

(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.

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

(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 organiza-

tion 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 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.

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§ 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 a contract applicant or M+C 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 the contract, HCFA may waive the minimum enrollment requirement as provided for below. To receive a waiver, a contract applicant or M+C organization must demonstrate to HCFA's satisfaction that it is capable of administering and managing an M+C contract and is able to manage the level of risk required under the contract. Factors that HCFA takes into consideration in making this evaluation include the extent to which—

(i) The contract applicant or M+C organization's 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 contract applicant or M+C 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 (b)(1)(i) of this section and stop-loss insurance that is adequate and acceptable to HCFA; and

(iii) The contract applicant or M+C organization is able to establish a marketing and enrollment process that allows it to meet the applicable enrollment requirement specified in paragraph (a) of this section before completion of the third contract year.

(2) If an M+C organization fails to meet the enrollment requirement in the first year, HCFA may waive the minimum requirements for another year provided that the organization—

(i) Requests an additional minimum enrollment waiver no later than 120 days before the end of the first year;