Medicare Managed Care Manual
Chapter 15 - Intermediate Sanctions

Table of Contents
(Rev. 73, 09 30 05)

---

10 - Types of Intermediate Sanctions

(Rev. 73, Issued: 09-30-05, Effective Date: 09-30-05)

In general, *and in accordance with 42 CFR 422.752, and 42 CFR 756*, CMS may impose the following intermediate sanctions on *Medicare Advantage (MA)* organizations that have contracts in effect:

- Civil Money Penalties (CMPs) *ranging from $10,000 to $100,000 depending on the violation*;
- Suspension of enrollment of Medicare beneficiaries;
- Suspension of payment to the *MA* organization
- Suspension of marketing activities to Medicare beneficiaries

While there are separate requirements regarding the imposition of CMPs, it is important to recognize that CMPs are but one of the four types of intermediate sanctions available to CMS.

20 - General Basis for Imposing Intermediate Sanctions on MA Organizations

(Rev. 73, Issued: 09-30-05, Effective Date: 09-30-05)

CMS may impose certain intermediate sanctions *on an MA organization* for the following violations *identified in 42 CFR 422.752(a)*:

- Fail*ing* substantially to provide, to an *MA* enrollee, medically necessary services that the organization is required to provide (under law or under the contract) to an *MA* enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee;
- Impos*ing* on *MA* enrollees premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under §1854 of the Social Security Act (the Act) and the Federal Regulations at 42 CFR 422 Subpart *F*;
- Expell*ing* or refus*ing* to re-enroll a beneficiary in violation of the provisions of this part;
- Engag*ing* 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;
- Misrepresent*ing* or falsif*ying* information that it furnishes:
    i. To CMS; or
    ii. To an individual or to any other entity.
- Fail*ing* to comply with the requirements of Federal Regulations at 42 CFR 422.206, which prohibit interference with practitioners' advice to enrollees;
- Fail*ing* to comply with Federal Regulations at 42 CFR 422.216, which require the organization to enforce the limit on balance billing under a private fee-for-service plan;
- Employ*ing* or contract*ing* with an individual who is excluded from participation in Medicare under §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; and
    iv. Administrative services.

For the violations described above, *CMS may impose one or more of the* intermediate sanctions listed in the Federal Regulations at 42 CFR 422.750(a)(2) through (4) - suspension of marketing, enrollment and payment. For these violations, the DHHS/OIG - and not CMS - independently maintains authority to impose CMPs, in addition to, or in place of, sanctions that CMS may impose.

30 - Imposing Sanctions for Specific MA Contract Violations

(Rev. 73, Issued: 09-30-05, Effective Date: 09-30-05)

CMS may impose certain intermediate sanctions, including CMPs, on *MA* organizations for the same reasons that we can terminate an *MA* organization's contract *under*

§422.510(a). *In cases involving fraud and abuse DHHS/ OIG, and not CMS, maintains the authority to impose CMPs*.

Federal Regulations at 42 CFR 422.510(a)(1) through (a)(12) permit CMS to terminate an *MA* organization's contract or impose intermediate sanctions if the Agency determines:

- The *MA* organization has failed substantially to carry out the terms of its contract with CMS;
- The *MA* organization is carrying out its contract with CMS in a manner that is inconsistent with the effective and efficient implementation of this part;
- CMS determines that the *MA* organization no longer meets the requirements of this part for being a contracting organization;
- The *MA* organization commits or participates in fraudulent or abusive activities affecting the Medicare program, including submission of fraudulent data (as mentioned above, only DHHS/OIG can impose a CMP for this violation);
- The *MA* 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;
- The *MA* organization substantially fails to comply with the requirements of the Federal Regulations at 42 CFR 422 Subpart M of this part relating to grievances and appeals;
- The *MA* organization fails to provide CMS with valid data as required under Federal Regulations at 42 CFR 422.310;
- The *MA* organization fails to implement an acceptable *quality improvement* program as required under Federal Regulations at 42 CFR 422 Subpart D of this part;
- The *MA* organization substantially fails to comply with the prompt payment requirements in the Federal Regulations at 42 CFR 422.520;
- The *MA* organization substantially fails to comply with the service access requirements in the Federal Regulations at 42 CFR 422.112 or the Federal Regulations at 42 CFR 422.114;
- The *MA* organization fails to comply with the requirements of the Federal Regulations at 42 CFR 422.208 regarding physician incentive plans; or
- The *MA* organization substantially fails to comply with the marketing requirements in the Federal Regulations at 42 CFR 422.80.

