

§ 423.508

(b) [Reserved]

[70 FR 4525, Jan. 28, 2005, as amended at 72 FR 68733, Dec. 5, 2007; 74 FR 1546, Jan. 12, 2009; 75 FR 19821, Apr. 15, 2010; 76 FR 21575, Apr. 15, 2011; 83 FR 16750, Apr. 16, 2018]

§ 423.508 Modification or termination of contract by mutual consent.

(a) *General rule.* A contract may be modified or terminated at any time by written mutual consent. If the PDP sponsor submits a request to end the term of its contract after the deadline provided in § 423.507(a)(2)(i), the contract may be terminated by mutual consent in accordance with paragraphs (b) through (f) of this section. CMS may mutually consent to the contract termination if the contract termination does not negatively affect the administration of the Medicare Part D program.

(b) *Notification of termination.* If the contract is terminated by mutual consent, the Part D plan sponsor must provide notice to its Medicare enrollees and the general public as provided in paragraph (c) of this section.

(c) *Notification of modification.* If the contract is modified by mutual consent, the Part D plan sponsor must notify its Medicare enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(d) *Timely transfer of data and files.* If a contract is terminated under paragraph (a) of this section, the Part D plan sponsor must ensure the timely transfer of any data or files.

(e) *Agreement to limit new Part D applications.* As a condition of the consent to a mutual termination, CMS will require, as a provision of the termination agreement language prohibiting the Part D plan sponsor from applying for new contracts or service area expansions for a period up to 2 years, absent circumstances warranting special consideration.

(f) *Prohibition against Part D 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 2-year period specified in paragraph (e) of this section, CMS will not contract with an

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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 nonrenewed or terminated organizations who are natural persons, other than shareholders who have an ownership interest of less than 5 percent.

(2) An owner of a whole or part interest in a 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 or board of trustees of the entity, if the organization is organized as a corporation.

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§ 423.509 Termination of contract by CMS.

(a) *Termination by CMS.* CMS may at any time terminate a contract if CMS determines that the Part D plan sponsor 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 Part D Plan sponsor has had one or more of the following occur:

(i) Based on credible 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 risk adjustment, reinsurance and risk corridor related data as required under