

§ 422.756

42 CFR Ch. IV (10-1-00 Edition)

applicable remedies available under law.

(1) Fails substantially to provide, to an M+C enrollee, medically necessary services that the organization is required to provide (under law or under the contract) to an M+C enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee.

(2) Imposes on M+C enrollees premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under section 1854 of the Act and subpart G 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 HCFA; 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 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 individual) 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 HCFA makes a determination under § 422.510(a), HCFA may impose the intermediate sanctions in § 422.756(c)(1) and (c)(3).

[63 FR 35115, June 26, 1998; 63 FR 52614, Oct. 1, 1998]

§ 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 HCFA—

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

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

(2) *Opportunity to respond.* HCFA allows the M+C 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. HCFA may allow a 15-day addition to the original 15 days upon receipt of a written request from the M+C organization. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date of receipt of the sanction notice. HCFA does not grant an extension if it determines that the M+C 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 M+C organization submits a timely response to HCFA's notice of sanction, HCFA conducts an informal reconsideration that:

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

(2) Gives the M+C 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 HCFA determines that an M+C organization has acted or failed to act as specified in § 422.752 and affirms this determination in accordance with paragraph (b) of this section, HCFA may—

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

(2) In the case of a violation under § 422.752(a), suspend payments to the

M+C organization for Medicare beneficiaries enrolled in the sanctioned M+C plan during the sanction period; and

(3) Require the M+C organization to suspend all marketing activities for the sanctioned M+C 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 M+C organization timely seeks reconsideration under paragraph (b) of this section, on the date specified in the notice of HCFA's reconsidered determination.

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

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

(e) *Termination by HCFA*. In addition to or as an alternative to the sanctions described in paragraph (c) of this section, HCFA 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 HCFA determines that an M+C organization has committed an act or failed to comply with a requirement described in §422.752, HCFA notifies the OIG of this determination, and also notifies OIG when HCFA 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 42 CFR parts 1003 and 1005, the OIG may impose civil money penalties on the M+C organization in accordance with parts 1003 and 1005 of this title in addition to, or in place of,

the sanctions that HCFA may impose under paragraph (c) of this section.

(3) In the case of a determination under paragraph (b) of §422.752 other than a determination based upon a violation under §422.510(a)(4), in accordance with the provisions of 42 CFR parts 1003 and 1005, HCFA may impose civil money penalties on the M+C organization in the amounts specified in §422.758 in addition to, or in place of, the sanctions that HCFA may impose under paragraph (c) of this section.

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

If HCFA makes a determination under §422.752(b), based on any determination under §422.510(a) except a determination under §422.510(a)(4), HCFA may impose civil money penalties 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 M+C enrollees—\$25,000 for each determination.

(b) For each week that a deficiency remains uncorrected after the week in which the M+C organization receives HCFA's notice of the determination—\$10,000.

§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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