

**CENTERS FOR MEDICARE & MEDICAID SERVICES  
HEARING OFFICER DECISION**

IN THE MATTER OF:

Golden Cross Health Plan, Corp.

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\* DOCKET NO. 2018 MA/PD APP. 01

Contract to Qualify as a  
Medicare Advantage/Prescription Drug Organization  
Contract Year 2018, Contract No. H0904  
Declared Invalid as Void Ab Initio

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ORDER GRANTING REQUEST TO DISMISS

The Centers for Medicare and Medicaid Services (CMS) Hearing Officers designated to hear this case are the undersigned, Benjamin Cohen and Stephany Young.

I. ISSUES

Whether the CMS Hearing Officers have jurisdiction under 42 C.F.R. § 423.650 over Golden Cross Health Plan Corporation's (Golden Cross) Request for Hearing, wherein Golden Cross is appealing CMS' November 17, 2017 notification that it was cancelling Golden Cross' Medicare Advantage Prescription Drug (MA-PD) contract on the basis that it is void ab initio?<sup>1</sup>

If the Hearing Officers find that jurisdiction exists, whether Golden Cross has demonstrated that CMS incorrectly determined that Golden Cross provided inconsistent information to CMS throughout the application and contracting process?

II. DECISION

The Hearing Officers do not have jurisdiction over this appeal. Pursuant to 42 C.F.R. § 423.503(c)(4)(i), a CMS notice nullifying a prior approval of a new contract is not appealable. Accordingly, the Hearing Officers grant CMS' Request to Dismiss. Moreover, even if the Hearing Officers possessed jurisdiction over this matter, Golden Cross failed to demonstrate that CMS incorrectly determined that Golden Cross provided inconsistent information to CMS throughout the application and contracting process. Golden Cross provided CMS with contradictory information regarding who filled various leadership roles for the company throughout the application and contracting process.

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<sup>1</sup> CMS asserts that its decision with respect to Golden Cross is not within the Hearing Officers' jurisdiction and requests the Hearing Officers dismiss the matter. CMS Reply Brief at 1.

III. PROGRAM BACKGROUND

The Medicare Advantage (MA or Part C) program offers Medicare beneficiaries the option of receiving health care benefits through a privately-operated coordinated care delivery system.<sup>2</sup> The Social Security Act (the Act) authorizes the Secretary of the United States Department of Health & Human Services (the Secretary) to contract with entities seeking to offer MA and Medicare outpatient prescription drug (Part D) benefits to their plan enrollees.<sup>3</sup> Through regulation, the Secretary has delegated this contracting authority to CMS, which has established the general provisions for entities seeking to qualify as MA-PD plans.<sup>4</sup> An organization may not offer MA or Part D benefits unless it has entered into a contract with CMS.<sup>5</sup> An MA organization offering coordinated care plans (including HMOs) must offer Part D benefits in the same service area.<sup>6</sup>

Potential MA-PD organizations submit applications to CMS, in which the applicant organization must document that it has a provider network in place that meets CMS' requirements.<sup>7</sup> This network must include a variety of providers, including primary care physicians, specialists, and hospitals.<sup>8</sup> These applications must be completed "in the form and manner required by CMS."<sup>9</sup> Entities seeking to offer a new MA product must demonstrate, through the submission of an application developed by CMS, that they meet the qualifications, including a) appropriate licensure, b) sufficient administrative capability to oversee the plan offerings, c) the capacity to enroll and dis-enroll beneficiaries, and d) hold contracts with a sufficient number and variety of medical service providers to ensure that all covered Medicare services will be available and accessible to their enrollees.<sup>10</sup> Presently, CMS requires the electronic submission of MA-PD applications via the Health Plan Management System (HPMS), which is CMS' on-line system of record for the administration of the Part C and Part D programs.<sup>11</sup>

After receiving a MA-PD application, CMS makes a determination as to whether the applicant organization meets all of the relevant program requirements.<sup>12</sup> CMS conducts a review of all submitted MA applications and issues determinations consistent with 42 C.F.R. § 422.502(c). This determination is based solely on information contained in the application or obtained by CMS through methods such as onsite visits.<sup>13</sup>

In order to meet the requirement that they offer a Part D plan, MA organizations must also meet the Part D application requirements to demonstrate their qualification as a Part D sponsor.<sup>14</sup>

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<sup>2</sup> See 42 U.S.C. § 1395w-21 *et seq.*; see also 42 C.F.R. § 422.4(a)(1) "[a] coordinated care plan is a plan that includes a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by CMS."

