

(c) *Novation agreement defined.* A novation agreement is an agreement among the current owner of the MA organization, the prospective new owner, and CMS—

(1) That is embodied in a document executed and signed by all three parties;

(2) That meets the requirements of § 422.552; and

(3) Under which CMS recognizes the new owner as the successor in interest to the current owner's Medicare contract.

(d) *Effect of change of ownership without novation agreement.* Except to the extent provided in paragraph (b)(2) of this section, the effect of a change of ownership without a novation agreement is that—

(1) The current MA organization, with respect to the affected contract, has substantially failed to comply with the regulatory requirements as described in § 422.510(a)(4)(ix) and the contract may be subject to intermediate enrollment and marketing sanctions as outlined in § 422.750(a)(1) and (a)(3). Intermediate sanctions imposed as part of this section remain in place until CMS approves the change of ownership (including execution of an approved novation agreement), or the contract is terminated.

(i)(A) If the new owner does not participate in the Medicare program in the same service area as the affected contract, it must apply for, and enter into, a contract in accordance with subpart K of this part and part 423 if applicable; and

(B) If the application is conditionally approved, must submit, within 30 days of the conditional approval, the documentation required under § 422.550(c) for review and approval by CMS; or

(ii) If the new owner currently participates in the Medicare program and operates in the same service area as the affected contract, it must, within 30 days of imposition of intermediate sanctions as outlined in paragraph (d)(1) of this section, submit the documentation required under § 422.550(c) for review and approval by CMS.

(2) If the new owner fails to begin the processes required under paragraph (d)(1)(i) or (d)(1)(ii) of this section within 30 days of imposition of inter-

mediate sanctions as outlined in paragraph (d)(1) of this section, the existing contract is subject to termination in accordance with § 422.510(a)(4)(ix).

(e) *Effect of change of ownership with novation agreement.* If the MA organization submits a novation agreement that meets the requirements of § 422.552, and CMS signs it, the new owner becomes the successor in interest to the current owner's Medicare contract.

(f) *Sale of beneficiaries not permitted.*

(1) CMS only recognizes the sale or transfer of an organization's entire MA line of business, consisting of all MA contracts held by the MA organization with the exception of the sale or transfer of a full contract between wholly owned subsidiaries of the same parent organization, which is permitted.

(2) CMS does not recognize or allow a sale or transfer that consists solely of the sale or transfer of individual beneficiaries or groups of beneficiaries enrolled in a plan benefit package.

[60 FR 45681, Sept. 1, 1995. Redesignated and amended at 63 FR 35067, 35106, June 26, 1998; 63 FR 52614, Oct. 1, 1998; 65 FR 40328, June 29, 2000; 70 FR 4738, Jan. 28, 2005; 86 FR 6101, Jan. 19, 2021; 89 FR 30826, Apr. 23, 2024]

§ 422.552 Novation agreement requirements.

(a) *Conditions for CMS approval of a novation agreement.* CMS approves a novation agreement if the following conditions are met:

(1) *Advance notification.* The MA organization notifies CMS at least 60 days before the date of the proposed change of ownership. The MA organization also provides CMS with updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization.

(2) *Advance submittal of agreement.* The MA organization submits to CMS, at least 30 days before the proposed change of ownership date, three signed copies of the novation agreement containing the provisions specified in paragraph (b) of this section, and one copy of other relevant documents required by CMS.

(3) *CMS's determination.* CMS determines that—

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(i) The proposed new owner is in fact a successor in interest to the contract;
(ii) Recognition of the new owner as a successor in interest to the contract is in the best interest of the Medicare program; and

(iii) The successor organization meets the requirements to qualify as an MA organization under subpart K of this part.

(b) *Provisions of a novation agreement*—(1) *Assumption of contract obligations.* The new owner must assume all obligations under the contract.

(2) *Waiver of right to reimbursement.* The previous owner must waive its rights to reimbursement for covered services furnished during the rest of the current contract period.

(3) *Guarantee of performance.* (i) The previous owner must guarantee performance of the contract by the new owner during the contract period; or

(ii) The new owner must post a performance bond that is satisfactory to CMS.

(4) *Records access.* The previous owner must agree to make its books and records and other necessary information available to the new owner and to CMS to permit an accurate determination of costs for the final settlement of the contract period.

[50 FR 1346, Jan. 10, 1985, as amended at 56 FR 8853, Mar. 1, 1991; 58 FR 38079, July 15, 1993; 60 FR 45681, Sept. 1, 1995. Redesignated and amended at 63 FR 35067, 35106, June 26, 1998; 70 FR 52027, Sept. 1, 2005]

§ 422.553 Effect of leasing of an MA organization's facilities.

(a) *General effect of leasing.* If an MA organization leases all or part of its facilities to another entity, the other entity does not acquire MA organization status under section 1876 of the Act.

(b) *Effect of lease of all facilities.* (1) If an MA organization leases all of its facilities to another entity, the contract terminates.

(2) If the other entity wishes to participate in Medicare as an MA organization, it must apply for and enter into a contract in accordance with subpart K of this part.

(c) *Effect of partial lease of facilities.* If the MA organization leases part of its facilities to another entity, its contract with CMS remains in effect while

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CMS surveys the MA organization to determine whether it continues to be in compliance with the applicable requirements and qualifying conditions specified in subpart K of this part.

[50 FR 1346, Jan. 10, 1985; 50 FR 20570, May 17, 1985, as amended at 58 FR 38079, July 15, 1993; 60 FR 45681, Sept. 1, 1995. Redesignated and amended at 63 FR 35067, 35106, June 26, 1998; 70 FR 52027, Sept. 1, 2005]

Subpart M—Grievances, Organization Determinations and Appeals

SOURCE: 63 FR 35107, June 26, 1998, unless otherwise noted.

§ 422.560 Basis and scope.

(a) *Statutory basis.* (1) Section 1852(f) of the Act provides that an MA organization must establish meaningful grievance procedures.

(2) Section 1852(g) of the Act establishes requirements that an MA organization must meet concerning organization determinations and appeals.

(3) Section 1869 of the Act specifies the amount in controversy needed to pursue a hearing and judicial review and authorizes representatives to act on behalf of individuals that seek appeals. These provisions are incorporated for MA appeals by section 1852(g)(5) of the Act and part 405 of this chapter.

(4) Section 1859(f)(8) of the Act provides for, to the extent feasible, unifying grievances and appeals procedures under sections 1852(f), 1852(g), 1902(a)(3), 1902(a)(5), and 1932(b)(4) of the Act for Medicare and Medicaid covered items and services provided by specialized MA plans for special needs individuals described in subsection 1859(b)(6)(B)(ii) of the Act for individuals who are eligible under titles XVIII and XIX of the Act. Beginning January 1, 2021, procedures established under section 1859(f)(8) of the Act apply in place of otherwise applicable grievances and appeals procedures with respect to Medicare and Medicaid covered items and services provided by applicable integrated plans.

(b) *Scope.* This subpart sets forth—