

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 14, 2015

Mr. Austin Pittman
Chief Executive Officer
UnitedHealthcare Community & State
9800 Health Care Lane
Minnetonka, MN 55343

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Number: H3387

Dear Mr. Pittman:

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 UnitedHealthcare of New York, Inc. (UnitedHealthcare), that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of **\$149,150** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H3387.

CMS has determined that UnitedHealthcare failed to provide timely 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

UnitedHealthcare reported to CMS that 5,966 of its enrollees received untimely information about their 2015 benefits in UnitedHealthcare's CY 2015 ANOC documents. The sponsor self-disclosed this issue to CMS and stated that one of its Plan Benefit Packages (PBPs) was not included in the ANOC file that was sent to the print vendor for fulfillment. A plan year benefit comparison of 2014 to 2015 showed a number of plan benefit changes that had the potential to negatively affect beneficiaries. These included an increase to the monthly plan premium by \$12.80, increased cost-sharing and copayment amounts for Part D prescription drugs, and increased annual deductible amounts.

UnitedHealthcare mailed the ANOC document, for the affected PBP, during the week of May 4, 2015, which 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.

Relevant Disclosure and Information Dissemination Requirements

Pursuant to 42 C.F.R. § 422.111(a)(3), § 422.111(d)(2) and § 423.128(a)(3), 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 received by beneficiaries 15 days before the annual coordinated election period. Since 2009, CMS has clearly informed plans about the importance of enrollees receiving these documents on time and noted that plans would be subject to penalties for late mailings.

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 UnitedHealthcare's enrollees.

UnitedHealthcare's violation includes:

1. Failure to notify enrollees of changes to their benefits for the 2015 plan year at least 15 days prior to the start of the Medicare Open Enrollment Period. As a result, enrollees did not receive benefit information in a timely manner, in order 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)(3), § 422.111(d)(2), § 423.128(a)(3), and IOM Pub. 100-18 Medicare Marketing Guidelines, Chapter 2, Section 60.7.

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 UnitedHealthcare's violations of Parts C and D requirements had the substantial likelihood of adversely affecting enrollees and warrants the imposition of a CMP. UnitedHealthcare 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

UnitedHealthcare 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. UnitedHealthcare 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 UnitedHealthcare disagrees. UnitedHealthcare 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 UnitedHealthcare 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. UnitedHealthcare 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 UnitedHealthcare 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 UnitedHealthcare 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: Ann Duarte, CMS/ CMHPO/Region IX
Deanna Gee, CMS/ CMHPO/Region IX
Nicole Edwards, CMS/ CMHPO/Region IX