<sup>3</sup> 42 U.S.C. § 1395w-27, see also *id.* § 1395w-112.

<sup>4</sup> 42 C.F.R. §§ 422.400 *et seq.*, 422.503(b) *et seq.*

<sup>5</sup> 42 U.S.C. § 1395w-27(a); see also *id.* § 1395w-112(b)(1).

<sup>6</sup> 42 C.F.R. § 422.4(c)(1); See also 42 U.S.C. § 1395w-112 (Medicare Part D).

<sup>7</sup> 42 C.F.R. § 422.501(c)(2).

<sup>8</sup> *Id.* § 422.112(a)(1).

<sup>9</sup> *Id.* § 422.501(c)(1).

<sup>10</sup> *Id.*

<sup>11</sup> CMS' Reply Brief at 3. Golden Cross' Brief at 10.

<sup>12</sup> 42 C.F.R. § 422.502(a)(2).

<sup>13</sup> *Id.* § 422.502(a)(1).

<sup>14</sup> *Id.* §§ 422.500(a), 423.500.

Organizations intending to offer Part D benefits must complete a certified application in the form and manner required by CMS.<sup>15</sup> The applicant must describe how it meets all Part D program requirements.<sup>16</sup> MA organizations attempting to qualify as a Part D sponsor in a given service area are obligated under 42 C.F.R. § 422.500 to follow the Part D qualification process governed by 42 C.F.R. Part 423. CMS limits its review to that information contained in the application, and any additional information that CMS obtains through on site visits and any Essential Operations Test (EOT),<sup>17</sup> to determine whether the application meets all Part D requirements.<sup>18</sup>

As part of the application process, applicants are directed to provide CMS with contact information for certain areas of responsibility within their organization by uploading such information into HPMS. Applicants are instructed that this information must be kept up to date during the application process and throughout the administration of the resulting contract.<sup>19</sup>

CMS issues conditional notices of application approval following the completion of its review process. Medicare approved organizations are informed in the notice that they still must successfully complete the bid negotiation process for Part C and Part D, pursuant to 422 Subpart D and 423 Subpart F.<sup>20</sup> CMS issues electronic contracting instructions for MA-PD contracts in August of each year through HPMS. Approved organizations are informed that once CMS has approved their bids, their contracts will be made available in HPMS and must be signed only by one of these officers of the organizations: the Chief Executive Officer (CEO), Chief Financial Officer (CFO), or Chief Operating Officer (COO).<sup>21</sup>

The regulation at 42 C.F.R. § 423.502(c)(1) entitled “Completion of an application” addresses who may file an application to become a Part D sponsor. The section dictates:

- (1) In order to obtain a determination on whether it meets the requirements to become a Part D plan sponsor, an entity, or an individual authorized to act for the entity (the applicant), must fully complete all parts of a certified application in the form and manner required by CMS.

The regulation at § 423.503(c) entitled “Notice of Determination” provides that CMS may approve, deny, or nullify an application. Additionally, subsection (4)(i) expressly indicates that a determination nullifying a contract is not appealable. The section indicates:

- (c) CMS notifies each applicant that applies to be determined qualified to contract as a Part D plan sponsor, under this part, of its

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<sup>15</sup> *Id.* § 423.502(c)(1).

<sup>16</sup> *Id.* § 423.502(c)(2).

<sup>17</sup> Organizations that are new to the administration of the Part D benefits must pass a CMS administered EOT prior to beginning operations for the upcoming contract year. 42 C.F.R. § 423.503(c)(4); 42 C.F.R. § 423.504(b)(10).

