

## § 422.758

## 42 CFR Ch. IV (10–1–23 Edition)

described in 422.752, CMS notifies the OIG of this determination. OIG may impose a civil money penalty upon an MA organization as specified at 422.752(c)(2).

(2) *CMS notice of civil money penalties to MA organizations.* If CMS makes a determination to impose a CMP as described in 422.752(c)(1), CMS will send a written notice of the Agency's decision to impose a civil money penalty to include—

- (i) A description of the basis for the determination.
- (ii) The basis for the penalty.
- (iii) The amount of the penalty.
- (iv) The date the penalty is due.
- (v) The MA organization's right to a hearing under subpart T of this part.
- (vi) Information about where to file the request for hearing.

[63 FR 35113, June 26, 1998, as amended at 68 FR 50859, Aug. 22, 2003; 70 FR 4741, Jan. 28, 2005; 72 FR 68725, Dec. 5, 2007; 73 FR 55764, Sept. 26, 2008; 75 FR 19814, Apr. 15, 2010; 79 FR 29959, May 23, 2014]

### § 422.758 Collection of civil money penalties imposed by CMS.

(a) When an MA organization does not request a hearing, CMS initiates collection of the civil money penalty following the expiration of the time-frame for requesting an ALJ hearing as specified in subpart T of this part.

(b) If an MA organization requests a hearing and CMS' decision to impose a civil money penalty is upheld, CMS may initiate collection of the civil money penalty once the administrative decision is final.

[72 FR 68726, Dec. 5, 2007]

### § 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

(a) *Determining the appropriate amount of any penalty.* In determining the amount of penalty imposed under 422.752(c)(1), CMS will consider as appropriate:

- (1) The nature of the conduct;
- (2) The degree of culpability of the MA organization;
- (3) The adverse effect to enrollees which resulted or could have resulted from the conduct of MA organization;
- (4) The financial condition of the MA organization;

(5) The history of prior offenses by the MA organization or principals of the MA organization; and,

(6) Such other matters as justice may require.

(b) *Amount of penalty imposed by CMS.* CMS may impose civil money penalties in the following amounts:

(1) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees—up to \$25,000 as adjusted annually under 45 CFR part 102 for each determination.

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees, CMS may calculate a CMP of up to \$25,000 as adjusted annually under 45 CFR part 102 for each MA enrollee directly adversely affected (or with the substantial likelihood of being adversely affected) by a deficiency.

(3) CMS calculates the minimum penalty amounts under paragraphs (b)(1) and (2) of this section using the following criteria:

(i) *Definitions for calculating penalty amounts—(A) Per determination.* The penalty amounts calculated under paragraph (b)(1) of this section.

(B) *Per enrollee.* The penalty amounts calculated under paragraph (b)(2) of this section.

(C) *Standard minimum penalty.* The per enrollee or per determination penalty amount that is dependent on the type of adverse impact that occurred.

(D) *Aggravating factor(s).* Specific penalty amounts that may increase the per enrollee or per determination standard minimum penalty and are determined based on criteria under paragraph (a) of this section.

(E) *Cost-of-living multiplier.* The percent change between each year's published October consumer price index for all urban consumers (United States city average), which is released by The Office of Management and Budget (OMB) annually.

(ii) *Calculation of minimum penalty amounts.* (A) Per determination and per enrollee minimum penalty amounts are increased by multiplying the current standard minimum penalty and

aggravating factor amounts by the cost-of-living multiplier.

(B) The minimum penalty and aggravating factor amounts is updated no more often than every 3 years.

(C) CMS tracks the calculation and accrual of the standard minimum penalty and aggravating factor amounts and announces them on an annual basis.

(4) For each week that a deficiency remains uncorrected after the week in which the MA organization receives CMS' notice of the determination—up to \$10,000 as adjusted annually under 45 CFR part 102.

(5) If CMS makes a determination that a MA organization has terminated its contract other than in a manner described under 422.512 and that the MA organization has therefore failed to substantially carry out the terms of the contract—\$250 as adjusted annually under 45 CFR part 102 per Medicare enrollee from the terminated MA plan or plans at the time the MA organization terminated its contract, or \$100,000 as adjusted annually under 45 CFR part 102, whichever is greater.

(c) *Amount of penalty imposed by CMS or OIG.* CMS or the OIG may impose civil money penalties in the following amounts for a determination made under § 422.752(a):

(1) Civil money penalties of not more than \$25,000 as adjusted annually under 45 CFR part 102 for each determination made.

(2) With respect to a determination made under § 422.752(a)(4) or (a)(5)(i), not more than \$100,000 as adjusted annually under 45 CFR part 102 for each such determination, except with respect to a determination made under § 422.752(a)(5), an assessment of not more than the amount claimed by such plan or MA organization based upon the misrepresentation or falsified information involved.

(3) Plus with respect to a determination made under § 422.752(a)(2), double the excess amount charged in violation of such paragraph (and the excess amount charged must be deducted from the penalty and returned to the individual concerned).

(4) Plus with respect to a determination made under § 422.752(a)(4), \$15,000 as adjusted annually under 45 CFR part

102 for each individual not enrolled as a result of the practice involved.

[72 FR 68726, Dec. 5, 2007, as amended at 74 FR 1542, Jan. 12, 2009; 79 FR 29960, May 23, 2014; 81 FR 61562, Sept. 8, 2016; 86 FR 6103, Jan. 19, 2021; 86 FR 29528, June 2, 2021]

#### § 422.762 Settlement of penalties.

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

[72 FR 68726, Dec. 5, 2007]

#### § 422.764 Other applicable provisions.

The provisions of section 1128A of the Act (except subsections (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

[63 FR 35115, June 26, 1998. Redesignated at 72 FR 68726, Dec. 5, 2007]

### Subparts P–S [Reserved]

## Subpart T—Appeal procedures for Civil Money Penalties

SOURCE: 72 FR 68726, Dec. 5, 2007, unless otherwise noted.

#### § 422.1000 Basis and scope.

(a) *Statutory basis.* (1) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected party has had notice and opportunity for a hearing.

(2) Section 1857(g) of the Act provides that, for MA organizations out of compliance with the requirements in part 422 specified remedies may be imposed instead of, or in addition to, termination of the MA organization's contract. Section 1857(g)(4) of the Act makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on MA organizations.

(b) [Reserved]

#### § 422.1002 Definitions.

As used in this subpart—