

(ii) To an individual or to any other entity under the Part D drug benefit program.

(6) 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 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.

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

(8) 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.

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

(10) Employs or contracts with any individual, agent, provider, supplier or entity who engages in the conduct described in paragraphs (a)(1) through (9) of this section.

(b) *Suspension of enrollment and communications.* If CMS makes a determination that could lead to a contract termination under § 423.509(a), CMS may impose the intermediate sanctions at § 423.750(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 either of the following:

(i) Section 423.760(b) for any of the determinations at § 423.509(a), except § 423.509(a)(4)(i).

(ii) Section 423.760(c) for any of the determinations in paragraph (a) of this section except § 422.752(a)(5) of this chapter.

(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 423.752(a).

(ii) Determinations made pursuant to § 422.510(a)(4)(i) of this chapter.

[70 FR 4525, Jan. 28, 2005, as amended at 72 FR 68734, Dec. 5, 2007; 75 FR 19825, Apr. 15, 2010; 79 FR 29965, May 23, 2014; 83 FR 16753, Apr. 16, 2018]

**§ 423.756 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 sanctions, CMS—

(i) Sends a written notice to the Part D plan sponsor stating the nature and basis of the proposed intermediate sanction, and the Part D plan sponsor'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 Part D plan sponsor 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 Part D plan sponsor 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 § 423.650 of this part does not delay the date specified by CMS when the sanction becomes effective.

(4) The Part D plan sponsor must follow the right to a hearing procedure as specified at subpart N of this part.

(c) *Effective date and duration of sanctions*—(1) *Effective date.* The effective date of the sanction is the date specified by CMS in the notice.

(2) *Exception.* If CMS determines that the Part D sponsor's conduct poses a serious threat to an enrollee's health and safety, CMS may make the sanction effective on an earlier date that CMS specifies.

(3) *Duration of sanction.* The sanction remains 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.