<sup>18</sup> 42 C.F.R. § 423.503(a)(1)-(2).

<sup>19</sup> CMS Reply Brief at 2. Section 1.5.B of the Medicare Advantage Application and Section 3.1.4 of the Prescription Drug Application.

<sup>20</sup> CMS' Reply Brief at 3; *see also id.* Exhibit A.

<sup>21</sup> CMS' Reply Brief at 3; *see also id.* Exhibit B.

determination on the application and the basis for the determination.  
The determination may be one of the following:

- (1) *Approval of application.* If CMS approves the application, it gives written notice to the applicant indicating that it qualifies to contract as Part D plan sponsor.
- (2) *Intent to deny.* . . .
- (3) *Denial of application.* If CMS denies the application, it gives written notice to the applicant indicating-
  - (i) That the applicant is not qualified to contract as a Part D sponsor under Part D of title XVIII of the Act;
  - (ii) The reasons why the applicant does is not so qualified; and
  - (iii) The applicant's right to request a hearing in accordance with the procedures specified in subpart N of this part.
- (4) **Nullification of approval of application.** If CMS discovers through any means that an applicant is not qualified to contract based on information gained subsequent to application approval (for example failure of an essential operations test, absence of required employees, etc.), CMS gives the applicant written notice that the approval issued under paragraph (c)(1) of this section is nullified and the applicant no longer qualifies to contract as a Part D plan sponsor. (Emphasis added)
  - (i) This determination is not subject to the appeals provisions in subpart N of this part.** (Emphasis added).
  - (ii) This provision only applies to applicants that have not previously entered into a Part D contract with CMS and neither it, nor another subsidiary of the applicant's parent organization, is offering Part D benefits during the current year.

The regulation at § 423.641 entitled "Contract determinations" identifies those contract determinations which are reviewable:

This subpart establishes the procedures for reviewing the following contract determinations:

- (a) A determination that an entity is not qualified to enter into a contract with CMS under Part D of title XVIII of the Act.
- (b) A determination not to authorize a renewal of a contract with a PDP sponsor in accordance with § 423.507(b).
- (c) A determination to terminate a contract with a PDP sponsor in accordance with § 423.509.
- (d)....

Next, the regulation at § 423.650 entitled “Right to a hearing” continues as follows:

- (a) The following parties are entitled to a hearing:
  - (1) A contract applicant that has been determined to be unqualified to enter into a contract with CMS under Part D of Title XVIII of the Act in accordance with § 423.502 and § 423.503 of this part.
  - (2) A Part D sponsor whose contract has been terminated in accordance with § 423.509 of this part.
  - (3) A Part D sponsor whose contract has not been renewed in accordance with § 423.507 of this part.
  - (4) A Part D sponsor who has had an intermediate sanction imposed in accordance with § 423.752(a) through (b).

The regulations governing the hearing process provide that either party may ask the Hearing Officer to rule on a Motion for Summary Judgment (and/or Request to Dismiss).<sup>22</sup>

#### IV. FACTUAL AND PROCEDURAL BACKGROUND

On February 15, 2017, Golden Cross submitted both MA and Part D applications for qualification for a MA-PD contract to offer Medicare Advantage and Part D benefits in certain parts of Puerto Rico for 2018. CMS assigned Golden Cross’ applications contract number “H0904.”<sup>23</sup> The Authorized Representative signature block for the MA application was signed by “Louis Hernandez, President.” In contrast, the Authorized Representative signature block for the Part D application was signed by “Victor Ramos, CEO.”<sup>24</sup> However, Appendix IX of the Part D Application lists Victor Ramos as the President as well as CEO of Golden Cross.<sup>25, 26</sup>

On April 27, 2017, in a submission to CMS as part of its MA application, Golden Cross listed Antonio Marrero as both the CEO and COO. It further listed Jose Esparra as both the President and CFO. The submission was made by Orlando Mendez who listed himself as the CIO of Golden Cross.<sup>27</sup>

