

§ 422.550

in an MA regional plan contract, non-renews and creates state-specific local preferred provider organization plans in its place to accommodate state contracting efforts in the service area, enrollees who are no longer in the service area may be moved into one or more new or renewing D-SNPs, offered under the same parent organization (even if the D-SNPs are offered by two different MA organizations), and for which the enrollees are eligible, as CMS determines is necessary to accommodate changes to the contracts between the state and D-SNP under § 422.107. For this crosswalk exception, CMS will permit enrollees to be moved between different contracts.

(4) When—

(i) A renewing D-SNP has another new or renewing D-SNP, and the two D-SNPs are offered to different populations, enrollees who are no longer eligible for their current D-SNP may be moved into the other new or renewing D-SNP offered by the same MA organization if they meet the eligibility criteria for the new or renewing D-SNP and CMS determines it is in the best interest of the enrollees to move to the new or renewing D-SNP in order to promote access to and continuity of care for enrollees relative to the absence of a crosswalk exception. For the crosswalk exception in this paragraph (c)(4)(i), CMS does not permit enrollees to be moved between different contracts; or

(ii) An MA organization creates a new MA contract when required by a State as described in § 422.107(e), eligible enrollees may be moved from the existing D-SNP that is non-renewing, reducing its service area, or has its eligible population newly restricted by a State, to a D-SNP offered under the D-SNP-only contract, which must be of the same plan type operated by the same parent organization. For the crosswalk exception in this paragraph (c)(4)(ii), CMS permits enrollees to be moved between different contracts.

(5) Renewing C-SNP with a grouping of multiple conditions that is transitioning eligible enrollees into another C-SNP with one of the chronic conditions from that grouping.

(d) *Procedures.* (1) An MA organization must submit all crosswalks in

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paragraph (b) of this section in writing through the bid submission process in HPMS by the bid submission deadline announced by CMS.

(2) An MA organization must submit all crosswalk exception requests in paragraph (c)(1) of this section in writing through the crosswalk exceptions process in HPMS by the crosswalk exception request deadline announced by CMS annually. CMS verifies the requests and notifies requesting MA organizations of the approval or denial after the crosswalk exception request deadline.

[86 FR 6099, Jan. 19, 2021, as amended at 87 FR 27896, May 9, 2022]

Subpart L—Effect of Change of Ownership or Leasing of Facilities During Term of Contract

SOURCE: 63 FR 35067, June 26, 1998, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart L of part 422 appear at 63 FR 35106, June 26, 1998.

§ 422.550 General provisions.

(a) *What constitutes change of ownership—*(1) *Partnership.* The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable State law, constitutes a change of ownership.

(2) *Asset transfer.* Transfer of title and property to another party constitutes change of ownership.

(3) *Corporation.* (i) The merger of the MA organization's corporation into another corporation or the consolidation of the MA organization with one or more other corporations, resulting in a new corporate body, constitutes a change of ownership.

(ii) Transfer of corporate stock or the merger of another corporation into the MA organization's corporation, with the MA organization surviving, does not ordinarily constitute change of ownership.

(b) *Advance notice requirement.* (1) An MA organization that has a Medicare contract in effect and is considering or negotiating a change in ownership must notify CMS at least 60 days before the anticipated effective date of

the change. The MA organization must also provide updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization.

(2) If the MA organization fails to give CMS the required notice timely, it continues to be liable for capitation payments that CMS makes to it on behalf of Medicare enrollees after the date of change of ownership.

(c) *Novation agreement defined.* A novation agreement is an agreement among the current owner of the MA organization, the prospective new owner, and CMS—

(1) That is embodied in a document executed and signed by all three parties;

(2) That meets the requirements of § 422.552; and

(3) Under which CMS recognizes the new owner as the successor in interest to the current owner's Medicare contract.

(d) *Effect of change of ownership without novation agreement.* Except to the extent provided in paragraph (b)(2) of this section, the effect of a change of ownership without a novation agreement is that—

(1) The existing contract becomes invalid; and

(2) If the new owner wishes to participate in the Medicare program, it must apply for, and enter into, a contract in accordance with subpart K of this part.

(e) *Effect of change of ownership with novation agreement.* If the MA organization submits a novation agreement that meets the requirements of § 422.552, and CMS signs it, the new owner becomes the successor in interest to the current owner's Medicare contract.

(f) *Sale of beneficiaries not permitted.* (1) CMS only recognizes the sale or transfer of an organization's entire MA line of business, consisting of all MA contracts held by the MA organization with the exception of the sale or transfer of a full contract between wholly owned subsidiaries of the same parent organization, which is permitted.

(2) CMS does not recognize or allow a sale or transfer that consists solely of the sale or transfer of individual bene-

ficiaries or groups of beneficiaries enrolled in a plan benefit package.

[60 FR 45681, Sept. 1, 1995. Redesignated and amended at 63 FR 35067, 35106, June 26, 1998; 63 FR 52614, Oct. 1, 1998; 65 FR 40328, June 29, 2000; 70 FR 4738, Jan. 28, 2005; 86 FR 6101, Jan. 19, 2021]

§ 422.552 Novation agreement requirements.

(a) *Conditions for CMS approval of a novation agreement.* CMS approves a novation agreement if the following conditions are met:

(1) *Advance notification.* The MA organization notifies CMS at least 60 days before the date of the proposed change of ownership. The MA organization also provides CMS with updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization.

(2) *Advance submittal of agreement.* The MA organization submits to CMS, at least 30 days before the proposed change of ownership date, three signed copies of the novation agreement containing the provisions specified in paragraph (b) of this section, and one copy of other relevant documents required by CMS.

(3) *CMS's determination.* CMS determines that—

(i) The proposed new owner is in fact a successor in interest to the contract;

(ii) Recognition of the new owner as a successor in interest to the contract is in the best interest of the Medicare program; and

(iii) The successor organization meets the requirements to qualify as an MA organization under subpart K of this part.

(b) *Provisions of a novation agreement—*(1) *Assumption of contract obligations.* The new owner must assume all obligations under the contract.

(2) *Waiver of right to reimbursement.* The previous owner must waive its rights to reimbursement for covered services furnished during the rest of the current contract period.

(3) *Guarantee of performance.* (i) The previous owner must guarantee performance of the contract by the new owner during the contract period; or