

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**

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November 17, 2015

Mr. Chris Deck  
Chief Executive Officer  
Alexian Brothers Community Services  
3900 S. Grand Blvd.  
St. Louis, MO 63118

Re: Notice of Imposition of Sanctions to Suspend Enrollment of PACE participants into contract number: H2609

Dear Mr. Deck,

Pursuant to 42 C.F.R. §§ 460.40(a) and (d) and 460.42(a), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Alexian Brothers Community Services (ABCS), owned by parent organization Ascension Health, that CMS and the Missouri Department of Social Services (MDSS) have made a determination to impose an enrollment suspension on Programs of All-Inclusive Care for the Elderly (PACE) contract number: H2609.

CMS and MDSS have determined that ABCS has failed substantially to provide participants medically necessary items and services that are covered PACE services, and that failure adversely affected (or had a substantial likelihood of adversely affecting) participants. CMS and MDSS have also determined that ABCS has engaged in practices that would reasonably be expected to have the effect of denying or discouraging enrollment by Medicare or Medicaid beneficiaries whose medical condition or history indicates a need for substantial future medical services. As detailed below, after an audit conducted in September 2015 revealed serious operational deficiencies, CMS and MDSS determined that ABCS has substantially failed to comply with requirements in 42 C.F.R. Part 460, Subparts F, G, H, I, and L.

This determination to impose an enrollment suspension will be effective November 18, 2015, and will remain in effect until CMS and MDSS are satisfied that the deficiencies upon which the determination was based have been corrected and are not likely to recur. The enrollment suspension will apply to all potential participants, including, Medicare-only and dual-eligible beneficiaries. MDSS will be responsible for restricting enrollment of Medicaid-only beneficiaries.

## Summary of Noncompliance

From September 15, 2015 to September 17, 2015, the CMS Kansas City Regional Office (KCRO) and the MDSS conducted an audit of ABCS' operations. During the audit, auditors found substantial noncompliance with PACE regulations regarding service delivery, maintenance of medical records, grievances and appeals, self-disclosure and investigation requirements, and the processing of enrollments. These violations resulted in participants experiencing delays and/or denials in receiving medically necessary PACE items and services, inappropriate and untimely resolution of their appeals and grievances, inappropriate processing of their enrollment applications, and inadequate protection of their medical records.

ABCS' violations include:

1. Failure to provide medically necessary PACE-covered items and services to participants. As a result, participants experienced delays and/or denials of medical items and services, which may have contributed to their health conditions worsening. This is in violation of 42 C.F.R. §§ 460.92 and 460.98(b).
2. Failure to maintain complete and accurate medical records for each participant. As a result, participants likely experienced delays and/or denials of medical items and services because their medical records were incomplete and not kept up-to-date. This is in violation of 42 C.F.R. § 460.210.
3. Failure to ensure the authenticity of all entries made in the medical records. As a result, participants likely experienced delays and/or denials of medical items and services because the PACE organization permitted its staff to routinely cancel medical orders without an explanation, date, or the prescribing physician's authorization. This is in violation of 42 C.F.R. § 460.210(d)(1)–(2).
4. Failure to maintain an adequate grievance process and to provide participants with written information on the grievance process. As a result, participants likely experienced delays and/or denials of medical items and services because the PACE organization did not resolve grievances through the appropriate procedures, nor consistently provide participants with information about the grievance process. This is in violation of 42 C.F.R. § 460.120.
5. Failure to provide participants and their family members with written information on the appeals process. As a result, participants likely experienced delays and/or denials of medical items and services because the PACE organization failed to consistently provide its participants with information regarding their appeal rights. This is in violation of 42 C.F.R. §§ 460.122(b) and 460.124.
6. Failure to process enrollments appropriately, including, not assessing participants' level of care needs, not providing appeal rights upon denial of enrollment, not referring participants to alternative services where appropriate, and not maintaining documentation of enrollment approvals and denials. As a result, Medicare and/or Medicaid beneficiaries

with significant medical needs were denied and/or discouraged from enrolling in ABCS PACE. This is in violation of 42 C.F.R. § 460.152.

7. Failure to safeguard participant data and records against unauthorized use. As a result, participants' protected health information could have been compromised. This is in violation of 42 C.F.R. § 460.200(d).
8. Failure to immediately correct identified issues that directly or potentially threaten the health and safety of PACE participants. As a result, participants likely have experienced delays and/or denials of medical items and services due to the PACE organization's failure to submit level II reports of unusual occurrences as required, or to conduct internal investigations and analyses of these incidents when they became known. This is in violation of 42 C.F.R. § 460.136(5); and HPMS Memo, Level II Reporting Guidance, July 2015.

