

and determine whether to uphold, reverse or modify the hearing officer's decision.

(3) The Administrator's determination is final and binding.

(d) *Reopening*—(1) *Ability to reopen*. CMS may reopen and revise an initial or reconsidered determination upon its own motion or upon the request of a sponsor:

(i) Within 1 year of the date of the notice of determination for any reason.

(ii) Within 4 years for good cause.

(iii) At any time when the underlying decision was obtained through fraud or similar fault.

(2) *Notice of reopening*. (i) Notice of reopening and any revisions following the reopening are mailed to the sponsor.

(ii) Notice of reopening specifies the reasons for revision.

(3) *Effect of reopening*. The revision of an initial or reconsidered determination is final and binding unless—

(i) The sponsor requests reconsideration in accordance with paragraph (a) of this section;

(ii) A timely request for a hearing is filed under paragraph (b) of this section;

(iii) The determination is reviewed by the Administrator in accordance with paragraph (c) of this section; or

(iv) The determination is reopened and revised in accordance with paragraph (d) of this section.

(4) *Good cause*. For purposes of this section, CMS finds good cause if—

(i) New and material evidence exists that was not readily available at the time the initial determination was made;

(ii) A clerical error in the computation of payments was made; or

(iii) The evidence that was considered in making the determination clearly shows on its face that an error was made.

(5) For purposes of this section, CMS does not find good cause if the only reason for reopening is a change of legal interpretation or administrative ruling upon which the initial determination was made.

(6) A decision by CMS not to reopen an initial or reconsidered determination is final and binding and cannot be appealed.

#### § 423.892 Change of ownership.

(a) *Change of ownership*. Any of the following constitutes a change of ownership:

(1) *Partnership*. The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable State law.

(2) *Asset sale*. Transfer of all or substantially all of the assets of the sponsor to another party.

(3) *Corporation*. The merger of the sponsor's corporation into another corporation or the consolidation of the sponsor's organization with one or more other corporations, resulting in a new corporate body.

(b) *Change of ownership, exception*. Transfer of corporate stock or the merger of another corporation into the sponsor's corporation, with the sponsor surviving, does not ordinarily constitute change of ownership.

(c) *Advance notice requirement*. A sponsor that has a sponsor agreement in effect under this part and is considering or negotiating a change in ownership must notify CMS at least 60 days before the anticipated effective date of the change.

(d) *Assignment of agreement*. When there is a change of ownership as specified in paragraph (a) of this section, and this results in a transfer of the liability for prescription drug costs, the existing sponsor agreement is automatically assigned to the new owner.

(e) *Conditions that apply to assigned agreements*. The new owner to whom a sponsor agreement is assigned is subject to all applicable statutes and regulations and to the terms and conditions of the sponsor agreement.

#### § 423.894 Construction.

Nothing in this part must be interpreted as prohibiting or restricting:

(a) A Part D eligible individual who is covered under employment-based retiree health coverage, including a qualified retiree prescription drug plan, from enrolling in a Part D plan;

(b) A sponsor or other person from paying all or any part of the monthly beneficiary premium (as defined in § 423.286) for a Part D plan on behalf of a retiree (or his or her spouse or dependents);