On May 15, 2017, Antonio Marrero, on behalf of Golden Cross, emailed CMS requesting help as his account (and the CFO’s account) had been deactivated and he was unable to upload documents in HPMS. Mr. Marrero asked, in the alternative, if CMS could change the attributes in the profile for Golden Cross’ CIO, Orlando Mendez, to allow him to upload the required documents. Lori

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<sup>22</sup> 42 C.F.R. § 422.684. *See also* Medicare Program, Revisions to the Medicare Advantage and Part D Prescription Drug Contract Determinations, Appeals and Intermediate Sanctions Processes, 72 Fed. Reg. 68700, 68714 (December 5, 2007) (Preamble to final rule stating, “In ruling on such a [Summary Judgment] motion, we propose that the hearing officer would be bound by the CMS regulations and general instructions. Where no factual dispute exists, the hearing officer may make a decision on the papers, without the need for a hearing.”).

<sup>23</sup> CMS’ Reply Brief at 4.

<sup>24</sup> *Id.* Exhibit Q. Attachment to February 2, 2018 email from CMS to Hearing Officers.

<sup>25</sup> CMS Reply Brief at 9; *see also id.* Exhibit N.

<sup>26</sup> In the contact list uploaded into HPMS by Golden Cross for contract H0904, as of January 3, 2017, Jose Esparra was listed as the COO/CFO, Antonio Marrero was listed as the CEO and Orlando Mendez was listed as the Chief Information Officer (CIO). CMS’ Reply Brief Exhibit K.

<sup>27</sup> CMS’ Reply Brief at 7-8; *see also id.* Exhibits J, M.

Robinson from CMS informed Mr. Marrero that if Orlando Mendez was re-designated in HPMS as the COO and Golden Cross provided an authorization letter confirming this change, she would make the changes. Mr. Marrero responded confirming that Orlando Mendez had been re-designated as their COO and CIO and was authorized to access HPMS and sign documents required. Ms. Robinson advised Mr. Marrero that Golden Cross' account was updated.<sup>28</sup>

On July 21, 2017, CMS conditionally approved Golden Cross' MA and Part D applications.<sup>29</sup> CMS explains that on August 17, 2017, it issued instructions through HPMS advising that only the CEO, CFO and COO would be permitted to sign electronically as an official of the contracting organization for MA contracts and the Part D addendum. Further, that it made a MA contract and Part D addendum available for Golden Cross' signature in August of 2017. On August 30, 2017, Orlando Mendez electronically signed both the MA contract and Part D addendum on behalf of Golden Cross.<sup>30</sup>

On October 17, 2017, CMS, via email, sent Golden Cross an engagement letter concerning Golden Cross's participation in a November 3, 2017 EOT to determine Golden Cross' capability to effectively administer the Medicare Part D benefit. The letter was addressed to Jose Esparra who was listed in HPMS at the time as the COO, CFO, CEO and Orlando Mendez who was listed in HPMS at the time as the Medicare Compliance Officer.<sup>31</sup>

On October 25, 2017, CMS asked Golden Cross to submit the names of the test participants for the EOT. Jose Esparra, responded with the list on October 27, 2017, which included Antonio Marrero as CEO, himself as CFO and Orlando Mendez as Information Systems Director. CMS asked that same day for Golden Cross to provide them with the employer of each participant identified. Mr. Esparra responded that he, Antonio Marrero and Orlando Mendez were employed by HMI Group, Inc. (HMI).<sup>32</sup>

On October 30, 2017, CMS via email, asked Golden Cross for a statement of their relationship with HMI. Orlando Mendez replied on the same day that HMI had been delegated all administrative functions by Golden Cross. At that point, CMS notified Golden Cross that it would need to see a contract documenting the relationship between Golden Cross and HMI, that Golden Cross executives would need to be employees of Golden Cross, and that Jose Esparra's MA-PD contract signature would be void without such relationship.<sup>33</sup> (Orlando Mendez actually signed the contract not Jose Esparra).

