

(iii) The contract is being terminated based on the violation specified in (a)(4) of this section.

(d) *Appeal rights.* If CMS decides to terminate a contract, it sends written notice to the Part D plan sponsor informing it of its termination appeal rights in accordance with § 423.642.

(e) *Timely transfer of data and files.* If a contract is terminated under paragraph (a) of this section, the Part D plan sponsor must ensure the timely transfer of any data or files.

[70 FR 4525, Jan. 28, 2005, as amended at 72 FR 68733, Dec. 5, 2007; 73 FR 20507, Apr. 15, 2008; 75 FR 19822, Apr. 15, 2010; 76 FR 21575, Apr. 15, 2011; 77 FR 22170, Apr. 12, 2012; 78 FR 31310, May 23, 2013]

**§ 423.510 Termination of contract by the Part D sponsor.**

(a) *Cause for termination.* The Part D plan sponsor may terminate its contract if CMS fails to substantially carry out the terms of the contract.

(b) *Notice of termination.* The Part D plan sponsor must give advance notice as follows:

(1) To CMS, at least 90 days before the intended date of termination. This notice must specify the reasons why the Part D sponsor 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 qualified prescription drug coverage within the services area, including alternative PDPs, MA-PDPs, and original Medicare and must receive CMS approval.

(3) To the general public, at least 60 days before the termination effective date by publishing a CMS-approved notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's geographic area.

(c) *Effective date of termination.* The effective date of the termination is determined by CMS and is at least 90 days after the date CMS receives the Part D plan sponsor's notice of intent to terminate.

(d) *CMS's liability.* CMS's liability for payment to the Part D plan sponsor 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.* (1) CMS does not enter into an agreement with an organization that has terminated its contract within the preceding 2 years unless there are circumstances that warrant special consideration, as determined by CMS.

(2) During the same 2-year period specified in (e)(1) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the terminating sponsor. A "covered person" as used in this paragraph means one of the following:

(i) All owners of nonrenewed or terminated organizations who are natural persons, other than shareholders who have an ownership interest of less than 5 percent.

(ii) An owner of a whole or part interest in a mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the organization.

(iii) A member of the board of directors or board of trustees of the entity, if the organization is organized as a corporation.

(f) *Timely transfer of data and files.* If a contract is terminated under paragraph (a) of this section, the Part D plan sponsor must ensure the timely transfer of any data or files.

[70 FR 4525, Jan. 28, 2005, as amended at 76 FR 21575, Apr. 15, 2011]

**§ 423.512 Minimum enrollment requirements.**

(a) *Basic rule.* Except as provided in paragraph (b) of this section, CMS does not enter into a contract under this subpart unless the organization meets the following minimum enrollment requirement:

(1) At least 5,000 individuals are enrolled for the purpose of receiving prescription drug benefits from the organization; or