

(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