

## § 422.2600

## 42 CFR Ch. IV (10–1–23 Edition)

amount that is reported represents costs incurred by the only plan under the contract that offers that benefit.

(3) Any information that could be used to identify Medicare beneficiaries or other individuals.

(4) MLR review correspondence.

(5) Any information for a contract for those contract years for which the contract is determined to be non-credible, as defined in accordance with § 422.2440(d).

(c) *Data release.* CMS releases to the public Part C MLR data, for each contract for each contract year, no earlier than 18 months after the end of the applicable contract year.

[81 FR 80557, Nov. 15, 2016, as amended at 83 FR 16736, Apr. 16, 2018; 87 FR 27899, May 9, 2022]

### Subpart Y [Reserved]

### Subpart Z—Part C Recovery Audit Contractor Appeals Process

SOURCE: 79 FR 29961, May 23, 2014, unless otherwise noted.

#### § 422.2600 Payment appeals.

If the Part C RAC did not apply its stated payment methodology correctly, an MA organization may appeal the findings of the applied methodology. The payment methodology itself is not subject to appeal.

#### § 422.2605 Request for reconsideration.

(a) *Time for filing a request.* The request for reconsideration must be filed with the designated independent reviewer within 60 calendar days from the date of the demand letter received by the MA organization.

(b) *Content of request.* (1) The request for reconsideration must be in writing and specify the findings or issues with which the MA organization disagrees.

(2) The MA organization must include with its request all supporting documentary evidence it wishes the independent reviewer to consider.

(i) This material must be submitted in the format requested by CMS.

(ii) Documentation, evidence, or substantiation submitted after the filing of the reconsideration request will not be considered.

(c) *CMS rebuttal.* CMS may file a rebuttal to the MA organization's reconsideration request.

(1) The rebuttal must be submitted within 30 calendar days of the review entity's notification to CMS that it has received the MA organization's reconsideration request.

(2) CMS sends its rebuttal to the MA organization at the same time it is submitted to the independent reviewer.

(d) *Review entity.* An independent reviewer conducts the reconsideration. The independent reviewer reviews the demand for repayment, the evidence and findings upon which it was based and any supporting documentation that the MA organization or CMS submitted in accordance with this section.

(e) *Notification of decision.* The independent reviewer informs the CMS and the MA organization of its decision in writing.

(f) *Effect of decision.* A reconsideration decision is final and binding unless the MA organization requests a hearing official review in accordance with § 422.2610.

(g) *Right to hearing official review.* An MA organization that is dissatisfied with the independent reviewer's reconsideration decision is entitled to a hearing official review as provided in § 422.2610.

#### § 422.2610 Hearing official review.

(a) *Time for filing a request.* A MA organization must file with CMS a request for a hearing official review within 30 calendar days from the date of the independent reviewer's issuance of a reconsideration determination.

(b) *Content of the request.* (1) The request must be in writing and must specify the findings or issues in the reconsideration decision with which the MA organization disagrees and the reasons for the disagreements.

(2) The MA organization must submit with its request all supporting documentation, evidence, and substantiation that it wants to be considered.

(3) No new evidence may be submitted.

(4) Documentation, evidence, or substantiation submitted after the filing of the request will not be considered.

(c) *CMS rebuttal.* CMS may file a rebuttal to the MA organization's hearing official review request.

(1) The rebuttal must be submitted within 30 calendar days of the MA organization's submission of its hearing official review request.

(2) CMS sends its rebuttal to the MA organization at the same time it is submitted to the hearing official.

(d) *Conducting a review.* A CMS-designated hearing official conducts the hearing on the record.

(1) The hearing is not to be conducted live or via telephone unless the hearing official, in his or her sole discretion, requests a live or telephonic hearing.

(2) In all cases, the hearing official's review is limited to information that meets one or more of the following:

(i) The Part C RAC used in making its determinations.

(ii) The independent reviewer used in making its determinations.

(iii) The MA organization submits with its hearing request.

(iv) CMS submits in accordance with paragraph (c) of this section.

(3) Neither the MA organization nor CMS may submit new evidence.

(e) *Hearing official decision.* The CMS hearing official decides the case within 60 days and sends a written decision to the MA organization and CMS, explaining the basis for the decision.

(f) *Effect of hearing official decision.* The hearing official's decision is final and binding, unless the decision is reversed or modified by the CMS Administrator in accordance with § 422.2615.

#### **§ 422.2615 Review by the Administrator.**

(a) *Request for review by Administrator.* If an MA organization is dissatisfied with the hearing official's decision, it may request that the CMS Administrator review the decision.

(1) The request must be filed with the CMS Administrator within 30 calendar days of the date of the hearing official's decision.

(2) The request must provide evidence or reasons to substantiate the request.

(b) *Content of request.* The MA organization must submit with its request all supporting documentation, evidence, and substantiation that it wants to be considered.

(1) Documentation, evidence, or substantiation submitted after the filing of the request will not be considered.

(2) Neither the MA organization, nor CMS may submit new evidence.

(c) *Discretionary review.* After receiving a request for review, the CMS Administrator has the discretion to review the hearing official's decision in accordance with paragraph (e) of this section or to decline to review said decision.

(d) *Notification of decision whether to review.* The Administrator notifies the MA organization within 45 days of receiving the MA organization's hearing request of whether he or she intends to review the hearing official's decision.

(1) If the Administrator agrees to review the hearing official's decision, CMS may file a rebuttal statement within 30 days of the Administrator's notice to the plan that the request for review has been accepted. CMS sends its rebuttal statement to the plan at the same time it is submitted to the Administrator.

(2) If the CMS Administrator declines to review the hearing official's decision, the hearing official's decision is final and binding.

(e) *CMS Administrator's review.* If the CMS Administrator agrees to review the hearing official's decision, he or she determines, based upon this decision, the hearing record, and any arguments submitted by the MA organization or CMS in accordance with this section, whether the determination should be upheld, reversed, or modified. The Administrator furnishes a written decision, which is final and binding, to the MA organization and to CMS.

## **PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT**

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