On November 2, 2017, Golden Cross provided CMS with a Management and Administrative Services Agreement entered into on November 1, 2017, between HMI and CMC Care Holdings, LLC (CMC) (CMC-HMI contract). Only HMI and CMC are parties to the agreement. The Recitals portion of the agreement states that Dr. Victor Ramos is the chairman of the Board of Directors of CMC and *will be* the owner of 100% of all authorized and outstanding common stocks of Golden

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<sup>28</sup> Golden Cross' Brief at Exhibit I, V.

<sup>29</sup> CMS' Reply Brief at 4; *see also id.* Exhibit A.

<sup>30</sup> CMS' Reply Brief at 4; *see also id.* Exhibit D.

<sup>31</sup> CMS' Reply Brief Exhibit C; *see also id.* Exhibit E.

<sup>32</sup> *Id.* at 5; *see also id.* Exhibit G.

<sup>33</sup> CMS' Reply Brief Exhibit G.

Cross upon final payment of the amounts agreed upon in the Stock Purchase Agreement. It further states that Jose Esparra is the President of HMI and that CMC wishes to engage HMI to provide MA services “through its related company,” Golden Cross.<sup>34</sup>

On November 3, 2017, Golden Cross and CMS met in the CMS Baltimore office.<sup>35</sup> In the November 3<sup>rd</sup> meeting it was relayed to CMS that CMC’s purchase of Golden Cross was not final as of November 3, 2017, and that the CMC-HMI contract was still awaiting required approval by the Puerto Rico Department of Insurance.<sup>36</sup>

On November 6, 2017, Francisco Hernandez, Vice President of Golden Cross, advised CMS that his father, Luis Hernandez, was the current owner and President of Golden Cross and would remain so until the CMC sale was completed.<sup>37</sup>

On November 16, 2017 (dated November 17, 2017), CMS, via email, issued a notice to Golden Cross advising that its contract has been declared invalid as CMS had determined that Orlando Mendez who electronically signed the MA-PD contract on August 30, 2017, was *not* the properly appointed CEO, CFO, or COO of Golden Cross on the date the signature was provided making Golden Cross ineligible to offer MA or Part D benefits during 2018. CMS stated the agreement was canceled as it was *void ab initio*.<sup>38,39</sup> In its reply brief, CMS further explained that there was no legally binding relationship between Golden Cross and HMI and therefore, an HMI employee, Orlando Mendez, could not sign an MA-PD contract on behalf of Golden Cross.<sup>40</sup>

On November 16, 2017 (dated November 17, 2017), Luis Hernandez, President of Golden Cross, requested a reconsideration of CMS’ decision and included a copy of a corporate resolution dated January 17, 2017, adopted by its Board of Directors, appointing Antonio Marrero as CEO, Jose Esparra as CFO, Orlando Mendez as COO and Eduardo Castaneda as Sales and Marketing Director.<sup>41</sup> The Corporate Resolution was signed by Alvilda Fuster Rivera, the Secretary of Golden Cross. After receiving the Request for Reconsideration from Golden Cross CMS determined that the document supplied by Golden Cross was not reliable because it was inconsistent with prior documents provided to CMS during the application process and declined to reverse its decision.<sup>42</sup> CMS informed Golden Cross that there existed certain inconsistencies in the referenced appointments noting that the original application uploaded in HPMS on February 15, 2017, listed Antonio Marrero as the entity’s COO.<sup>43</sup>

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<sup>34</sup> *Id.* at 6; *see also id.* Exhibit H.

<sup>35</sup> In lieu of the EOT scheduled for November 3, 2017, Golden Cross through Antonio Marrero, requested a meeting with CMS executives.

<sup>36</sup> CMS’ Reply Brief Exhibit E.

<sup>37</sup> *Id.* at 6, CMS’ Reply Brief Exhibit E.

<sup>38</sup> *Id.* at 5; *see also* Golden Cross’ Brief at Exhibit III.

<sup>39</sup> CMS also cancelled the EOT which had been re-scheduled for November 20, 2017, based on the status of the Golden Cross contract.

<sup>40</sup> CMS’ Reply Brief at 7.

<sup>41</sup> *Id.* at 5; *see also* Golden Cross’ Brief at Exhibit IV.

