§ 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.

(b) Civil money penalties. In addition to, or in place of, any intermediate sanctions, CMS may impose civil money penalties in the amounts specified in 422.760 for any of the determinations at § 422.510(a), except § 422.510(a)(4).

(b) OIG. In addition to, or in place of any intermediate sanctions imposed by CMS, the OIG, in accordance with part 1003 of Chapter V of this title, may impose civil money penalties for the following:

(1) Violations listed at § 422.752(a).

(2) Violations made pursuant to § 422.510(a)(4).

§ 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—

(1) 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

(2) Sends the OIG a copy of the notice.

(2) Opportunity to respond. CMS allows the MA organization 10 calendar days from the date of receiving the notice to respond in writing. The response may include evidence and arguments in the organization’s behalf.

459
§ 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.

(A) If, following this time period, CMS determines the deficiencies have not been corrected or are likely to recur, the intermediate sanctions will remain in effect until such time that CMS is assured the deficiencies have been corrected and are not likely to recur.

(B) The MA organization does not have a right to a hearing under §422.660(a)(4) of this part to challenge CMS’ determination to keep the intermediate sanctions in effect.

(d) Termination by CMS. In addition to or as an alternative to the sanctions described in paragraph (c) of this section, CMS may decline to authorize the renewal of an organization’s contract in accordance with §422.506(b)(2) and (b)(3), or terminate the contract in accordance with §422.510.

(e) Notice to impose civil money penalties—(1) CMS notice to OIG. If CMS determines that an MA organization has failed to comply with a requirement as described in 422.752, CMS notifies the OIG of this determination. OIG may impose a civil money penalty upon an MA organization as specified at 422.752(c)(2).

(2) CMS notice of civil money penalties to MA organizations. If CMS makes a determination to impose a CMP as described in 422.752(c)(1), CMS will send a written notice of the Agency’s decision to impose a civil money penalty to include—

(i) A description of the basis for the determination.
(ii) The basis for the penalty.
(iii) The amount of the penalty.
(iv) The date the penalty is due.
(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.