

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



PROGRAM COMPLIANCE AND OVERSIGHT GROUP

December 14, 2012

VIA:
EMAIL (orlando.gonzalez@mmmhc.com)
AND FACSIMILE (787-999-1719)

Orlando González
President
Aveta Inc.
350 Avenida Chardón
Torre Chardón, Suite 500
San Juan, PR 00918
Phone: 787-999-1719

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage - Prescription Drug Plan and Prescription Drug Plan Contract Numbers: MMM Healthcare, Inc. (H4003) and Preferred Medicare Choice, Inc. (H4004 and S0043)

Dear Mr. González:

Pursuant to 42 C.F.R. §§ 422.752(c)(1) and 423.752(c)(1), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Aveta Inc. (Aveta) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of \$75,000 for Medicare Advantage-Prescription Drug (MA-PD) Plan and Prescription Drug Plan (PDP) Contract Numbers: MMM Healthcare, Inc. (H4003) and Preferred Medicare Choice, Inc. (H4004 and S0043).

CMS has determined that Aveta failed to provide its enrollees with services and benefits in accordance with CMS requirements. An MA-PD/PDP sponsor's central mission is to provide Medicare enrollees with medical services and prescription drug benefits within a framework of Medicare requirements that provide enrollees with a number of protections.

Summary of Noncompliance

CMS conducted an audit at Aveta's San Juan, Puerto Rico offices from July 9, 2012 through July 16, 2012. During the audit, CMS conducted reviews of Aveta's operational areas to determine if Aveta is following CMS rules, regulations, and guidelines. After conducting an extensive review, CMS auditors concluded that Aveta failed to comply with CMS requirements governing the processing of organization and coverage determinations set forth in 42 C.F.R. Part 422, Subpart M (and related beneficiary protection provisions in Subparts C and F and contract provisions in Subpart K), and 42 C.F.R. Part 423, Subpart M (and related beneficiary protection provisions in Subpart C and contract provisions in Subpart K). Violations in these areas can result in enrollees experiencing delays or denials in receiving covered medical services or prescription drugs, and increased out-of-pocket costs. These violations directly adversely affected (or had the substantial likelihood of adversely affecting) Aveta's enrollees.

Part C and Part D Grievance, Organization Determination, Coverage Determination and Appeal Relevant Requirements

Medicare enrollees have the right to contact their plan sponsor to express general dissatisfaction with the operations, activities, or behavior of the plan sponsor, or to make a specific complaint about the denial of coverage for drugs or services to which the enrollee believes he or she is entitled. Sponsors are required to classify complaints about coverage for services as a request for an organization determination, and coverage for drugs as a request for a coverage determination. 42 C.F.R. §§ 422.564 (b), 422.566(b), 423.564(b) and 423.566(b).

The enrollee, the enrollee's representative, or the enrollee's treating physician or prescriber may make a request for an organization determination or coverage determination. 42 C.F.R. §§ 422.566(c) and 423.566(c). The first level review is the organization determination or coverage determination, which is conducted by the plan sponsor, and the point at which beneficiaries or their physicians submit justification for the service or benefit. 42 C.F.R. §§ 422.566(d) and 423.566(d). Coverage decisions must be made in accordance with Medicare coverage guidelines, Medicare covered benefits, and each sponsor's CMS-approved coverage policies and prescription drug benefits. 42 C.F.R. §§ 422.101(a-b) and 423.104(a). If the organization or coverage determination is adverse (not in favor of the enrollee), the enrollee has the right to file an appeal. 42 C.F.R. §§ 422.578 and 423.580. There are different decision making timeframes for the review of organization or coverage determinations and appeals. 42 C.F.R. §§ 422.568, 422.572, 422.590, 423.568, 423.572, and 423.590.

Deficiencies Related to Organization Determinations, Coverage Determinations and Appeals

CMS identified serious violations of Part C and Part D requirements in Aveta's organization determinations and coverage determinations operations. Aveta's violations include:

Part C

- Routinely reclassifying expedited organization determination requests and processing them under the standard organization determination timeframe when the plan was unable to make a decision within the expedited timeframe. At no time did the plan conduct any clinical review to determine whether applying the standard timeframe could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function. This is in violation of 42 C.F.R. §§ 422.570(c) and 422.572(a).

Part D

- Failure to process standard and expedited formulary exception requests properly, including failure to toll exception requests received without a prescriber's supporting statement, failure to conduct appropriate outreach to obtain missing information, and failure to allow prescribers time to respond to requests for information. This is in violation of 42 C.F.R. §§ 423.566(a), 423.578(b) and the Medicare Prescription Drug Benefit Manual, Chapter 18, Section 30.2.2.
- Failure to properly administer its CMS approved prescription drug benefit. Aveta failed to authorize prescriptions for the period indicated in the CMS-approved formulary. This is in violation of 42 C.F.R. §§ 423.104(a) and 423.120(b)(2)(iv). In addition, Aveta failed to extend exceptions approvals through the end of the plan year. This is in violation of 42 C.F.R. § 423.578(c)(4).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. §§ 422.752(c) and 423.752(c), CMS has determined that Aveta's violations of Medicare Parts C and D requirements are significant enough to warrant the imposition of a CMP. Aveta failed substantially to carry out the terms of its contracts with CMS, and failed to carry out its contracts with CMS in a manner that is consistent with the effective and efficient implementation of the program. 42 C.F.R. §§ 422.510(a)(1) and (2), and 423.509(a)(1) and (2).

Right to Request a Hearing

Aveta 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. Aveta 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 February 13, 2013. 42 C.F.R. §§ 422.1006, 423.1006, 422.1020, and 423.1020. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Aveta disagrees. Aveta must also specify the basis for each contention that the finding or conclusion of law is incorrect. The request should be sent to:

Orlando González
December 14, 2012
Page 4 of 4

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:

Patricia Axt
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard
MAIL STOP: C1-22-06
Baltimore, MD 21244
Email: Trish.Axt@cms.hhs.gov
FAX: 410-786-6301

If Aveta 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 February 14, 2013. Aveta may choose to have the penalty deducted from its monthly payment, transfer the funds electronically, or mail a check to CMS.

Please note that further failures by Aveta 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 Aveta has any questions about this notice, please call or email the enforcement contact provided in the email notification.

Sincerely,

/s/

Gerard J. Mulcahy
Acting Director
Program Compliance and Oversight Group

cc: Mr. Reginald Slaten, CMS/CMHPO/Region II
Mr. Mitchell Croll, CMS/ CMHPO/Region II
Mr. Allan Auguste, CMS/ CMHPO/Region II