

§ 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)(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.

(ii) CMS sets minimum penalty amounts in accordance with paragraphs (b)(1) and (2) of this section.

(iii) CMS announces the standard minimum penalty amounts and aggravating factor amounts for per determination and per enrollee penalties on an annual basis.

(iv) CMS has the discretion to issue penalties up to the maximum amount under paragraphs (b)(1) and (2) of this section when CMS determines that an organization's non-compliance warrants a penalty that is higher than would be applied under the minimum penalty amounts set by CMS.

(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