(2) If an M+C organization does not intend to renew its contract, it must notify—

(i) HCFA in writing, by May 1 of the year in which the contract would end;

(ii) Each Medicare enrollee, at least 90 days before the date on which the nonrenewal is effective. This notice must include a written description of alternatives available for obtaining Medicare services within the service area, including alternative M+C plans, Medigap options, and original Medicare and must receive HCFA approval.

(iii) 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 located in the M+C organization's service area.

(3) HCFA may accept a nonrenewal notice submitted after May 1 if—

(i) The M+C organization notifies its Medicare enrollees and the public in accordance with paragraph (a)(2)(ii) and (a)(2)(iii) of this section; and

(ii) Acceptance is not inconsistent with the effective and efficient administration of the Medicare program.

(4) If an M+C organization does not renew a contract under this paragraph (a), HCFA will not enter into a contract with the organization for 5 years unless there are special circumstances that warrant special consideration, as determined by HCFA.

(b) *HCFA decision not to renew.* (1) HCFA may elect not to authorize renewal of a contract for any of the following reasons:

(i) The M+C organization has not fully implemented or shown discernable progress in implementing quality improvement projects as defined in § 422.152(d).

(ii) The M+C organization's level of enrollment or growth in enrollment is determined by HCFA to threaten the viability of the organization under the M+C program and or be an indicator of beneficiary dissatisfaction with the M+C plan(s) offered by the organization.

(iii) For any of the reasons listed in § 422.510(a), which would also permit HCFA to terminate the contract.

(iv) The M+C organization has committed any of the acts in § 422.752(a) that would support the imposition of intermediate sanctions or civil money penalties under subpart O of this part.

(2) *Notice.* HCFA provides notice of its decision whether to authorize renewal of the contract as follows:

(i) To the M+C organization by May 1 of the contract year.

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

(iii) If HCFA 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 M+C organization's service area.

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

§ 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 M+C 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 M+C organization must notify its Medicare enrollees of any changes that HCFA determines are appropriate for notification within timeframes specified by HCFA.

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

§ 422.510 Termination of contract by HCFA.

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

(1) The M+C organization has failed substantially to carry out the terms of its contract with HCFA.

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

(3) HCFA determines that the M+C organization no longer meets the requirements of this part for being a contracting organization.

(4) The M+C organization commits or participates in fraudulent or abusive activities affecting the Medicare program, including submission of fraudulent data.

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

(7) The M+C organization fails to provide HCFA with valid encounter data as required under § 422.257.

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

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

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

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

(b) *Notice.* If HCFA 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 HCFA.* (i) HCFA notifies the M+C organization in writing 90 days before the intended date of the termination.

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

(iii) The M+C 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 M+C organization's service area.

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

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

(iii) HCFA notifies the general public of the termination no later than 30 days after notifying the plan of HCFA's decision to terminate the M+C contract. This notice is published in one or more newspapers of general circulation in each community or county located in the M+C 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, HCFA provides the M+C organization with reasonable opportunity, not to exceed timeframes specified at subpart N of this part, to develop and receive HCFA 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 M+C organization will not have the opportunity to submit a corrective action plan.

(d) *Appeal rights.* If HCFA decides to terminate a contract, it sends written notice to the M+C organization informing it of its termination appeal rights in accordance with subpart N of this part.

§ 422.512 Termination of contract by the M+C organization.

(a) *Cause for termination.* The M+C organization may terminate the M+C contract if HCFA fails to substantially carry out the terms of the contract.

(b) *Notice.* The M+C organization must give advance notice as follows:

(1) To HCFA, at least 90 days before the intended date of termination. This notice must specify the reasons why the M+C 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 M+C plans, Medigap options, original Medicare and must receive HCFA approval.

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

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

(d) *HCFA's liability.* HCFA's liability for payment to the M+C 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.* HCFA does not enter into an agreement with an organization that has terminated its contract within the preceding 5 years unless there are circumstances that warrant special consideration, as determined by HCFA.

§ 422.514 Minimum enrollment requirements.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, HCFA does not enter into a contract under this subpart unless the organization meets the following minimum enrollment requirement—

(1) At least 5,000 individuals (or 1,500 individuals if the organization is a PSO) are enrolled for the purpose of receiving health benefits from the organization; or

(2) At least 1,500 individuals (or 500 individuals if the organization is a PSO) are enrolled for purposes of receiving health benefits from the organization and the organization primarily serves individuals residing outside of urbanized areas as defined in § 412.62(f) (or, in the case of a PSO, the PSO meets the requirements in § 422.352(c)).

(3) Except as provided for in paragraph (b) of this section, an M+C organization must maintain a minimum enrollment as defined in paragraphs (a)(1) and (a)(2) of this section for the duration of its contract.

(b) *Minimum enrollment waiver.* (1) For an organization that does not meet the applicable requirement of paragraph (a) of this section at application for an M+C contract or during the first 3 years of such contract, HCFA may waive the minimum enrollment requirement as provided for below. To receive a waiver, an organization must demonstrate to HCFA's satisfaction that it is capable to administering and managing an M+C contract and is able to manage the level of risk required under the contract. Factors that HCFA will take into consideration in making this evaluation include the extent to which—

(i) The organization management and providers have previous experience in managing and providing health care services under a risk-based payment arrangement to at least as many individuals as the applicable minimum enrollment for the entity as described in paragraph (a) of this section, or

(ii) The organization has the financial ability to bear financial risk under an M+C contract. In determining whether an organization is capable of bearing risk, HCFA considers factors such as the organization's management experience as described in paragraph