

**§ 422.372 Basis for waiver of State licensure.**

(a) *General rule.* Subject to this section and to paragraphs (a) and (e) of § 422.374, CMS may waive the State licensure requirement if the organization has applied (except as provided in paragraph (b)(4) of this section) for the most closely appropriate State license or authority to conduct business as an MA plan.

(b) *Basis for waiver of State licensure.* Any of the following may constitute a basis for CMS's waiver of State licensure.

(1) *Failure to act timely on application.* The State failed to complete action on the licensing application within 90 days of the date the State received a substantially complete application.

(2) *Denial of application based on discriminatory treatment.* The State has—

(i) Denied the license application on the basis of material requirements, procedures, or standards (other than solvency requirements) not generally applied by the State to other entities engaged in a substantially similar business; or

(ii) Required, as a condition of licensure that the organization offer any product or plan other than an MA plan.

(3) *Denial of application based on different solvency requirements.* (i) The State has denied the application, in whole or in part, on the basis of the organization's failure to meet solvency requirements that are different from those set forth in §§ 422.380 through 422.390; or

(ii) CMS determines that the State has imposed, as a condition of licensure, any documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, or standards set forth by CMS to implement, monitor, and enforce §§ 422.380 through 422.390.

(4) *State declines to accept licensure application.* The appropriate State licensing authority has given the organization written notice that it will not accept its licensure application.

[63 FR 35098, June 26, 1998]

**§ 422.374 Waiver request and approval process.**

(a) *Substantially complete waiver request.* The organization must submit a substantially complete waiver request that clearly demonstrates and documents its eligibility for a waiver under § 422.372.

(b) CMS gives the organization written notice of granting or denial of waiver within 60 days of receipt of a substantially complete waiver request.

(c) *Subsequent waiver requests.* An organization that has had a waiver request denied, may submit subsequent waiver requests until November 1, 2002.

(d) *Effective date.* A waiver granted under § 422.370 will be effective on the effective date of the organization's MA contract.

(e) *Consistency in application.* CMS reserves the right to revoke waiver eligibility if it subsequently determines that the organization's MA application is significantly different from the application submitted by the organization to the State licensing authority.

[63 FR 25377, May 7, 1998, as amended at 63 FR 35098, June 26, 1998]

**§ 422.376 Conditions of the waiver.**

A waiver granted under this section is subject to the following conditions:

(a) *Limitation to State.* The waiver is effective only for the particular State for which it is granted and does not apply to any other State. For each State in which the organization wishes to operate without a State license, it must submit a waiver request and receive a waiver.

(b) *Limitation to 36-month period.* The waiver is effective for 36 months or through the end of the calendar year in which the 36 month period ends unless it is revoked based on paragraph (c) of this section.

(c) *Mid-period revocation.* During the waiver period (set forth in paragraph (b) of this section), the waiver is automatically revoked upon—

(1) Termination of the MA contract;

(2) The organization's compliance with the State licensure requirement of section 1855(a)(1) of the Act; or

(3) The organization's failure to comply with § 422.378.

[63 FR 25377, May 7, 1998]