Centers for Medicare & Medicaid Services, HHS § 422.752

§ 422.694 Effect of Administrator’s decision.

A decision by the Administrator under section 422.692 is final and binding unless it is reopened and revised in accordance with § 422.696.

§ 422.696 Reopening of a contract determination or decision of a hearing officer or the Administrator.

(a) Contract determination. CMS may reopen and revise an initial determination upon its own motion.

(b) Decision of hearing officer. A decision of a hearing officer that is unfavorable to any party and is otherwise final may be reopened and revised by the hearing officer upon the officer’s own motion within one year of the notice of the hearing decision. Another hearing officer designated by CMS may reopen and revise the decision if the hearing officer who issued the decision is unavailable.

(c) Decision of Administrator. A decision by the Administrator that is otherwise final may be reopened and revised by the Administrator upon the Administrator’s own motion within one year of the notice of the Administrator’s decision.

(d) Notices. (1) The notice of reopening and of any revisions following the reopening is mailed to the parties.

(2) The notice of revision specifies the reasons for revisions.

§ 422.750 Types of intermediate sanctions and civil money penalties.

(a) The following intermediate sanctions may be imposed and will continue in effect until CMS is satisfied that the deficiencies that are the basis for the sanction determination have been corrected and are not likely to recur:

(1) Suspension of the MA organization’s enrollment of Medicare beneficiaries.

(2) Suspension of payment to the MA organization for Medicare beneficiaries enrolled after the date CMS notifies the organization of the intermediate sanction.

(3) Suspension of all marketing activities to Medicare beneficiaries by an MA organization.

(b) CMS may impose civil money penalties as specified in 422.760.

§ 422.752 Basis for imposing intermediate sanctions and civil money penalties.

(a) All intermediate sanctions. For the violations listed in this paragraph, CMS may impose one or more of the sanctions specified in § 422.750(a) of this subpart on any MA organization with a contract. The MA organization may also be subject to other remedies authorized under law.

(1) Fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has the substantial likelihood of adversely affecting) the individual.

(2) Imposes on MA enrollees premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under section 1854 of the Act and subpart F of this part.

(3) Acts to expel or refuses to re-enroll a beneficiary in violation of the provisions of this part.

(4) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services.

(5) Misrepresents or falsifies information that it furnishes—

(i) To CMS; or

(ii) To an individual or to any other entity.

(6) Fails to comply with the requirements of § 422.206, which prohibits interference with practitioners’ advice to enrollees.

Subpart O—Intermediate Sanctions

Source: 63 FR 35115, June 26, 1998, unless otherwise noted.

§ 422.750 Types of intermediate sanctions and civil money penalties.

(a) The following intermediate sanctions may be imposed and will continue in effect until CMS is satisfied that the deficiencies that are the basis for the sanction determination have been corrected and are not likely to recur:

(1) Suspension of the MA organization’s enrollment of Medicare beneficiaries.
§ 422.756 Procedures for imposing intermediate sanctions and civil money penalties.

(a) Notice of intermediate sanction and opportunity to respond—(1) Notice of intent. Before imposing the intermediate sanction, CMS—
(i) Sends a written notice to the MA organization stating the nature and basis of the proposed intermediate sanction and the MA organization’s right to a hearing as specified in paragraph (b) of this section; and
(ii) Sends the OIG a copy of the notice.

(2) Opportunity to respond. CMS allows the MA organization 10 calendar days from receipt of the notice to provide a written rebuttal. CMS considers receipt of notice as the day after notice is sent by fax, e-mail, or submitted for overnight mail.

(b) Hearing. (1) The MA organization may request a hearing before a CMS hearing officer.

(2) A written request must be received by the designated CMS office within 15 calendar days after the receipt of the notice.

(3) A request for a hearing under § 422.660 does not delay the date specified by CMS when the sanction becomes effective.

(4) The MA organization must follow the right to a hearing procedure as specified at § 422.660 through § 422.684.

(c) Effective date and duration of sanction—(1) Effective date. The effective date of the sanction is the date specified by CMS in the notice.

(2) Exception. If CMS determines that the MA organization’s conduct poses a serious threat to an enrollee’s health and safety, CMS may make the sanction effective on an earlier date that CMS specifies.

(3) Duration of sanction. The sanction remains in effect until CMS is satisfied that the deficiencies that are the basis for the sanction determination have been corrected and are not likely to recur.

(i) CMS may require that the MA organization hire an independent auditor to provide CMS with additional information to determine if the deficiencies that are the basis for the sanction determination have been corrected and are not likely to recur. The independent auditor must work in accordance with CMS specifications and must be willing to attest that a complete and full independent review has been performed.

(ii) In instances where marketing or enrollment or both intermediate sanctions have been imposed, CMS may require an MA organization to market or to accept enrollments or both for a limited period of time in order to assist CMS in making a determination as to whether the deficiencies that are the bases for the intermediate sanctions...