

applicant) must fully complete all parts of a certified application, in the form and manner required by CMS, including the following:

(i) Documentation of appropriate State licensure or State certification that the entity is able to offer health insurance or health benefits coverage that meets State-specified standards applicable to MA plans, and is authorized by the State to accept prepaid capitation for providing, arranging, or paying for the comprehensive health care services to be offered under the MA contract.

(ii) For regional plans, documentation of application for State licensure in any State in the region that the organization is not already licensed.

(iii) For Specialized MA Plans for Special Needs Individuals, documentation that the entity meets the requirements of §§ 422.2; 422.4(a)(1)(iv); 422.101(f); 422.107, if applicable; and 422.152(g) of this part.

(iv) Documentation that payment for health care services or items is not being and will not be made to individuals and entities included on the preclusion list, defined in § 422.2.

(2) The authorized individual must thoroughly describe how the entity and MA plan meet, or will meet, all the requirements described in this part, including providing documentation that payment for health care services or items is not being and will not be made to individuals and entities included on the preclusion list, defined in § 422.2.

(d) *Responsibility for making determinations.* (1) CMS is responsible for determining whether an entity qualifies as an MA organization and whether proposed MA plans meet the requirements of this part.

(2) A CMS determination that an entity is qualified to act as an MA organization is distinct from the bid negotiation that occurs under subpart F of this part and such negotiation is not subject to the appeals provisions included in subpart N of this part.

(e) *Resubmittal of an application.* An application that has been denied by CMS for a particular contract year may not be resubmitted until the beginning of the application cycle for the following contract year.

(f) *Disclosure of application information under the Freedom of Information Act.* An applicant submitting material that he or she believes is protected from disclosure under 5 U.S.C. 552, the Freedom of Information Act, or because of exemptions provided in 45 CFR part 5 (the Department's regulations providing exceptions to disclosure), must label the material "privileged" and include an explanation of the applicability of an exception described in 45 CFR part 5. Any final decisions as to whether material is privileged is the final decision of the Secretary.

[70 FR 4736, Jan. 28, 2005, as amended at 75 FR 19809, Apr. 15, 2010; 77 FR 22167, Apr. 12, 2012; 81 FR 80557, Nov. 15, 2016; 83 FR 16733, Apr. 16, 2018]

#### **§ 422.502 Evaluation and determination procedures.**

(a) *Basis for evaluation and determination.* (1) With the exception of evaluations conducted under paragraph (b) of this section, CMS evaluates an application for an MA contract or for a Specialized MA Plan for Special Needs Individuals solely on the basis of information contained in the application itself and any additional information that CMS obtains through other means such as on-site visits.

(2) After evaluating all relevant information, CMS determines whether the applicant's application meets all the requirements described in this part.

(b) *Use of information from a current or prior contract.* (1) Except as provided in paragraphs (b)(2) through (4) of this section, if an MA organization fails during the 12 months preceding the deadline established by CMS for the submission of contract qualification applications to comply with the requirements of the Part C program under any current or prior contract with CMS under title XVIII of the Act, CMS may deny an application based on the applicant's failure to comply with the requirements of the Part C program under any current or prior contract with CMS even if the applicant currently meets all of the requirements of this part.

(i) An applicant may be considered to have failed to comply with a contract for purposes of an application denial

under paragraph (b)(1) of this section if during the applicable review period the applicant does any of the following:

(A) Was subject to the imposition of an intermediate sanction under subpart O of this part or a determination by CMS to prohibit the enrollment of new enrollees in accordance with § 422.2410(c), with the exception of a sanction imposed under § 422.752(d).

(B) Failed to maintain a fiscally sound operation consistent with the requirements of § 422.504(b)(14).

(C) Filed for or is currently in State bankruptcy proceedings.

(D) Received any combination of Part C or D summary ratings of 2.5 or less in both of the two most recent Star Rating periods, as identified in § 422.166.

(E) Met or exceeded 13 points for compliance actions for any one contract.

(1) CMS determines the number of points each MA organization accumulated during the performance period for compliance actions based on the following point values:

(i) Each corrective action plan issued during the performance period under § 422.504(m) counts for 6 points.

(ii) Each warning letter issued during the performance period under § 422.504(m) counts for 3 points.

(iii) Each notice of noncompliance issued during the performance period under § 422.504(m) counts for 1 point.

(2) CMS adds all the point values for each MA organization to determine if any organization meets CMS' identified threshold.

(A) Was subject to the imposition of an intermediate sanction under subpart O of this part, with the exception of a sanction imposed under § 422.752(d) or a determination by CMS to prohibit the enrollment of new enrollees pursuant to § 422.2410(c).

(B) Failed to maintain a fiscally sound operation consistent with the requirements of § 422.504(b)(14).

