sponsors, notify the individual of the change, as outlined in § 70. The Part D sponsor refunds or, where appropriate, credits the enrollee's future bill for any overpaid Part D LEP.

The refund amount is reported on the LEPD and MPWR data files, for individuals in direct bill and premium withhold statuses, respectively. These data files will be provided to all impacted Part D sponsors.

If the individual's premium was withheld from Social Security benefits, CMS and SSA will take the necessary action to refund the Part D LEP withheld as part of the premium.

If the adjustment to the previously reported NUNCMO results in a reduction rather than a removal of the penalty, CMS will also provide the new NUNCMO to impacted Part D sponsors.

APPENDIX

Appendix 1: Part D Enrollment Gap Determination/LEP – Notices and Reference Sections

Reference Section	Notice	Required?	Timeframe
§ 40.2	Beneficiary Notice of Return of Creditable Coverage Information Received Without an Accompanying Enrollment Request	Yes	Within 10 calendar days of the Part D sponsor's receipt of creditable coverage information from beneficiary
§§ 40, 40.2	Beneficiary Cover Letter and Attestation of Prior Prescription Drug Coverage for Individuals with Part D Enrollment Gap	Yes	Within seven calendar days of receiving the TRC showing enrollment acceptance on the DTRR
§§ 40.2, 40.2.1	"Final Notice" Beneficiary Cover Letter and Attestation of Prior Prescription Drug Coverage for Individuals with Part D Enrollment Gap	No	Mail with a deadline return date that will allow Part D sponsors enough time to meet the reporting deadline to CMS

§§ 40.2.3, 40.2.4	Beneficiary Notice of Creditable Coverage Information Received After Deadline	Yes, if attestation information is provided after timeframes outlined in § 40.2.3	Within 10 calendar days following receipt of the late attestation or creditable coverage information
§ 70.1	Beneficiary Notice of Part D LEP Include: Part D LEP Reconsideration Notice and Reconsideration Request Form	Yes	Within 10 days from the date that the sponsor receives all information needed to properly inform an enrollee of their Part D LEP premium amount/billing status
§ 70.3	Beneficiary Notice of Existing Part D LEP	No	No specific timeframe required
§§ 30.1.3, 50.4, 70.1	Beneficiary Notice of Removal of Part D LEP Due to Subsequent IEP	Yes	Within 10 days from the date that the sponsor receives CMS notification that reset has occurred and/or receives all information needed to properly inform an enrollee of their Part D LEP, premium amount, and billing status
§§ 30.1.4, 50.4, 70.1	Beneficiary Notice of Removal of Part D LEP Due to LIS Eligibility	Yes	Within 10 days from the date that the sponsor receives CMS notification that reset has occurred and/or receives all information needed to properly inform an enrollee of their Part D LEP, premium amount, and billing status

§§ 50.2.1, 70.1, 70.2	Beneficiary Notice of Part D LEP Adjustment Due to Part D sponsor Error Include: Part D LEP Reconsideration Notice and Reconsideration Request Form if error imposes or increases Part D LEP	Yes	Within 10 days from the date that the sponsor receives CMS notification that transaction was accepted, and/or receives all information needed to properly inform an enrollee of their Part D LEP, premium amount, and billing status
§§ 50.2.3, 70.1, 70.2	Beneficiary Notice to Confirm Adjustment of Premium After IRE Reconsideration of Part D LEP	Yes	Within 10 days from the date that the sponsor receives CMS notification that transaction was accepted, and/or receives all information needed to properly inform an enrollee of their Part D LEP, premium amount, and billing status
§§ 60.3, 70.1	Beneficiary Notice of Yearly Change in Part D LEP Amount	Yes	Within 10 days from the date that the sponsor receives CMS notification of the change, and/or receives all information needed to properly inform an enrollee of their Part D LEP, premium amount, and billing status