

§ 422.566 Organization determinations.

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(c) *Who can request an organization determination.* (1) Those individuals or entities who can request an organization determination are—

(i) The enrollee (including his or her authorized representative);

(ii) Any provider that furnishes, or intends to furnish, services to the enrollee; or

(iii) The legal representative of a deceased enrollee's estate.

(2) Those who can request an expedited determination are—

(i) An enrollee (including his or her authorized representative); or

(ii) A physician (regardless of whether the physician is affiliated with the M+C organization).

■ 25. In § 422.618, paragraph (c) is revised to read as set forth below:

§ 422.618 How an M+C organization must effectuate standard reconsidered determinations or decisions.

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(c) *Reversals other than by the M+C organization or the independent outside entity.*—(1) *General rule.* If the independent outside entity's determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision or that it has appealed the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it pays for, authorizes, or provides the service under dispute. A M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

■ 26. In § 422.619, paragraph (c) is revised to read as set forth below:

§ 422.619 How a M+C organization must effectuate expedited reconsidered determinations.

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(c) *Reversals other than by the M+C organization or the independent outside entity.*—(1) *General rule.* If the independent outside entity's expedited determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it authorizes or provides the service under dispute. A M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

Subpart O—Intermediate Sanctions

■ 27. In § 422.756, the following amendments are made as set forth below:

■ a. Paragraph (f)(2) is revised.

■ b. Paragraph (f)(3) is revised.

§ 422.756 Procedures for imposing sanctions.

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(f) * * *

(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 part 1005 of this title, the OIG may impose civil money penalties on the M+C organization in accordance with part 1005 of this title in addition to, or in place of, the sanctions that CMS 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 part 1005 of this title, CMS 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 CMS may impose under paragraph (c) of this section.

■ 28. In § 422.758, the following amendments are made as set forth below:

■ a. The introductory text is designated as paragraph (a) introductory text.

■ b. Paragraph (a) is redesignated as paragraph (a)(1) and is revised.

■ c. Paragraph (b) is redesignated as paragraph (a)(2) and is revised.

■ d. A new paragraph (b) is added.

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

(a) * * *

(1) For the violations listed below, CMS may impose the sanctions specified in § 422.750(a)(2), (a)(3), or (a)(4) on any M+C organization that has a contract in effect. The M+C organization may also be subject to other applicable remedies available under law.

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

(b) If CMS makes a determination under § 422.752(b) and § 422.756(f)(3), based on a determination under § 422.510(a)(1) that an M+C organization has terminated its contract with CMS in a manner other than described under § 422.512—\$250 per Medicare enrollee from the terminated M+C plan or plans at the time the M+C organization terminated its contract, or \$100,000, whichever is greater.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 3, 2003.

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

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Tommy G. Thompson,
Secretary.

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