

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—