<sup>42</sup> CMS’ Reply Brief at 5.

<sup>43</sup> Golden Cross’ Brief at Exhibit V.

On November 18, 2017, Luis Hernandez, President, and Victor Ramos, Chairman of the Board of CMC, submitted a second Request for Reconsideration. In their second Request for Reconsideration they acknowledged that the original application uploaded in HPMS on February 15, 2017, listed Antonio Marrero as the COO. However, they advised they corrected their error on May 15, 2017, when they realized that Orlando Mendez had only been designated in the system as CIO and not COO. Golden Cross also stated:

The issue of an officer's authority to bind a corporation is one purely of state law. GCHP—the entity seeking to be bound by Mr. Mendez' signature- has validated that he had the necessary corporate authority to enter into the CMS MA-PD Agreement on behalf of GCHP when the Agreement was signed. CMS has no discretion to ignore the evidence provided by GCHP of Mr. Mendez' authority, which is sufficient and conclusive under Puerto Rico law.

In its reply brief, CMS indicated that it found Golden Cross' second Request for Reconsideration unpersuasive.<sup>44</sup>

On November 30, 2017, Golden Cross filed a Request for Hearing with the CMS Office of Hearings. On December 1, 2017, the Hearing Officer requested that CMS provide its position regarding whether or not the Hearing Officer has jurisdictional authority to adjudicate the matter. On December 8, 2017, CMS provided an additional statement of their position.

On December 14, 2017, the Hearing Officer formally acknowledged Golden Cross' November 30, 2017 Request for Hearing and established briefing deadlines for the parties and a hearing date of January 2, 2018. On December 15, 2017, CMS requested an extension of the briefing deadlines and hearing date. On that same date, the Hearing Officer granted CMS' request for an extension, issued new briefing deadlines and moved the hearing date to January 17, 2018.

On December 20, 2017, Golden Cross submitted its brief to the Hearing Officer. Included in its brief are sworn statements dated December 20, 2017, from Luis Hernandez, President and Chairman of the Board of Directors of Golden Cross, and Alvilda Fuster Rivera, Secretary of the Board of Directors of Golden Cross declaring that they are the sole owners of Golden Cross and have been since 2009. Mr. Hernandez states that he has authorized all activities performed by Antonio Marrero, Jose Esparra, Orlando Mendez and Eduardo Castaneda on behalf of Golden Cross towards the completion of all application and contracting process requirements with CMS. Further, Mr. Hernandez stated that Mr. Marrero in his appointed capacity as CEO of Golden Cross is authorized to designate representatives of Golden Cross for all required activities by CMS. Ms. Rivera states that she certified the corporate resolution dated January 17, 2017, adopted by the Board of Directors, whereby it was resolved to authorize all activities performed by HMI through Antonio Marrero, Jose Esparra, Orlando Mendez and Eduardo Castanena on behalf of Golden Cross towards the development and submission of a MA proposal and contract with CMS.

On January 4, 2018, CMS submitted its reply brief; within its reply brief, CMS requested that the matter be dismissed for lack of jurisdiction. On January 9, 2018, Golden Cross submitted its reply

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<sup>44</sup> CMS' Reply Brief at 5. Golden Cross' Brief at Exhibit V.



to CMS' brief. On January 10, 2018, the Hearing Officer advised the parties that the Office of Hearings was reviewing the administrative record and considering CMS' request to dismiss the matter; the Hearing Officer cancelled the January 17, 2018 hearing.

V. DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Officers do not have jurisdiction over this appeal which challenges CMS' cancellation of Golden Cross' MA-PD contract, contract H0904. CMS, in essence, by issuing the November 17, 2017 notice invalidating the contract and voiding the contract ab initio, nullified approval of the Part D application process in accordance with 42 C.F.R. §423.503(c)(4). The regulation at § 423.503(c)(4)(i) expressly states that a notice which nullifies a prior approval of an application determination is not subject to the appeals provisions in 42 C.F.R. Part 423, subpart N (Medicare Contract Determinations and Appeals). Accordingly, the Hearing Officers grant CMS' Request to Dismiss.

