

## § 423.642

the extent a fallback prescription drug plan contract is terminated by CMS.

### § 423.642 Notice of contract determination.

(a) When CMS makes a contract determination under § 423.641, it gives the PDP sponsor written notice.

(b) The notice specifies the—

(1) Reasons for the determination; and

(2) The Part D sponsor's right to request a hearing.

(c) *CMS-initiated terminations*—(1) *General rule.* Except as provided in (c)(2) of this section, CMS mails notice to the Part D plan sponsor 45 calendar days before the anticipated effective date of the termination.

(2) *Exception.* If a contract is terminated in accordance with § 423.509(b)(2)(i) of this part, CMS notifies the Part D plan sponsor of the date that it will terminate the Part D plan sponsor's contract.

(d) When CMS determines that it will not authorize a contract renewal, CMS mails the notice to the Part D sponsor by August 1 of the current contract year.

[70 FR 4525, Jan. 28, 2005, as amended at 72 FR 68733, Dec. 5, 2007; 75 FR 19823, Apr. 15, 2010; 79 FR 29965, May 23, 2014]

### § 423.643 Effect of contract determination.

The contract determination is final and binding unless a timely request for a hearing is filed under 423.651.

[72 FR 68733, Dec. 5, 2007]

### § 423.650 Right to a hearing, burden of proof, standard of proof, and standards of review.

(a) *Right to a hearing.* The following parties are entitled to a hearing:

(1) A contract applicant that has been determined to be unqualified to enter into a contract with CMS under Part D of Title XVIII of the Act in accordance with § 423.502 and § 423.503 of this part.

(2) A Part D sponsor whose contract has been terminated in accordance with § 423.509 of this part.

(3) A Part D sponsor whose contract has not been renewed in accordance with § 423.507 of this part.

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(4) A Part D sponsor who has had an intermediate sanction imposed in accordance with § 423.752(a) through (b).

(b) *Burden of proof, standard of proof, and standard of review at hearing.* (1) During a hearing to review a contract determination as described at § 423.641(a) of this subpart, the applicant has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 423.502 and § 423.503 of this part.

(2) During a hearing to review a contract determination as described at § 423.641(b) of this part, the Part D plan sponsor has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 423.507 of this part.

(3) During a hearing to review a contract determination as described at § 423.641(c) of this subpart, the Part D plan sponsor has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 423.509 of this part.

(4) During a hearing to review the imposition of an intermediate sanction as described at § 423.750 of this part, the Part D sponsor has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 423.752 of this part.

(c) *Timing of favorable decision.* Notice of any decision favorable to the Part D sponsor appealing a determination that it is not qualified to enter into a contract with CMS must be issued by September 1 for the contract in question to be effective on January 1 of the following year.

[75 FR 19824, Apr. 15, 2010, as amended at 80 FR 7965, Feb. 12, 2015]

### § 423.651 Request for hearing.

(a) *Method and place for filing a request.* (1) A request for a hearing must be made in writing and filed by an authorized official of the contract applicant or Part D plan sponsor that was the party to the determination under the appeal.

(2) The request for the hearing must be filed in accordance with the requirements specified in the notice.