

(D) County level average per member per month CMS payment amount for each plan type in that county, weighted by enrollment and standardized to the 1.0 (average risk score) beneficiary in that county.

(ii) For Part D plan sponsors, plan payment data in accordance with § 423.505(o) of this subchapter.

(2) *MA bid pricing data and Part C MLR data.* The contract must provide that the MA organization acknowledges that CMS releases to the public data as described at §§ 422.272 and 422.2490.

(o) *Business continuity.* (1) The MA organization agrees to develop, maintain, and implement a business continuity plan containing policies and procedures to ensure the restoration of business operations following disruptions to business operations which would include natural or man-made disasters, system failures, emergencies, and other similar circumstances and the threat of such occurrences. To meet the requirement, the business continuity plan must, at a minimum, include the following:

(i) *Risk assessment.* Identify threats and vulnerabilities that might affect business operations.

(ii) *Mitigation strategy.* Design strategies to mitigate hazards. Identify essential functions in addition to those specified in paragraph (o)(2) of this section and prioritize the order in which to restore all other functions to normal operations. At a minimum, each MA organization must do the following:

(A) Identify specific events that will activate the business continuity plan.

(B) Develop a contingency plan to maintain, during any business disruption, the availability and, as applicable, confidentiality of communication systems and essential records in all forms (including electronic and paper copies). The contingency plan must do the following:

(1) Ensure that during any business disruption the following systems will operate continuously or, should they fail, be restored to operational capacity on a timely basis:

(i) Information technology (IT) systems including those supporting claims processing at point of service.

(ii) Provider and enrollee communication systems including telephone, Web site, and email.

(2) With respect to electronic protected health information, comply with the contingency plan requirements of the Health Insurance Portability and Accountability Act of 1996 Security Regulations at 45 CFR parts 160 and 164, subparts A and C.

(C) Establish a chain of command.

(D) Establish a business communication plan that includes emergency capabilities and procedures to contact and communicate with the following:

(1) Employees.

(2) First tier, downstream, and related entities.

(3) Other third parties (including pharmacies, providers, suppliers, and government and emergency management officials).

(E) Establish employee and facility management plans to ensure that essential operations and job responsibilities can be assumed by other employees or moved to alternate sites as necessary.

(F) Establish a restoration plan including procedures to transition to normal operations.

(G) Comply with all applicable Federal, State, and local laws.

(iii) *Testing and revision.* On at least an annual basis, test and update the business operations continuity plan to ensure the following:

(A) That it can be implemented in emergency situations.

(B) That employees understand how it is to be executed.

(iv) *Training.* On at least an annual basis, educate appropriate employees about the business continuity plan and their own respective roles.

(v) *Records.* (A) Develop and maintain records documenting the elements of the business continuity plan described in paragraphs (o)(1)(i) through (iv) of this section.

(B) Make the information specified in paragraph (o)(1)(v)(A) of this section available to CMS upon request.

(2) *Restoration of essential functions.* Every MA organization must plan to restore essential functions within 72 hours after any of the essential functions fail or otherwise stop functioning as usual. In addition to any essential

functions that the MA organization identifies under paragraph (o)(1)(ii) of this section, for purposes of this paragraph (o)(2) of the section essential functions include, at a minimum, the following:

(i) Benefit authorization (if not waived) for services to be immediately furnished at a hospital, clinic, provider office, or other place of service.

(ii) Operation of call center customer services.

[63 FR 35099, June 26, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 422.504, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 422.505 Effective date and term of contract.

(a) *Effective date.* The contract is effective on the date specified in the contract between the MA organization and CMS and, for a contract that provides for coverage under an MSA plan, not earlier than January 1999.

(b) *Term of contract.* Each contract is for a period of at least 12 months.

(c) *Renewal of contract.* In accordance with 422.506, contracts are renewed annually only if the MA organization has not provided CMS with a notice of intention not to renew and CMS has not provided the MA organization with a notice of intention not to renew.

(d) *Renewal of contract contingent on reaching agreement on the bid.* Although an MA organization may be determined qualified to renew its contract under this section, if the organization and CMS cannot reach agreement on the bid under subpart F of this part, no renewal will take place, and the failure to reach an agreement is not subject to the appeals provisions in subpart N of this part.

[63 FR 35099, June 26, 1998, as amended at 65 FR 40328, June 29, 2000. Redesignated at 70 FR 4736, Jan. 28, 2005, as amended at 70 FR 4737, Jan. 28, 2005; 72 FR 68723, Dec. 5, 2007]

§ 422.506 Nonrenewal of contract.

(a) *Nonrenewal by an MA organization.*

(1) An MA organization may elect not to renew its contract with CMS as of the end of the term of the contract for any reason provided it meets the time-

frames for doing so set forth in paragraphs (a)(2) and (a)(3) of this section.

(2) If an MA organization does not intend to renew its contract, it must notify—

(i) CMS in writing, by the first Monday in June of the year in which the contract would end;

(ii) Each Medicare enrollee by mail at least 90 calendar days before the date on which the nonrenewal is effective. The MA organization must also provide information about alternative enrollment options by doing one or more of the following:

(A) Provide a CMS approved written description of alternative MA plan, MA-PD plan, and PDP options available for obtaining qualified Medicare services within the beneficiaries' region.

(B) Place outbound calls to all affected enrollees to ensure beneficiaries know who to contact to learn about their enrollment options.

(3) If an MA organization does not renew a contract under paragraph (a) of this section, CMS may deny an application for a new contract or a service area expansion from the MA organization for 2 years unless there are circumstances that warrant special consideration, as determined by CMS. This prohibition may apply regardless of the product type, contract type or service area of the previous contract.

(4) During the same 2-year period as specified in paragraph (a)(3) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the non-renewing sponsor. A "covered person" as used in this paragraph means one of the following:

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

(ii) An owner in whole or part interest in any 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.

(iii) A member of the board of directors or board of trustees of the entity,