

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

August 9, 2016

Ms. Tara Buonocore-Rut
Executive Director
AgeWell New York, LLC
1991 Marcus Ave
Suite M201
Lake Success, NY 11042

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription
Drug Contract Number: H4922

Dear Ms. Buonocore-Rut:

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 AgeWell New York, LLC (AgeWell), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$3,325** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H4922.

CMS has determined that AgeWell failed to provide timely and accurate benefit information to its enrollees in the combined Contract Year (CY) 2016 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents.

Summary of Noncompliance

AgeWell reported to CMS that it sent inaccurate ANOC/EOC documents for the 2016 plan benefit year to 95 enrollees. The ANOCs/EOCs incorrectly stated that enrollees:

- Were not required to pay a monthly plan premium (members were required to pay a monthly premium of \$39.70);
- Qualified for the catastrophic phase of the Part D benefit once they spent \$4,700 in out-of-pocket costs (the correct amount was \$4,850); and
- Remained in the deductible phase of the Part D benefit until they spent \$275 out-of-pocket (the correct amount was \$360).

AgeWell mailed errata sheets correcting the errors on December 1, 2015, which was approximately one week before the end of the Annual Election Period (AEP). The inaccurate information combined with the delay in correcting the errors resulted in affected enrollees having

a much shorter period of time to consider their Medicare health care and prescription drug options than is required during the AEP, and not being able to make fully informed decisions about their Medicare plan options for the 2016 plan benefit year.

In addition, AgeWell reported to CMS that it did not send the CY 2016 ANOC/EOC documents to 38 of its enrollees timely. A plan year benefit comparison of 2015 to 2016 showed a number of plan benefit changes in 2016, including increased deductibles, increased co-payments, and changes to the provider and pharmacy networks.

AgeWell mailed the ANOC/EOC documents on December 16, 2015. As a result of receiving the documents after the AEP, affected enrollees were not able to make fully informed decisions about their Medicare plan options for the 2016 plan benefit year.

Relevant Disclosure and Information Dissemination Requirements

Pursuant to 42 C.F.R. §§ 422.111(a) and 423.128(a), Sponsors are required to ensure that enrollees receive clear and accurate ANOC/EOC documents at least 15 days before the AEP. For the 2016 plan year, Sponsors were required to deliver ANOC/EOC documents to enrollees by September 30, 2016. The ANOCs and EOCs provide vital information to Medicare beneficiaries about their plans, and allow beneficiaries to make informed choices concerning Medicare health care and prescription drug options for the upcoming plan year. Sponsors are required to ensure that their ANOCs/EOCs are accurate and errata sheets are mailed to enrollees quickly when inaccuracies are identified. Since 2009, CMS has repeatedly stressed the importance of providing accurate ANOC/EOC documents to enrollees timely, and noted that Sponsors would be subject to penalties for inaccurate documents and late mailings.

Violations Related to Disclosure and Information Dissemination Requirements

CMS has determined that AgeWell violated the disclosure and information dissemination requirements, and the violation had the substantial likelihood of adversely affecting its enrollees. AgeWell's violations include:

1. Failure to provide clear and accurate benefit information to its enrollees for the 2016 Medicare AEP. As a result, affected enrollees did not receive accurate benefit information and were not able to make fully informed choices concerning their Medicare coverage for the 2016 plan benefit year. AgeWell's action violated 42 C.F.R. §§ 422.111(a) and 423.128(a).
2. Failure to notify enrollees of changes to their benefits for the 2016 plan year at least 15 days prior to the start of the Medicare AEP. As a result, enrollees were not able to make fully informed decisions about their Medicare coverage for the 2016 plan benefit year. AgeWell's action violated 42 C.F.R. §§ 422.111(a)(3), 422.111(d)(2), and 423.128(a)(3), and the marketing guidelines in Chapter 2, Section 60.7 of the Medicare Prescription Drug Benefit Manual (IOM Pub. 100-18).

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 AgeWell's violations of Parts C and D requirements had the substantial likelihood of adversely affecting enrollees and warrant the imposition of a CMP. CMS has also determined that AgeWell's action resulted in it 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

AgeWell may appeal CMS' determination by requesting a hearing in accordance with the procedures outlined in 42 C.F.R. Parts 422 and 423, Subpart T. AgeWell 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 (i.e., by October 11, 2016). The request for hearing must identify the specific issues, findings of fact, and conclusions of law with which AgeWell disagrees. AgeWell must also specify the basis for each contention that the finding or conclusion of law is incorrect. The request must 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:

John A. Scott
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-23-17
Email: John.Scott@cms.hhs.gov

If AgeWell does not request an appeal in the manner and timeframe described above, the determination by CMS to impose a CMP will become final and the CMP will be due to CMS on October 11, 2016. AgeWell may choose to have the CMP deducted from a monthly payment, transfer the funds electronically, or mail a check to CMS. Please call or email the enforcement contact indicated in the email notification sent to you in order to notify CMS of your intent to make payment and to receive instructions on making the payment.

Please note that additional violations by AgeWell may result in CMS taking applicable remedies available under law, including penalties, intermediate sanctions, contract termination, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If AgeWell has questions about this notice, please call or email the enforcement contact indicated in the email notification sent to you.

Sincerely,

/s/

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

cc: Reginald Slaten, CMS/ CMHPO/Region II
Rachel Walker, CMS/ CMHPO/Region II
Starr Brown, CMS/ CMHPO/Region II
Kevin Stansbury, CMS/CMS/MOEG/DCE
Allison Conaway, CMS/CM/MOEG/DCE
Tim Roe, CMS/CM/MCAG/DSCM
Erica Sontag, CMS/CM/MCAG/DSCM