

(2) During a hearing to review a contract determination as described at § 422.641(b) of this subpart, the MA organization has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 422.506 of this part.

(3) During a hearing to review a contract determination as described at § 422.641(c) of this subpart, the MA organization has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 422.510 of this part.

(4) During a hearing to review the imposition of an intermediate sanction as described at § 422.750, the MA organization has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of § 422.752(a) and (b).

(5) During a hearing to review a determination as described at § 422.641(d) 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 §§ 422.2; 422.4(a)(1)(iv); 422.101(f); 422.107, if applicable; and 422.152(g) of this part.

(c) *Timing of favorable decisions.* Notice of any decision favorable to the MA organization 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 19813, Apr. 15, 2010, as amended at 77 FR 22168, Apr. 12, 2012; 80 FR 7962, Feb. 12, 2015]

#### § 422.662 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 MA organization 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.

(b) *Time for filing a request.* A request for a hearing must be filed within 15 calendar days after the receipt of the

notice of the contract determination or intermediate sanction.

(c) *Parties to a hearing.* The parties to a hearing must be—

(1) The parties described in § 422.660;

(2) At the discretion of the hearing officer, any interested parties who make a showing that their rights may be prejudiced by the decision to be rendered at the hearing; and

(3) CMS.

[63 FR 35113, June 26, 1998, as amended at 65 FR 40332, June 29, 2000; 72 FR 68724, Dec. 5, 2007; 75 FR 19813, Apr. 15, 2010]

#### § 422.664 Postponement of effective date of a contract determination when a request for a hearing is filed timely.

(a) *Hearing.* When a request for a hearing is timely filed, CMS will postpone the proposed effective date of the contract determination listed at 422.641 until a hearing decision is reached and affirmed by the Administrator following review according to 422.692 in instances where an MA organization or CMS requests Administrator review and the Administrator accepts the matter for review.

(b) *Exceptions:* (1) If a final decision is not reached on CMS' determination for an initial contract by September 1, CMS will not enter into a contract with the applicant for the following year.

(2) A contract terminated in accordance with § 422.510(b)(2)(i) of this part will be terminated on the date specified by CMS and will not be postponed if a hearing is requested.

[72 FR 68724, Dec. 5, 2007, as amended at 75 FR 19813, Apr. 15, 2010; 83 FR 16734, Apr. 16, 2018]

#### § 422.666 Designation of hearing officer.

CMS designates a hearing officer to conduct the hearing. The hearing officer need not be an ALJ.

#### § 422.668 Disqualification of hearing officer.

(a) A hearing officer may not conduct a hearing in a case in which he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.