

Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program (DMEPOS CBP) Appeals Process for Termination of Competitive Bidding Contract Provisions for Notice of Final Rulemaking (1503-P)

BACKGROUNDERS

Background:

In §414.423, we established a new appeals process for contracts terminated under section 1847(a) and (b) of the Act. Section 414.423, of this rule, sets forth policies and procedures relating to breach of contract determinations and an appeals process for a contract supplier that are considered to be in breach of its contract. In addition, we amended section §414.402 to include definitions for the following terms related to the appeals process: affected party, breach of contract, corrective action plan (CAP), hearing officer (HO), and parties to the hearing.

Revisions to the current rule:

This appeals process is for situations in which a supplier is determined to be in breach of contract of its Medicare Competitive Bidding Program (CBP) contract.

Under the rule, the Competitive Bidding Implementation Contractor (CBIC) will work with suppliers to informally resolve any performance deficiencies prior to sending a recommendation to CMS that the supplier's contract be terminated.

If informal efforts to resolve deficiencies are not successful, suppliers considered in breach of their contract will be notified by certified mail that their DMEPOS competitive bidding contract will be terminated within 45 calendar days from the date of the notification of termination. In most cases the notice will indicate that the supplier may submit a corrective action plan to address the breach of contract.

Any supplier who receives a notice that we consider them in breach of contract will have the right to request a hearing before a CBIC HO who was not involved with the original recommendation to terminate the supplier's contract. The hearing request must be received by the CBIC within 30 calendar days from the date of the termination letter. The HO will conduct a thorough and independent review and will make a recommendation based on all the information submitted and presented at the hearing. The HO will then issue a written recommendation to CMS within 30 days of the close of the hearing. The HO's recommendation will include the rationale for his or her recommendation regarding the termination of the supplier's contract. The HO will submit this recommendation to CMS for its determination.

CMS will make the final determination regarding whether to terminate the supplier's contract. CMS's determination will be based upon on the record of the hearing, evidence, and documents considered by the HO as part of the HO recommendation and will be made within 30 days of the receipt of the HO's recommendation. If CMS's decision is to terminate the contract, the supplier will be notified of the effective date of termination by certified mail. This decision of CMS is final and binding.