

value that exceeds \$25,000 or 5 percent of the PDP sponsor's total operating expenses, whichever is less.

[70 FR 4525, Jan. 28, 2005, as amended at 77 FR 22170, Apr. 12, 2012; 80 FR 29963, Nov. 6, 2015]

§ 423.502 Application requirements.

(a) *Scope.* This section sets forth application requirements for an entity that seeks a determination from CMS that it is qualified to contract as a sponsor of a Part D plan.

(b) *Completion of a notice of intent to apply.* (1) An organization submitting an application under this section for a particular contract year must first submit a completed Notice of Intent to Apply by the date established by CMS. CMS will not accept applications from organizations that do not submit a timely Notice of Intent to Apply.

(2) Submitting a Notice of Intent to Apply does not bind that organization to submit an application for the applicable contract year.

(3) An organization's decision not to submit an application after submitting an Notice of Intent to Apply will not form the basis of any action taken against the organization by CMS.

(c) *Completion of an application.* (1) In order to obtain a determination on whether it meets the requirements to become a Part D plan sponsor, an entity, or an individual authorized to act for the entity (the 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 as specified in subpart I of this part; or

(ii) A Federal waiver as specified in subpart I of this part.

(2) The authorized individual must describe thoroughly how the entity is qualified to meet the all requirements described in this part.

(d) *Responsibility for making determinations.* (1) CMS is responsible for determining whether an entity is qualified to contract as a Part D plan sponsor and meets the requirements of this part.

(2) A CMS determination that an entity is qualified to act as a Part D plan sponsor is distinct from the bid negotiations that occur under subpart F of part 423 and such negotiations are not subject to the appeals provisions included in subpart N of this part.

(e) *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 USC 552, the Freedom of Information Act, or because of exemptions provided in 45 CFR part 5 (the Department's regulations providing exemptions to disclosure), must label the material "privileged" and include an explanation of the applicability of an exemption specified in 45 CFR part 5.

[70 FR 4525, Jan. 28, 2005, as amended at 75 FR 19819, Apr. 15, 2010]

§ 423.503 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 entity's application solely on the basis of information contained in the application itself and any additional information that CMS obtains through on-site visits and any essential operations test.

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

(3) CMS does not approve an application when it would result in the applicant's parent organization, directly or through its subsidiaries, holding more than one PDP sponsor contract in the PDP Region for which the applicant is seeking qualification as a PDP sponsor.

(b) *Use of information from a current or prior contract.* (1) Except as provided in paragraphs (b)(2) through (4) of this section, if a Part D plan sponsor 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 D 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