

§ 422.758

(v) The MA organization's right to a hearing under subpart T of this part.

(vi) Information about where to file the request for hearing.

[63 FR 35113, June 26, 1998, as amended at 68 FR 50859, Aug. 22, 2003; 70 FR 4741, Jan. 28, 2005; 72 FR 68725, Dec. 5, 2007; 73 FR 55764, Sept. 26, 2008; 75 FR 19814, Apr. 15, 2010]

§ 422.758 Collection of civil money penalties imposed by CMS.

(a) When an MA organization does not request a hearing, CMS initiates collection of the civil money penalty following the expiration of the time-frame for requesting an ALJ hearing as specified in subpart T of this part.

(b) If an MA organization requests a hearing and CMS' decision to impose a civil money penalty is upheld, CMS may initiate collection of the civil money penalty once the administrative decision is final.

[72 FR 68726, Dec. 5, 2007]

§ 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

(a) *Determining the appropriate amount of any penalty.* In determining the amount of penalty imposed under 422.752(c)(1), CMS will consider as appropriate:

- (1) The nature of the conduct;
- (2) The degree of culpability of the MA organization;
- (3) The harm which resulted or could have resulted from the conduct of MA organization;
- (4) The financial condition of the MA organization;
- (5) The history of prior offenses by the MA organization or principals of the MA organization; and,
- (6) Such other matters as justice may require.

(b) *Amount of penalty.* CMS may impose civil money penalties in the following amounts:

(1) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees—up to \$25,000 for each determination.

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one

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or more MA enrollees, CMS may calculate a CMP of up to \$25,000 for each MA enrollee directly adversely affected (or with the substantial likelihood of being adversely affected) by a deficiency.

(3) For each week that a deficiency remains uncorrected after the week in which the MA organization receives CMS' notice of the determination—up to \$10,000.

(4) If CMS makes a determination that a MA organization has terminated its contract other than in a manner described under 422.512 and that the MA organization has therefore failed to substantially carry out the terms of the contract—\$250 per Medicare enrollee from the terminated MA plan or plans at the time the MA organization terminated its contract, or \$100,000, whichever is greater.

[72 FR 68726, Dec. 5, 2007, as amended at 74 FR 1542, Jan. 12, 2009]

§ 422.762 Settlement of penalties.

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

[72 FR 68726, Dec. 5, 2007]

§ 422.764 Other applicable provisions.

The provisions of section 1128A of the Act (except subsections (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

[63 FR 35115, June 26, 1998. Redesignated at 72 FR 68726, Dec. 5, 2007]

Subparts P—S [Reserved]

Subpart T—Appeal procedures for Civil Money Penalties

SOURCE: 72 FR 68726, Dec. 5, 2007, unless otherwise noted.

§ 422.1000 Basis and scope.

(a) *Statutory basis.* (1) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected party