

card enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(f) *Appeal of contract determinations*—

(1) *Scope*. This section establishes the procedures for reviewing the following contract determinations:

(i) A determination that an applicant is not qualified to enter into a contract with CMS under section 1860D–31 of the Act; and

(i) A determination to terminate a contract with an endorsed sponsor in accordance with paragraph (c) of this section.

(2) *Notice of determination*. When CMS makes an initial contract determination, it gives the endorsed sponsor or applicant written notice specifying—

(i) The reasons for the determination; and

(ii) The endorsed sponsor's or applicant's right to request reconsideration.

(3) *Effect of contract determination*. The contract determination is final and binding unless a timely request for a reconsideration hearing is filed under this section.

(4) *Right to reconsideration*. An endorsed sponsor whose contract is terminated or an applicant denied endorsement may request a hearing for reconsideration of the CMS contract determination.

(5) *Method and place for filing a request*. A request for a reconsideration hearing must be made in writing and filed with the CMS Central Office.

(6) *Time for filing a request*. The request for a reconsideration hearing must be filed within 15 days from the date of the notice of the initial determination.

(7) *Appointment of hearing officer*. CMS shall appoint a hearing officer to conduct the reconsideration. The hearing officer shall be a representative of the Administrator and not otherwise a party to the contract determination.

(8) *Conduct of hearing*. The endorsed sponsor or applicant may be represented by counsel and may present evidence and examine witnesses. A complete recording of the proceedings will be made and transcribed.

(9) *Reconsideration determination*. A reconsideration determination is a new determination that—

(i) Is based on a review of the contract determination, the evidence and findings upon which it was based, and any other written evidence submitted before notice of the reconsidered determination is mailed, including facts relating to the status of the endorsed sponsor subsequent to the contract determination; and

(ii) Affirms, reverses, or modifies the initial contract determination.

(10) *Notice of reconsidered determination*. As soon as practicable after the close of the hearing, the hearing officer issues a written reconsideration determination that contains the following:

(i) Findings with respect to the applicant's qualifications to enter into or an endorsed sponsor's qualifications to remain under a contract with CMS under section 1860D–31 of the Act;

(ii) A statement of the specific reasons for the reconsidered determination.

(11) *Effect of reconsidered determination*. A reconsidered determination is final and binding on the parties and is not subject to judicial review.

(g) *Compliance with HIPAA*. Failure of an endorsed sponsor to comply with HIPAA and/or the standards, implementation specifications, and requirements in 45 CFR parts 160, 162, and 164, as established in § 403.812, shall be a violation of HIPAA and may be enforced under sections 1176 and 1177 of the Act.

§ 403.822 Reimbursement of transitional assistance and associated sponsor requirements.

(a) A Transitional Assistance Account is created within the Federal Supplementary Medical Insurance Trust Fund and kept separate from all other funds within that fund.

(b) The Managing Trustee of the Transitional Assistance Account shall pay on a monthly basis from the Account the amounts certified by CMS as necessary to make payments for transitional assistance as allowed in § 403.808.

(c) Endorsed sponsors must routinely account to CMS for the transitional assistance provided to the transitional assistance enrollees for finalized (not

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pending, or denied) claims up to the allowed balance provided by CMS to the sponsor.

(d) Payment transactions will be audited by the Secretary or his agent.

(e) Federal funding in excess of the amount of the balance included in CMS's system is not permitted.