### **Basis for Sanctions**

CMS has determined that ABCS' violations provide a sufficient basis for the imposition of sanctions under 42 C.F.R. § 460.42(a). Specifically, ABCS:

- Failed substantially to provide participants medically necessary items and services that are PACE-covered services, which adversely affected (or had the substantial likelihood of adversely affecting) the participants (42 C.F.R § 460.40(a)); and
- Engaged in practices that had the effect of denying or discouraging enrollment by Medicare and/or Medicaid beneficiaries whose medical condition or history indicated a need for substantial future medical services(42 C.F.R. § 460.40(d)).

The nature of ABCS' substantial noncompliance supports the immediate suspension of ABCS' ability to enroll new PACE participants. Consequently, these sanctions are effective on November 18, 2015, pursuant to 42 C.F.R. § 460.42(a).

### **Opportunity to Correct**

Pursuant to 42 C.F.R. § 460.42(c), the enrollment suspension will remain in effect until CMS and MDSS are satisfied that ABCS has corrected the violations which form the basis for the sanction and that the violations are not likely to recur. ABCS is solely responsible for the identification, development, and implementation of its Corrective Action Plan (CAP), and for demonstrating to CMS and MDSS that the underlying deficiencies have been corrected and are not likely to recur. It is our understanding that your organization submitted a CAP in response to the Final Audit Report on November 15, 2015. That CAP will satisfy the CAP submission requirement for purposes of this sanction notice, so long as it addresses all of the eight (8) violations cited above. Otherwise, ABCS will need to submit a revised CAP to CMS that covers all of the violations in this notice within seven (7) calendar days from the date of receipt of this notice, or by November 25, 2015. If ABCS needs additional time beyond seven (7) days to submit its CAP, please contact your enforcement lead.

Once ABCS has fully implemented its Corrective Action Plan and believes these violations have been corrected, it must submit to CMS an attestation from ABCS' Chief Executive Officer, or most senior official, stating that ABCS has corrected the deficiencies that are the basis for the sanction and that they are not likely to recur.

### **Validation Audit**

ABCS will be required to undergo a validation audit of all the operational areas cited in this notice before the enrollment suspension will be lifted. Upon completion of the validation audit, CMS and MDSS will make a determination about whether the deficiencies that are the basis for the sanctions have been corrected and are not likely recur.

### **Opportunity to Respond to Notice**

ABCS may respond to this notice in accordance with the procedures specified in 42 C.F.R. § 422.756(a)(2). ABCS has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by November 27, 2015. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case November 18, 2015. If you choose to submit a rebuttal, please send it to the attention of Michael DiBella at the address noted below. Note that the sanctions imposed pursuant to this letter are not stayed pending a rebuttal submission.

### **Right to Request a Hearing**

ABCS may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. § 422.641–696. Pursuant to 42 C.F.R. § 422.662 a written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by December 2, 2015.<sup>1</sup> Please note, however, a request for a hearing will not delay the date specified by CMS when the sanctions become effective. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

The request for a hearing must be sent to the CMS Hearing Office at the following address:

Benjamin Cohen  
CMS Hearing Officer  
Office of Hearings  
ATTN: HEARING REQUEST  
Centers for Medicare & Medicaid Services  
2520 Lord Baltimore Drive  
Suite L  
Mail Stop: LB-01-22  
Baltimore, MD 21244-2670

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<sup>1</sup> If the 15<sup>th</sup> day falls on a weekend or federal holiday, you have until the next regular business day to submit your request.

Phone: 410-786-3169  
Email: Benjamin.Cohen@cms.hhs.gov

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

CMS will consider the date the Office of Hearings receives the email or the date it receives the fax or traceable mail document, whichever is earlier, as the date of receipt of the request. The request for a hearing must include the name, fax number, and e-mail address of the contact within ABCS (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request.

Please note that we are closely monitoring your organization and ABCS may also be subject to other applicable remedies available under law, including the imposition of additional sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Part 460, Subpart D. CMS will consider taking action to immediately terminate your contract if issues that pose a serious threat to the health and safety of PACE participants are identified or left uncorrected.

If you have any questions about this notice, please call or email the enforcement contact provided in your email notification.

Sincerely,

/s/

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

cc: Judith Flynn, CMS/CMHPO/Region VII  
Dale Ferguson, CMS/CMHPO/Region VII  
Sue Lovett, CMS/CMHPO/Region VII  
Delorse Mays, CMS/CMHPO/Region VII  
Michael Dibella, CMS/CM/MOEG/DCE  
Kevin Stansbury, CMS/CM/MOEG/DCE  
Stephanie Brown, CMS/CM/MOEG/DCE  
Rita Vann, Chief Clinical Officer, Ascension Health

Cyndi Young, Medicare Compliance Officer, Alexian Brothers Community Services  
Rhonda Driver, MDSS, MO HealthNet  
Melody Webb, MDSS, MO HealthNet  
Samar Muzaffar, MDSS, MO HealthNet