CMS may impose CMPs for the reasons outlined at §422.510(a), other than fraud or abuse, if the deficiency on which the sanction determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more *MA* enrollees. *In such cases* the amount of the CMS-imposed CMP is $25,000 for each determination. For each week that a deficiency remains uncorrected after the

week in which the *MA* organization receives CMS's notice of the determination to impose a CMP, CMS may further impose CMPs in the amount of $10,000.

40 - CMPs for *MA* Organizations That Improperly Terminate the MA Contract

(Rev. 73, Issued: 09-30-05, Effective Date: 09-30-05)

Under §623 of the Benefits Improvement and Protection Act of 2000 (BIPA), when CMS determines that an *MA* organization terminates its *MA* contract in a manner that violates *MA* termination requirements described in the Federal Regulations at 42 CFR 422.512, CMS may levy a CMP of *$250 per enrollee from the terminated plan or* $100,000, *whichever is* higher.

50 - CMS Process for Suspending Marketing, Enrollment, and Payment

(Rev. 73, Issued: 09-30-05, Effective Date: 09-30-05)

If CMS determines that an *MA* organization has acted or failed to act, as specified above under Federal Regulations at 42 CFR 422.752, CMS sends a written notice to the MA organization stating the nature and basis of the proposed sanction, and also sends the DHHS/OIG a copy of the notice. The *MA organization* has 15 days *from receipt of the notice* to respond to the notice of intent to impose sanctions; otherwise the sanction(s) *goes into effect*.

Upon receipt of the sanction notice, the *MA organization* has several *other* options:

- The *MA* organization may request an additional 15 days to respond, which is granted at CMS's discretion. The request must provide a credible explanation of why additional time is necessary and must be received by CMS before the 15-day period expires. CMS does not grant an extension if it determines that the MA organization's conduct poses a threat to an enrollee's health and safety.
- *If the MA organization submits a response, as described above,* a CMS official not involved in the original determination *conducts an informal reconsideration*. The reconsideration includes a review of the evidence and a written decision that affirms or rescinds the original determination. If CMS's original determination is **rescinded** by the reconsideration official, the intermediate sanction process terminates.
- If the *MA* organization requests that CMS reconsider its original determination and CMS **affirms** this determination in accordance with the informal reconsideration process described above, the sanction is effective on the date specified in the notice of CMS's reconsidered determination. However, if CMS determines that the *MA* organization's conduct poses a serious threat to an enrollee's health and safety, CMS may make the sanction effective on a date before issuance of CMS's reconsidered determination.

If the MA organization does not seek to have CMS reconsider its decision, a sanction is effective 15 days after the date that the organization is notified by CMS of its decision to impose the sanction. The MA organization must submit a corrective action plan (CAP) that includes a timetable for completion. The purpose of the CAP is to explain to CMS how the sanctionable action will be corrected and avoided in the future. .The CMS-imposed intermediate sanctions remain in effect until CMS notifies the *MA* organization that CMS is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur. CMS notifies the DHHS/OIG when CMS reverses or terminates a sanction.

60 - Contract Termination by CMS

(Rev. 73, Issued: 09-30-05, Effective Date: 09-30-05)

In addition to or as an alternative to freezing marketing, enrollment or suspending payments to a sanctioned *MA* organization, CMS may decline to authorize the renewal of an organization's contract in accordance with the Federal Regulations at 42 CFR 422.506(b), or terminate the *MA* organization's contract in accordance with Federal Regulations at 42 CFR 422.510.

NOTE: For more information on termination of contracts see Chapter 11 of this manual, Medicare Advantage Application Procedures and Contract Requirements.

Transmittals Issued for this Chapter

Rev #	Issue Date	Subject	Impl Date	CR#
R73MCM	09/30/2005	Changes in Manual Instructions for Intermediate Sanctions	N/A	N/A
R37MCM	10/31/2003	Miscellaneous Clarification	N/A	N/A
R19MCM	02/28/2003	Initial Issuance of Chapter	02/28/2003	N/A