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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.

§ 422.698 Effect of revised determination.

The revision of a contract or reconsidered determination is binding unless a party files a written request for hearing of the revised determination in accordance with § 422.662.

Subpart O—Intermediate Sanctions

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

§ 422.750 Kinds of sanctions.

(a) The following intermediate sanctions and civil money penalties may be imposed:

(1) Civil money penalties ranging from \$10,000 to \$100,000 depending upon the violation.

(2) Suspension of enrollment of Medicare beneficiaries.

(3) Suspension of payment to the MA organization for Medicare beneficiaries who enroll.

(4) Require the MA organization to suspend all marketing activities to Medicare beneficiaries for the MA plan subject to the intermediate sanctions.

(b) The enrollment, payment, and marketing sanctions continue in effect until CMS is satisfied that the deficiency on which the determination was based has been corrected and is not likely to recur.

§ 422.752 Basis for imposing sanctions.

(a) *All intermediate sanctions.* For the violations listed in this paragraph (a), we may impose one, or more, of the sanctions specified in § 422.750(a)(2), (a)(3), or (a)(4) on any MA organization that has a contract in effect. The MA organization may also be subject to other applicable remedies available under law.

(1) Fails substantially to provide, to an MA enrollee, medically necessary services that the organization is required to provide (under law or under

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the contract) to an MA enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee.

(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) Expels or refuses to reenroll a beneficiary in violation of the provisions of this part.

(4) Engages in any practice that could reasonably be expected to have the effect of denying or discouraging enrollment of individuals 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.

(b) *Suspension of enrollment and marketing.* If CMS makes a determination under § 422.510(a), CMS may impose the intermediate sanctions in § 422.750(a)(2) and (a)(4).

[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]

§ 422.756 Procedures for imposing sanctions.

(a) *Notice of Sanction and opportunity to respond—*(1) *Notice of sanction.* Before imposing the intermediate sanctions

specified in paragraph (c) of this section CMS—

(i) Sends a written notice to the MA organization stating the nature and basis of the proposed sanction; and

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

(2) *Opportunity to respond.* CMS allows the MA organization 15 days from receipt of the notice to provide evidence that it has not committed an act or failed to comply with the requirements described in § 422.752, as applicable. CMS may allow a 15-day addition to the original 15 days upon receipt of a written request from the MA organization. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by CMS before the end of the 15-day period following the date of receipt of the sanction notice. CMS does not grant an extension if it determines that the MA organization's conduct poses a threat to an enrollee's health and safety.

(b) *Informal reconsideration.* If, consistent with paragraph (a)(2) of this section the MA organization submits a timely response to CMS's notice of sanction, CMS conducts an informal reconsideration that:

(1) Consists of a review of the evidence by an CMS official who did not participate in the initial decision to impose a sanction; and

(2) Gives the MA organization a concise written decision setting forth the factual and legal basis for the decision that affirms or rescinds the original determination.

(c) *Specific sanctions.* If CMS determines that an MA organization has acted or failed to act as specified in § 422.752 and affirms this determination in accordance with paragraph (b) of this section, CMS may—

(1) Require the MA organization to suspend acceptance of applications made by Medicare beneficiaries for enrollment in the sanctioned MA plan during the sanction period;

(2) In the case of a violation under § 422.752(a), suspend payments to the MA organization for Medicare beneficiaries enrolled in the sanctioned MA plan during the sanction period; and

(3) Require the MA organization to suspend all marketing activities for

the sanctioned MA plan to Medicare enrollees.

(d) *Effective date and duration of sanctions—*(1) *Effective date.* Except as provided in paragraph (d)(2) of this section, a sanction is effective 15 days after the date that the organization is notified of the decision to impose the sanction or, if the MA organization timely seeks reconsideration under paragraph (b) of this section, on the date specified in the notice of CMS's reconsidered determination.

(2) *Exception.* If CMS determines that the MA organization's conduct poses a serious threat to an enrollee's health and safety, CMS may make the sanction effective on a date before issuance of CMS's reconsidered determination.

(3) *Duration of sanction.* The sanction remains in effect until CMS notifies the MA organization that CMS is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur.

(e) *Termination by CMS.* In addition to or as an alternative to the sanctions described in paragraph (c) of this section, CMS may decline to authorize the renewal of an organization's contract in accordance with § 422.506(b)(2) and (b)(3), or terminate the contract in accordance with § 422.510.

(f) *Civil money penalties.* (1) If CMS determines that an MA organization has committed an act or failed to comply with a requirement described in § 422.752, CMS notifies the OIG of this determination, and also notifies OIG when CMS reverses or terminates a sanction imposed under this part.

(2) In the case of a violation described in paragraph (a) of § 422.752, or a determination under paragraph (b) of § 422.752 based upon a violation under § 422.510(a)(4) (involving fraudulent or abusive activities), in accordance with the provisions of part 1003 of this chapter, the OIG may impose civil money penalties on the MA organization in accordance with part 1003 of this chapter in addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

(3) In the case of a determination under § 422.752(b) other than a determination based upon a violation under § 422.510(a)(4), CMS may impose civil

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money penalties on the MA organization in the amounts specified in § 422.758 in addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

[63 FR 35113, June 26, 1998, as amended at 68 FR 50859, Aug. 22, 2003; 70 FR 4741, Jan. 28, 2005]

§ 422.758 Maximum amount of civil money penalties imposed by CMS.

If CMS makes a determination under § 422.510(a), as described in § 422.752(b) excepting those determinations under § 422.510(a)(4), CMS may impose civil money penalties in addition to, or in place of, the sanctions that CMS may impose under § 422.756(c) in the following amounts:

(a) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Medicare Advantage enrollees—up to \$25,000 for each determination.

(b) For each week that a deficiency remains uncorrected after the week in which the Medicare Advantage organization receives CMS' notice of the determination—up to \$10,000.

(c) If CMS makes a determination that a MA organization has terminated its contract other than in a manner described under § 422.512 and that the MA organization has therefore failed to substantially carry out the terms of the contract—\$250 per Medicare enrollee from the terminated MA plan or plans at the time the MA organization terminated its contract, or \$100, 000, whichever is greater.

[69 FR 78338, Dec. 30, 2004, as amended at 70 FR 4741, Jan. 28, 2005]

§ 422.760 Other applicable provisions.

The provisions of section 1128A of the Act (except subsections (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

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