

## § 438.702

(1) An MCO has violated any of the other requirements of sections 1903(m) or 1932 of the Act, and any implementing regulations;

(2) A PCCM has violated any of the other applicable requirements of sections 1932 or 1905(t)(3) of the Act and any implementing regulations;

(3) For any of the violations under paragraphs (d)(1) and (d)(2) of this section, only the sanctions specified in § 438.702, paragraphs (a)(3), (a)(4), and (a)(5) may be imposed.

### § 438.702 Types of intermediate sanctions.

(a) The types of intermediate sanctions that a State may impose under this subpart include the following:

(1) Civil money penalties in the amounts specified in § 438.704.

(2) Appointment of temporary management for an MCO as provided in § 438.706.

(3) Granting enrollees the right to terminate enrollment without cause and notifying the affected enrollees of their right to disenroll.

(4) Suspension of all new enrollment, including default enrollment, after the effective date of the sanction.

(5) Suspension of payment for beneficiaries enrolled after the effective date of the sanction and until CMS or the State is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.

(b) State agencies retain authority to impose additional sanctions under State statutes or State regulations that address areas of noncompliance specified in § 438.700, as well as additional areas of noncompliance. Nothing in this subpart prevents State agencies from exercising that authority.

### § 438.704 Amounts of civil money penalties.

(a) *General rule.* The limit on, or the maximum civil money penalty the State may impose varies depending on the nature of the MCO's or PCCM's action or failure to act, as provided in this section.

(b) *Specific limits.* (1) The limit is \$25,000 for each determination under the following paragraphs of § 438.700:

(i) Paragraph (b)(1) (Failure to provide services).

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(ii) Paragraph (b)(5) (Misrepresentation or false statements to enrollees, potential enrollees, or health care providers).

(iii) Paragraph (b)(6) (Failure to comply with physician incentive plan requirements).

(iv) Paragraph (c) (Marketing violations).

(2) The limit is \$100,000 for each determination under paragraph (b)(3) (discrimination) or (b)(4) (Misrepresentation or false statements to CMS or the State) of § 438.700.

(3) The limit is \$15,000 for each beneficiary the State determines was not enrolled because of a discriminatory practice under paragraph (b)(3) of § 438.700. (This is subject to the overall limit of \$100,000 under paragraph (b)(2) of this section).

(c) *Specific amount.* For premiums or charges in excess of the amounts permitted under the Medicaid program, the maximum amount of the penalty is \$25,000 or double the amount of the excess charges, whichever is greater. The State must deduct from the penalty the amount of overcharge and return it to the affected enrollees.

### § 438.706 Special rules for temporary management.

(a) *Optional imposition of sanction.* The State may impose temporary management only if it finds (through onsite survey, enrollee complaints, financial audits, or any other means) that—

(1) There is continued egregious behavior by the MCO, including but not limited to behavior that is described in § 438.700, or that is contrary to any requirements of sections 1903(m) and 1932 of the Act; or

(2) There is substantial risk to enrollees' health; or

(3) The sanction is necessary to ensure the health of the MCO's enrollees—

(i) While improvements are made to remedy violations under § 438.700; or

(ii) Until there is an orderly termination or reorganization of the MCO.

(b) *Required imposition of sanction.* The State must impose temporary management (regardless of any other sanction that may be imposed) if it finds that an MCO has repeatedly failed to meet substantive requirements in