

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

CORRECTION: THE ORIGINAL NOTICE ISSUED ON APRIL 2, 2015 HAS BEEN RESCINDED AND REPLACED BY THIS NOTICE

April 16, 2015

Francis Soistman
EVP, Government Services
Aetna Inc.
151 Farmington Avenue
Mail Code RT52
Hartford, CT 06156

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug and Prescription Drug Plan Contract Numbers: H0318, H0523, H1013, H1419, H1608, H1609, H2112, H2611, H2663, H2667, H2672, H3152, H3623, H3931, H3959, H4523, H5048, H5414, H5509, H5521, H5832, H6923, H7149, H7301, H7306, H7908, H8393, H8649, H8980, H9847, S5569, S5768, S5810

Dear Mr. Soistman,

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 Aetna Inc., (Aetna) that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of **\$1,000,000** for Medicare Advantage-Prescription Drug (MA-PD) and Prescription Drug Plan Contract Numbers (PDP): H0318, H0523, H1013, H1419, H1608, H1609, H2112, H2611, H2663, H2667, H2672, H3152, H3623, H3931, H3959, H4523, H5048, H5414, H5509, H5521, H5832, H6923, H7149, H7301, H7306, H7908, H8393, H8649, H8980, H9847, S5569, S5768, S5810.

Summary of Noncompliance

Aetna reported that a total of 6,887 non-network retail pharmacies were erroneously identified by Aetna as “retail in-network” for 2015 on its website and through its call center customer service representatives during the calendar year 2015 Annual Election Period. Beneficiaries that selected a plan based on its in-network pharmacies may have been misled by this incorrect information.

The confusion created by errors in Aetna’s pharmacy network directory on their website led to disruption in the marketplace. After January 1, 2015, many Aetna enrollees presented with a

prescription at their usual pharmacy only to discover that the pharmacy was not in their plan's network. These enrollees complained because they either had to pay cash at the point of sale for their prescription (and seek subsequent repayment from Aetna) or to leave the pharmacy without their drug. Aetna's complaint rates for Part D issues were five times greater than the complaint rate for all MA-PD and PDP parent organizations. Aetna's 3,767 complaints accounted for 33 percent of all complaints received by CMS. Of those complaints, 2,750 (73 percent) were marketing complaints that beneficiaries were misled about in-network pharmacy coverage.

To assist those beneficiaries impacted by the misinformation, CMS granted Aetna beneficiaries a special enrollment period (SEP) to disenroll from Aetna's plan and reenroll in another Part D plan. Additionally, CMS is imposing this CMP as a direct consequence of Aetna's inaccurate network pharmacy information on its website and provided through its call center customer service representatives. This issue of non-compliance directly adversely impacted thousands of beneficiaries and had the substantial likelihood of impacting all Medicare beneficiaries enrolled in Aetna plans with incorrect pharmacy listings.

Basis for Civil Money Penalty

This action is based upon your organization's failure to disseminate clear and accurate information regarding the number, mix, and distribution (addresses) of network pharmacies from which enrollees may obtain covered Part D drugs. This is a violation of 42 C.F.R. § 423.128(a)(2). As a result, CMS has determined that your organization substantially failed to comply with information dissemination requirements of § 423.128 and is carrying out its contract in a manner that is "inconsistent with the efficient and effective administration of this part." *See* 42 C.F.R. § 423.509(a)(2).

Medicare beneficiaries rely on vital information about their plan and pharmacy networks to make informed choices concerning Medicare health care and prescription drug options. As such, Aetna's website, pharmacy search tool, and customer service representatives are vital sources of information that beneficiaries rely on to make informed decisions on health coverage.

Right to Request a Hearing

Aetna 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. Aetna 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 June 16, 2015. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Aetna disagrees. Aetna 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 Aetna 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 June 17, 2015. Aetna 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 Aetna 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 Aetna 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: Tod Anderson, CMS/ CMHPO/Region VIII
Anne Kane, CMS/ CMHPO/Region VIII
Don Marik, CMS/ CMHPO/Region VIII