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## 42 C.F.R. § 414.423

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### Appeals process for breach of a DMEPOS competitive bidding program contract actions.

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This section implements an appeals process for suppliers that CMS has determined are in breach of their Medicare DMEPOS Competitive Bidding Program contract and where CMS has issued a notice of breach of contract indicating its intent to take action(s) pursuant to § 414.422(g)(2).

- (a) *Breach of contract.* CMS may take one or more of the actions specified in § 414.422(g)(2) as a result of a supplier's breach of their DMEPOS Competitive Bidding Program contract.
- (b) *Notice of breach of contract—(1) CMS notification.* If CMS determines a supplier to be in breach of its contract, it will notify the supplier of the breach of contract in a notice of breach of contract.
  - (2) *Content of the notice of breach of contract.* The CMS notice of breach of contract will include the following:
    - (i) The details of the breach of contract.
    - (ii) The action(s) that CMS is taking as a result of the breach of the contract pursuant to § 414.422(g)(2), and the duration of or timeframe(s) associated with the action(s), if applicable.
    - (iii) The right to request a hearing by a CBIC hearing officer and, depending on the nature of the breach, the supplier may also be allowed to submit a corrective action plan (CAP) in lieu of requesting a hearing by a CBIC hearing officer, as specified in paragraph (c)(1)(i) of this section.
    - (iv) The address to which the written request for a hearing must be submitted.
    - (v) The address to which the CAP must be submitted, if applicable.
    - (vi) The effective date of the action(s) that CMS is taking is the date specified by CMS in the notice of breach of contract, or 45 days from the date of the notice of breach of contract unless:
      - (A) A timely hearing request has been filed; or
      - (B) A CAP has been submitted within 30 days of the date of the notice of breach of contract where CMS allows a supplier to submit a CAP.
- (c) *Corrective action plan (CAP) —(1) Option for a CAP.* (i) CMS has the option to allow a supplier to submit a written CAP to remedy the deficiencies identified in the notice at its sole discretion, including where CMS determines that the delay in the effective date of the breach of contract action(s) caused by allowing a CAP will not cause harm to beneficiaries. CMS will not allow a CAP if the supplier has been excluded from any Federal program, debarred by a Federal agency, or convicted of a healthcare-related crime, or for any other reason determined by CMS.

(ii) If a supplier chooses not to submit a CAP, if CMS determines that a supplier's CAP is insufficient, or if CMS does not allow the supplier the option to submit a CAP, the supplier may request a hearing on the breach of contract action(s).

(2) *Submission of a CAP.* (i) If allowed by CMS, a CAP must be submitted within 30 days from the date on the notice of breach of contract. If the supplier decides not to submit a CAP the supplier may, within 30 days of the date on the notice, request a hearing by a CBIC hearing officer.

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