

(ii) If CMS decides not to authorize a renewal of the contract, to the MA organization's Medicare enrollees by mail at least 90 days before the end of the current calendar year.

(iii) If CMS decides not to authorize a renewal of the contract, to the general public at least 90 days before the end of the current calendar year, by publishing a notice in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

(3) *Notice of appeal rights.* CMS gives the MA organization written notice of its right to appeal the decision not to renew in accordance with § 422.644.

[63 FR 35099, June 26, 1998, as amended at 65 FR 40328, June 29, 2000; 67 FR 13289, Mar. 22, 2002; 70 FR 4737, Jan. 28, 2005]

§ 422.508 Modification or termination of contract by mutual consent.

(a) A contract may be modified or terminated at any time by written mutual consent.

(1) If the contract is terminated by mutual consent, except as provided in paragraph (b) of this section, the MA organization must provide notice to its Medicare enrollees and the general public as provided in § 422.512(b)(2) and (b)(3).

(2) If the contract is modified by mutual consent, the MA organization must notify its Medicare enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(b) If the contract terminated by mutual consent is replaced the day following such termination by a new MA contract, the MA organization is not required to provide the notice specified in paragraph (a)(1) of this section.

§ 422.510 Termination of contract by CMS.

(a) *Termination by CMS.* CMS may terminate a contract for any of the following reasons:

(1) The MA organization has failed substantially to carry out the terms of its contract with CMS.

(2) The MA organization is carrying out its contract with CMS in a manner that is inconsistent with the effective and efficient implementation of this part.

(3) CMS determines that the MA organization no longer meets the requirements of this part for being a contracting organization.

(4) There is credible evidence that the MA organization committed or participated in false, fraudulent, or abusive activities affecting the Medicare program, including submission of false or fraudulent data.

(5) The MA organization experiences financial difficulties so severe that its ability to make necessary health services available is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or otherwise fails to make services available to the extent that such a risk to health exists.

(6) The MA organization substantially fails to comply with the requirements in subpart M of this part relating to grievances and appeals.

(7) The MA organization fails to provide CMS with valid data as required under § 422.310.

(8) The MA organization fails to implement an acceptable quality assessment and performance improvement program as required under subpart D of this part.

(9) The MA organization substantially fails to comply with the prompt payment requirements in § 422.520.

(10) The MA organization substantially fails to comply with the service access requirements in § 422.112 or § 422.114.

(11) The MA organization fails to comply with the requirements of § 422.208 regarding physician incentive plans.

(12) The MA organization substantially fails to comply with the marketing requirements in § 422.80.

(b) *Notice.* If CMS decides to terminate a contract for reasons other than the grounds specified in § 422.510(a)(5), it gives notice of the termination as follows:

(1) *Termination of contract by CMS.* (i) CMS notifies the MA organization in writing 90 days before the intended date of the termination.

(ii) The MA organization notifies its Medicare enrollees of the termination by mail at least 30 days before the effective date of the termination.

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(iii) The MA organization notifies the general public of the termination at least 30 days before the effective date of the termination by publishing a notice in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

(2) *Immediate termination of contract by CMS.* (i) For terminations based on violations prescribed in § 422.510(a)(5), CMS notifies the MA organization in writing that its contract has been terminated effective the date of the termination decision by CMS. If termination is effective in the middle of a month, CMS has the right to recover the prorated share of the capitation payments made to the MA organization covering the period of the month following the contract termination.

(ii) CMS notifies the MA organization's Medicare enrollees in writing of CMS's decision to terminate the MA organization's contract. This notice occurs no later than 30 days after CMS notifies the plan of its decision to terminate the MA contract. CMS simultaneously informs the Medicare enrollees of alternative options for obtaining Medicare services, including alternative MA organizations in a similar geographic area and original Medicare.

(iii) CMS notifies the general public of the termination no later than 30 days after notifying the plan of CMS's decision to terminate the MA contract. This notice is published in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

(c) *Corrective action plan*—(1) *General.* Before terminating a contract for reasons other than the grounds specified in paragraph (a)(5) of this section, CMS provides the MA organization with reasonable opportunity to develop and receive CMS approval of a corrective action plan to correct the deficiencies that are the basis of the proposed termination.

(2) *Exception.* If a contract is terminated under § 422.510(a)(5), the MA organization will not have the opportunity to submit a corrective action plan.

(d) *Appeal rights.* If CMS decides to terminate a contract, it sends written notice to the MA organization informing it of its termination appeal rights

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in accordance with subpart N of this part.

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§ 422.512 Termination of contract by the MA organization.

(a) *Cause for termination.* The MA organization may terminate the MA contract if CMS fails to substantially carry out the terms of the contract.

(b) *Notice.* The MA organization must give advance notice as follows:

(1) To CMS, at least 90 days before the intended date of termination. This notice must specify the reasons why the MA organization is requesting contract termination.

(2) To its Medicare enrollees, at least 60 days before the termination effective date. This notice must include a written description of alternatives available for obtaining Medicare services within the services area, including alternative MA plans, Medigap options, original Medicare and must receive CMS approval.

(3) To the general public at least 60 days before the termination effective date by publishing an CMS-approved notice in one or more newspapers of general circulation in each community or county located in the MA organization's geographic area.

(c) *Effective date of termination.* The effective date of the termination is determined by CMS and is at least 90 days after the date CMS receives the MA organization's notice of intent to terminate.

(d) *CMS's liability.* CMS's liability for payment to the MA organization ends as of the first day of the month after the last month for which the contract is in effect.

(e) *Effect of termination by the organization.* CMS does not enter into an agreement with an organization that has terminated its contract within the preceding 2 years unless there are circumstances that warrant special consideration, as determined by CMS.

[63 FR 35099, June 26, 1998, as amended at 67 FR 13288, Mar. 22, 2002]