

(b) *Decision of hearing officer.* A decision of a hearing officer that is unfavorable to any party and is otherwise final may be reopened and revised by the hearing officer upon the officer's own motion within one year of the notice of the hearing decision. Another hearing officer designated by CMS may reopen and revise the decision if the hearing officer who issued the decision is unavailable.

(c) *Decision of Administrator.* A decision by the Administrator that is otherwise final may be reopened and revised by the Administrator upon the Administrator's own motion within one year of the notice of the Administrator's decision.

(d) *Notices.* (1) The notice of reopening and of any revisions following the reopening is mailed to the parties.

(2) The notice of revision specifies the reasons for revisions.

[63 FR 35113, June 26, 1998, as amended at 72 FR 68725, Dec. 5, 2007; 75 FR 19814, Apr. 15, 2010]

### Subpart O—Intermediate Sanctions

SOURCE: 63 FR 35115, June 26, 1998, unless otherwise noted.

#### § 422.750 Types of intermediate sanctions and civil money penalties.

(a) The following intermediate sanctions may be imposed and will continue in effect until CMS is satisfied that the deficiencies that are the basis for the sanction determination have been corrected and are not likely to recur:

(1) Suspension of the MA organization's enrollment of Medicare beneficiaries.

(2) Suspension of payment to the MA organization for Medicare beneficiaries enrolled after the date CMS notifies the organization of the intermediate sanction.

(3) Suspension of communication activities to Medicare beneficiaries by an MA organization, as defined by CMS.

(b) CMS may impose civil money penalties as specified in 422.760.

[72 FR 68725, Dec. 5, 2007, as amended at 75 FR 19814, Apr. 15, 2010; 83 FR 16734, Apr. 16, 2018]

#### § 422.752 Basis for imposing intermediate sanctions and civil money penalties.

(a) *All intermediate sanctions.* For the violations listed in this paragraph, CMS may impose one or more of the sanctions specified in § 422.750(a) of this subpart on any MA organization with a contract. The MA organization may also be subject to other remedies authorized under law.

(1) Fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has the substantial likelihood of adversely affecting) the individual.

(2) Imposes on MA enrollees premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under section 1854 of the Act and subpart F of this part.

(3) Acts to expel or refuses to re-enroll a beneficiary in violation of the provisions of this part.

(4) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services.

(5) Misrepresents or falsifies information that it furnishes—

(i) To CMS; or  
(ii) To an individual or to any other entity.

(6) Fails to comply with the requirements of § 422.206, which prohibits interference with practitioners' advice to enrollees.

(7) Fails to comply with § 422.216, which requires the organization to enforce the limit on balance billing under a private fee-for-service plan.

(8) Employs or contracts with an individual or entity who is excluded from participation in Medicare under section 1128 or 1128A of the Act (or with an entity that employs or contracts with such an excluded individual or entity) for the provision of any of the following:

(i) Health care.  
(ii) Utilization review.  
(iii) Medical social work.

(iv) Administrative services.

(9) Except as provided under § 423.34 of this chapter, enrolls an individual in any plan under this part without the prior consent of the individual or the designee of the individual.

(10) Transfers an individual enrolled under this part from one plan to another without the prior consent of the individual or the designee of the individual or solely for the purpose of earning a commission.

(11) Fails to comply with communication restrictions described in subpart V of this part or applicable implementing guidance.

(12) Employs or contracts with any individual, agent, provider, supplier or entity who engages in the conduct described in paragraphs (a)(1) through (11) of this section.

(13) Fails to comply with §§ 422.222 and 422.224, that requires the MA organization not to make payment to excluded individuals and entities, nor to individuals and entities on the preclusion list, defined in § 422.2.

(b) *Suspension of enrollment and communications.* If CMS makes a determination that could lead to a contract termination under § 422.510(a), CMS may impose the intermediate sanctions at § 422.750(a)(1) and (3).

(c) *Civil Money Penalties.* (1) CMS. In addition to, or in place of, any intermediate sanctions, CMS may impose civil money penalties in the amounts specified in the following:

(i) Section 422.760(b) for any of the determinations at § 422.510(a), except § 422.510(a)(4)(i).

(ii) Section 422.760(c) for any of the determinations at § 422.752(a) except § 422.752(a)(5).

(2) *OIG.* In addition to, or in place of any intermediate sanctions imposed by CMS, the OIG, in accordance with part 1003 of Chapter V of this title, may impose civil money penalties for the following:

(i) Violations listed at 422.752(a).

(ii) Determinations made under § 422.510(a)(4)(i).

(d) *Special rule for non-compliant dual eligible special needs plans.* Notwithstanding any other provision of this section, CMS must impose during plan years 2021 through 2025 intermediate sanctions specified at § 422.750(a) on an

MA organization with a contract to operate a dual eligible special needs plan if CMS determines that the dual eligible special needs plan fails to comply with at least one of the criteria for the integration of Medicare and Medicaid benefits provided in the definition of a dual eligible special needs plan at § 422.2. If CMS imposes such an intermediate sanction, the MA organization must submit to CMS a corrective action plan in a form, manner, and timeframe established by CMS. The procedures outlined in § 422.756 apply to the imposition of the intermediate sanction under this provision.

[63 FR 35115, June 26, 1998; 63 FR 52614, Oct. 1, 1998, as amended at 69 FR 78338, Dec. 30, 2004; 70 FR 4741, Jan. 28, 2005; 70 FR 52027, Sept. 1, 2005; 72 FR 68725, Dec. 5, 2007; 75 FR 19814, Apr. 15, 2010; 79 FR 29959, May 23, 2014; 81 FR 80557, Nov. 15, 2016; 83 FR 16734, Apr. 16, 2018; 84 FR 15839, April 16, 2019]

**§ 422.756 Procedures for imposing intermediate sanctions and civil money penalties.**

(a) *Notice of intermediate sanction and opportunity to respond*—(1) *Notice of intent.* Before imposing the intermediate sanction, CMS—

(i) Sends a written notice to the MA organization stating the nature and basis of the proposed intermediate sanction and the MA organization's right to a hearing as specified in paragraph (b) of this section; and

(ii) Sends the OIG a copy of the notice.

(2) *Opportunity to respond.* CMS allows the MA organization 10 calendar days after receipt of the notice to provide a written rebuttal. CMS considers receipt of the notice as the day after notice is sent by fax, e-mail, or submitted for overnight mail.

(b) *Hearing.* (1) The MA organization may request a hearing before a CMS hearing officer.

(2) A written request must be received by the designated CMS office within 15 calendar days after the receipt of the notice.

(3) A request for a hearing under § 422.660 does not delay the date specified by CMS when the sanction becomes effective.

(4) The MA organization must follow the right to a hearing procedure as specified at subpart N of this part..