However, even if the Hearing Officers did have jurisdiction over this matter, Golden Cross did not demonstrate that CMS incorrectly determined that Golden Cross provided inconsistent information to CMS throughout the application and contracting process. Golden Cross represents that Orlando Mendez had the necessary corporate authority to enter into the CMS MA-PD Agreement, the issue of an officer's authority to bind a corporation is one of state law, and CMS has no discretion to ignore GCHP's evidence it claims is sufficient and conclusive under Puerto Rico law. CMS disagrees, alleging it received contradictory and unsupported information and noting that Mr. Mendez' was an HMI employee, not a Golden Cross employee.

The Hearing Officers note that while they recognize that Golden Cross asserts that Mr. Mendez possessed the necessary corporate authority to bind the company, in terms of securing a Part D contract with CMS, CMS makes its determination as to whether the applicant organization meets program requirements on information it receives in the application and through other submissions and representations.<sup>45</sup> In order to meet the requirement that they offer a Part D plan, the burden remains on MA organizations to demonstrate their qualification to CMS.

In this case, the record reflects that Golden Cross provided unclear and inconsistent information to CMS throughout the application and contracting process. As an example, a contact list as of January 3, 2017, identified Jose Esparra as the COO and Orlando Mendez as the CIO.<sup>46</sup> On April 27, 2017, in a submission to CMS, Orlando Mendez, CIO, listed Antonio Marrero as the COO.<sup>47</sup> Later, on October 27, 2017, Golden Cross submitted a list identifying Orlando Mendez as Information Systems Director.<sup>48</sup> The Hearing Officers note a similar irregularity regarding the CEO position, Victor Ramos was identified as CEO in the original Part D application, Antonio Marrero was listed as CEO at various subsequent points during the application process, and Jose Esparra was listed as CEO in the HPMS system of record.<sup>49</sup>

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<sup>45</sup> *Id.* §§ 422.500(a), 423.502-504.

<sup>46</sup> CMS' Reply Brief Exhibit K.

<sup>47</sup> *Supra* note 28.

<sup>48</sup> *Supra* note 33.

<sup>49</sup> *Supra* note 31.

Finally, regarding CMS' comment that it would have declared the initial application invalid on the basis that Victor Ramos was unauthorized to file the application,<sup>50</sup> the Hearing Officers concur that the administrative record reflects Mr. Ramos, as a pending buyer of Golden Cross, was not authorized to sign the application at the time it was officially submitted to CMS. Moreover, the appeal regulations 42 C.F.R. §§ 423.641 and 423.650 only extend appeal rights (and the right to have the opportunity to cure a defect prior to the issuance of the contract determination) to authorized applicants who receive contract determinations.<sup>51</sup>

VI. CONCLUSION

The Hearing Officers lack jurisdiction over the Part D and MA issues in Golden Cross' Request for Hearing. CMS' Request to Dismiss is granted.

/Benjamin Cohen/  
Benjamin Cohen, Esq.  
Hearing Officer

March 16, 2018

/Stephany Young/  
Stephany Young, Esq.  
Hearing Officer

March 16, 2018

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<sup>50</sup> CMS' Reply Brief at 11 footnote 5.

<sup>51</sup> The Golden Cross Part D application submitted on February 15, 2017, was completed by Victor Ramos, who signed the application certification form as CEO of Golden Cross. Victor Ramos certified in the application certification form at #6 that he is "an authorized representative, officer, chief executive, or general partner of the business organization that is applying for qualification to enter into a Part D contract with CMS." (CMS Reply Brief Exhibit Q). However, the record reflects that Victor Ramos is the Chairman of the Board of Directors of CMC. (CMS Reply Brief at H). Indeed, the recitals portion of the CMC-HMI contract states that Victor Ramos is the chairman of the Board of Directors of CMC and *will be* the owner of 100% of all authorized and outstanding common stocks of Golden Cross *upon final payment of the amounts agreed upon* in the Stock Purchase Agreement. As of the date the briefing was completed in this appeal, this has not occurred.