(ii) CMS may deny an application submitted by an organization that does not hold a Part C contract at the time of the submission when the applicant's parent organization or another subsidiary of the parent organization meets the criteria for denial stated in paragraph (b)(1)(i) of this section. This paragraph does not apply when the par-

ent organization completed the acquisition of the subsidiary that meets the criteria within the 24 months preceding the application submission deadline.

(2) In the absence of 12 months of performance history, CMS may deny an application based on a lack of information available to determine an applicant's capacity to comply with the requirements of the MA program.

(3) If CMS has terminated, under § 422.510, or non-renewed, under § 422.506(b), an MA organization's contract, effective within the 38 months preceding the deadline established by CMS for the submission of contract qualification applications, CMS may deny an application for a new contract or service area expansion based on the applicant's substantial failure to comply with the requirements of the Part C program even if the applicant currently meets all of the requirements of this part.

(4) During the same 38-month period as specified in (b)(3) of this section, CMS may deny an application where the applicant's covered persons also served as covered persons for the terminated or non-renewed contract. A "covered person" as used in this paragraph means one of the following:

(i) All owners of terminated organizations who are natural persons, other than shareholders who have an ownership interest of less than 5 percent.

(ii) An owner in whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the organization.

(iii) A member of the board of directors or board of trustees of the entity, if the organization is organized as a corporation.

(c) *Notice of determination.* Within timeframes determined by CMS, it notifies each applicant that applies for an MA contract or to be designated a Specialized MA Plan for Special Needs Individuals under this part of its determination and the basis for the determination. The determination is one of the following:

(1) *Approval of application.* If CMS approves the application, it gives written

notice to the applicant, indicating that it qualifies to contract as an MA organization.

(2) *Intent to deny.* (i) If CMS finds that the applicant does not appear to be able to meet the requirements for an MA organization or Specialized MA Plan for Special Needs Individuals, CMS gives the applicant notice of intent to deny the application for an MA contract or for a Specialized MA Plan for Special Needs Individuals a summary of the basis for this preliminary finding.

(ii) Within 10 days from the intent to deny, the applicant must respond in writing to the issues or other matters that were the basis for CMS' preliminary finding and must revise its application to remedy any defects CMS identified.

(iii) If CMS does not receive a revised application within 10 days from the date of the notice, or if after timely submission of a revised application, CMS still finds that the applicant does not appear qualified or has not provided CMS enough information to allow CMS to evaluate the application, CMS will deny the application.

(3) *Denial of application.* If CMS denies the application, it gives written notice to the contract applicant indicating—

(i) That the applicant is not qualified to contract as an MA organization under Part C of title XVIII of the Act and/or is not qualified to offer a Specialized MA Plan for Special Needs Individuals;

(ii) The reasons why the applicant is not qualified; and

(iii) The applicant's right to request a hearing in accordance with the procedures specified in subpart N of this part.

[70 FR 4736, Jan. 28, 2005, as amended at 75 FR 19809, Apr. 15, 2010; 76 FR 21568, Apr. 15, 2011; 77 FR 22167, Apr. 12, 2012; 80 FR 7960, Feb. 12, 2015; 83 FR 16733, Apr. 16, 2018; 86 FR 6099, Jan. 19, 2021; 87 FR 27896, May 9, 2022]

#### § 422.503 General provisions.

(a) *Basic rule.* In order to qualify as an MA organization, enroll beneficiaries in any MA plans it offers, and be paid on behalf of Medicare beneficiaries enrolled in those plans, an MA

organization must enter into a contract with CMS.

(b) *Conditions necessary to contract as an MA organization.* Any entity seeking to contract as an MA organization must:

(1) Complete an application as described in § 422.501.

(2) Be licensed by the State as a risk bearing entity in each State in which it seeks to offer an MA plan as defined in § 422.2.

(3) Meet the minimum enrollment requirements of § 422.514, unless waived under § 422.514(b).

(4) Have administrative and management arrangements satisfactory to CMS, as demonstrated by at least the following:

(i) A policy making body that exercises oversight and control over the MA organization's policies and personnel to ensure that management actions are in the best interest of the organization and its enrollees.

(ii) Personnel and systems sufficient for the MA organization to organize, implement, control, and evaluate financial and communication activities, the furnishing of services, the quality improvement program, and the administrative and management aspects of the organization.

(iii) At a minimum, an executive manager whose appointment and removal are under the control of the policy making body.

(iv) A fidelity bond or bonds, procured and maintained by the MA organization, in an amount fixed by its policymaking body but not less than \$100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the MA organization.

(v) Insurance policies or other arrangements, secured and maintained by the MA organization and approved by CMS to insure the MA organization against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks.

(vi) Adopt and implement an effective compliance program, which must include measures that prevent, detect, and correct non-compliance with CMS'