

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP

July 13, 2015

Mr. W. Patrick Hughes
President & Chief Executive Officer
Fallon Community Health Plan
One Chestnut Place
10 Chestnut Street
Worcester, MA 01608

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Number: H9001

Dear Mr. Hughes:

Pursuant to 42 C.F.R. § 422.752(c)(1), § 422.760(b), § 423.752(c)(1), and § 423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Fallon Community Health Plan (FCHP), that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of **\$52,045** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H9001.

CMS has determined that FCHP failed to provide clear and accurate benefit information to its enrollees in the combined Contract Year (CY) 2015 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents.

Summary of Noncompliance

FCHP reported to CMS that 1,487 of its enrollees received inaccurate information about their 2015 benefits in FCHP's CY 2015 EOC documents. The EOC document inaccurately reported the 2015 monthly premium as \$129, when the correct amount is \$176. FCHP mailed errata sheets correcting the inaccurate information on January 23, 2015. This was after the open enrollment period had ended and after enrollees could use the information to make a fully informed decision about their Medicare health care and prescription drug options for the 2015 plan benefit year.

In addition, this is not the first year FCHP has been cited for mailing inaccurate ANOC/EOC documents to its enrollees. In 2014, FCHP received a notice of non-compliance for failing to accurately describe benefits and/or cost sharing information to its enrollees in its CY 2014 ANOC/EOC documents.

Relevant Disclosure and Information Dissemination Requirements

Pursuant to 42 C.F.R. § 422.111(a) and § 423.128(a), MA-PD Sponsors are required to ensure that members receive clear and accurate ANOC/EOC documents by September 30th of each year. The ANOC and EOC provide vital information to Medicare beneficiaries about their plan and permit beneficiaries to make informed choices concerning Medicare health care and prescription drug options for the upcoming plan year. Organizations are required to ensure their ANOC/EOCs are accurate and mail errata sheets if inaccuracies are identified. Since 2009, CMS has clearly informed plans about the importance of providing beneficiaries with accurate ANOC/EOC documents and noted that plans would be subject to penalties for inaccuracies.

Violations Related to Disclosure and Information Dissemination Requirements

CMS identified a violation of the disclosure and information dissemination requirements that had the substantial likelihood of adversely affecting FCHP's enrollees. FCHP's violation includes:

1. Failure to provide clear and accurate benefit information to its enrollees for the 2015 Medicare Open Enrollment Period. As a result, enrollees did not receive accurate benefit information to make fully informed choices concerning their Medicare coverage for the 2015 plan benefit year. This is in violation of 42 C.F.R. § 422.111(a) and 42 C.F.R. § 423.128(a).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 422.752(c)(1), § 422.760(b), § 423.752(c)(1), and § 423.760(b), CMS has determined that FCHP's violations of Parts C and D requirements had the substantial likelihood of adversely affecting enrollees and warrants the imposition of a CMP. FCHP is carrying out its contract in a manner that is "inconsistent with the effective and efficient implementation of this part." *See* 42 C.F.R. §422.510(a)(2) and §423.509(a)(2).

Right to Request a Hearing

FCHP may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. Parts 422 and 423, Subpart T. FCHP must send a written request for a hearing to the Departmental Appeals Board office listed below within 60 calendar days from receipt of this notice or by September 14, 2015. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which FCHP disagrees. FCHP must also specify the basis for each contention that the finding or conclusion of law is incorrect. The request should be sent to:

Civil Remedies Division
Department of Health and Human Services
Departmental Appeals Board
Medicare Appeals Council, MS 6132
330 Independence Ave., S.W.

Cohen Building Room G-644
Washington, D.C. 20201

A copy of the hearing request should also be sent to CMS at the following address:

Michael DiBella
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-06
Email: Michael.Dibella@cms.hhs.gov

If FCHP does not request an appeal in the manner and timeframe described above, the initial determination by CMS to impose a CMP will become final and due on September 15, 2015. FCHP may choose to have the penalty deducted from its monthly payment, transfer the funds electronically, or mail a check to CMS. To notify CMS of your intent to make payment and for instructions on how to make payment, please call or email the enforcement contact provided in the email notification.

Please note that further failures by FCHP may result in additional applicable remedies available under law, up to and including contract termination, the imposition of intermediate sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If FCHP has any questions about this notice, please call or email the enforcement contact provided in the email notification.

Sincerely,

/s/

Gerard J. Mulcahy
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Douglas Edwards, CMS/ CMHPO/Region I
Adele Pietrantonio, CMS/ CMHPO/Region I
Richard Singer, CMS/ CMHPO/Region I