

services within the beneficiaries' region.

(B) Place outbound calls to all affected enrollees to ensure beneficiaries know who to contact to learn about their enrollment options.

(3) If an MA organization does not renew a contract under paragraph (a) of this section, CMS may deny an application for a new contract or a service area expansion from the MA organization for 2 years unless there are circumstances that warrant special consideration, as determined by CMS. This prohibition may apply regardless of the product type, contract type or service area of the previous contract.

(4) During the same 2-year period as specified in paragraph (a)(3) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the non-renewing sponsor. A "covered person" as used in this paragraph means one of the following:

(i) All owners of nonrenewed or 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.

(b) [Reserved]

[63 FR 35099, June 26, 1998, as amended at 65 FR 40328, June 29, 2000; 67 FR 13289, Mar. 22, 2002; 70 FR 4737, Jan. 28, 2005; 72 FR 68723, Dec. 5, 2007; 74 FR 1542, Jan. 12, 2009; 75 FR 19811, Apr. 15, 2010; 76 FR 21568, Apr. 15, 2011; 80 FR 7961, Feb. 12, 2015; 83 FR 16734, Apr. 16, 2018]

**§ 422.508 Modification or termination of contract by mutual consent.**

(a) A contract may be modified or terminated at any time by written mutual consent.

(1) If the contract is terminated by mutual consent, except as provided in paragraph (b) of this section, the MA

organization must provide notice to its Medicare enrollees and the general public as provided in § 422.512(b)(2) and (b)(3).

(2) If the contract is modified by mutual consent, the MA organization must notify its Medicare enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(3) If the organization submits a request to end the term of its contract after the deadline provided in § 422.506(a)(2)(i), the contract may be terminated by mutual consent in accordance with paragraphs (a) through (d) of this section. CMS may mutually consent to the contract termination if the contract termination does not negatively affect the administration of the Medicare program.

(b) If the contract terminated by mutual consent is replaced the day following such termination by a new MA contract, the MA organization is not required to provide the notice specified in paragraph (a)(1) of this section.

(c) *Agreement to limit new MA applications.* As a condition of the consent to a mutual termination CMS will require, as a provision of the termination agreement language prohibiting the MA organization from applying for new contracts or service area expansions for a period of 2 years, absent circumstances warranting special consideration. This prohibition may apply regardless of the product type, contract type or service area of the previous contract.

(d) *Prohibition against Part C program participation by organizations whose owners, directors, or management employees served in a similar capacity with another organization that mutually terminated its Medicare contract within the previous 2 years.* During the same 2-year period, CMS will not contract with an organization whose covered persons also served as covered persons for the mutually terminating sponsor. A "covered person" as used in this paragraph means one of the following:

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

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(2) 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.

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

[63 FR 35099, June 26, 1998, as amended at 75 FR 19811, Apr. 15, 2010; 76 FR 21569, Apr. 15, 2011; 80 FR 7961, Feb. 12, 2015; 83 FR 16734, Apr. 16, 2018]

### § 422.510 Termination of contract by CMS.

(a) *Termination by CMS.* CMS may at any time terminate a contract if CMS determines that the MA organization meets any of the following:

(1) Has failed substantially to carry out the contract.

(2) Is carrying out the contract in a manner that is inconsistent with the efficient and effective administration of this part.

(3) No longer substantially meets the applicable conditions of this part.

(4) CMS may make a determination under paragraph (a)(1), (2), or (3) of this section if the MA organization has had one or more of the following occur:

(i) Based on creditable evidence, has committed or participated in false, fraudulent or abusive activities affecting the Medicare, Medicaid or other State or Federal health care programs, including submission of false or fraudulent data.

(ii) Substantially failed to comply with the requirements in subpart M of this part relating to grievances and appeals.

(iii) Failed to provide CMS with valid data as required under § 422.310.

(iv) Failed to implement an acceptable quality assessment and performance improvement program as required under subpart D of this part.

(v) Substantially failed to comply with the prompt payment requirements in § 422.520.

(vi) Substantially failed to comply with the service access requirements in § 422.112 or § 422.114.

(vii) Failed to comply with the requirements of § 422.208 regarding physician incentive plans.

(viii) Substantially fails to comply with the requirements in subpart V of this part.

(ix) Failed to comply with the regulatory requirements contained in this part or part 423 of this chapter or both.

(x) Failed to meet CMS performance requirements in carrying out the regulatory requirements contained in this part or part 423 of this chapter or both.

(xi) Achieves a Part C summary plan rating of less than 3 stars for 3 consecutive contract years. Plan ratings issued by CMS before September 1, 2012 are not included in the calculation of the 3-year period.

(xii) Has failed to report MLR data in a timely and accurate manner in accordance with § 422.2460 or that any MLR data required by this subpart is found to be materially incorrect or fraudulent.

(xiii) Fails to meet the preclusion list requirements in accordance with § 422.222 and 422.224.

(xiv) The MA organization has committed any of the acts in § 422.752(a) that support the imposition of intermediate sanctions or civil money penalties under subpart O of this part.

(xv) Following the issuance of a notice to the MA organization no later than August 1, CMS must terminate, effective December 31 of the same year, an individual MA plan if that plan does not have a sufficient number of enrollees to establish that it is a viable independent plan option.

(xvi) Meets the criteria in § 422.514(d)(1) or (2).

(b) *Notice.* If CMS decides to terminate a contract it gives notice of the termination as follows:

(1) *Termination of contract by CMS.*

(i) CMS notifies the MA organization in writing at least 45 calendar days before the intended date of the termination.

(ii) The MA organization notifies its Medicare enrollees of the termination by mail at least 30 calendar days before the effective date of the termination.

(iii) The MA organization notifies the general public of the termination at