

(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..