

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

September 11, 2019

Ms. Heather Cianfrocco
Chief Executive Officer
Care Improvement Plus South Central Insurance Company
9800 Health Care Lane
Minnetonka, MN 55343

Re: Notice of Enrollment Suspension for Medicare Advantage-Prescription Drug Contract
Number H5322

Dear Ms. Cianfrocco:

Pursuant to 42 C.F.R. §§ 422.2410(c) and 423.2410(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Care Improvement Plus South Central Insurance Company (“Care Improvement Plus”) that CMS has made a determination to prohibit the enrollment of new beneficiaries under the Medicare Advantage-Prescription Drug (MA-PD) contract H5322 for contract year (CY) 2020.

Medical Loss Ratio (MLR) Relevant Requirements

Section 1857(e)(4) of the Social Security Act (“the Act”) requires Medicare Advantage organizations to maintain a medical loss ratio (MLR) of at least 85%, a requirement made applicable to Medicare Part D contracts through section 1860D-12(b)(3)(D) of the Act. The statute further provides, at section 1857(e)(4)(B) of the Act, that when an organization fails for three consecutive years to meet the 85% threshold, CMS must suspend that organization’s ability to accept new enrollments in the plans it offers under the non-compliant contract for the contract year following submission of the report (i.e., the second contract year after the third consecutive year in which the organization failed to meet the minimum MLR).

CMS administers the MLR review process for MA-PD organizations through the application of regulations at 42 C.F.R. Parts 422 and 423, Subpart X. In particular, MA-PD organizations are required, per §§ 422.2410(a) and 423.2410(a), to report an MLR each year for each of their contracts, and §§ 422.2460 and 423.2460 obligates sponsors to make such reports consistent with guidance provided by CMS. CMS has published MLR instructions and workbooks on June 27, 2017 (for CY 2016 data), June 29, 2018 (for CY 2017 data), and June 6, 2019 (for CY 2018 data).

Violation Related to MLR Requirements

Care Improvement Plus has reported to CMS the following MLRs for MA-PD contract H5322: 71.3% for CY 2016, 83.9% for CY 2017, and 84.1% for CY 2018. Based on this plan sponsor-reported information, CMS has determined that Care Improvement Plus has failed to meet the 85% MLR threshold for three consecutive years.

As a result of this determination, Care Improvement Plus will be prohibited from accepting any MA-PD plan enrollments which would be effective January 1, 2020, through December 1, 2020. This action will include the removal of H5322 from the list of MA-PD plans from which beneficiaries may make an election during the CY 2020 Annual Election Period (AEP), which runs between October 15, 2019, and December 7, 2019. However, Care Improvement Plus may continue to accept and process enrollments that become effective on or before December 1, 2019.

During CY 2020, all individual market plans offered under H5322 will be precluded from accepting any new enrollees, including those beneficiaries already enrolled in a Care Improvement Plus MA- PD plan who may want to elect a different plan offered under the same contract. Pursuant to sections 1857(i) and 1860D-22(b) of the Act, if Care Improvement Plus has employer group plans, it may apply for and be granted an employer group waiver in order to continue to enroll members into their existing employer group plans, although CMS will not permit Care Improvement Plus to add new employer group plans to contract H5322 for CY 2020.

Care Improvement Plus must ensure that its marketing materials and activities are not misleading to beneficiaries, and therefore must accurately reflect the fact that the plans under H5322 are not available for enrollment during 2020. Enforcement actions, as described in 42 C.F.R. Parts 422 and 423 Subparts K and O, may be imposed if CMS finds that Care Improvement Plus has engaged in activities that could mislead or confuse Medicare beneficiaries or misrepresent the plan pursuant to 42 C.F.R. §§ 422.2268 and 423.2268.

If Care Improvement Plus submits a CY 2019 report in 2020 for H5322 that demonstrates it has achieved an MLR of at least 85%, CMS will allow the sponsor to resume accepting enrollments that become effective on or after January 1, 2021. In such an instance, CMS would allow Care Improvement Plus to offer plans under H5322 to beneficiaries during the CY 2021 AEP, which will be held between October 15, 2020, and December 7, 2020. In the event that the CY 2019 MLR report for H5322 again shows an MLR below 85%, enrollment under that contract will remain closed during CY 2021. Furthermore, CMS reminds Care Improvement Plus that if it fails to report an MLR of at least 85% for five consecutive years for H5322, CMS must terminate that contract, pursuant to sections 1860D-12(b)(3)(D) and 1857(e)(4)(C) of the Act.

Opportunity to Respond and Right to Request a Hearing

In accordance with our statement in the May 23, 2013, final rule (78 FR 31287-88), through which CMS adopted the MA organization and Part D sponsor MLR regulations, CMS is affording Care Improvement Plus the opportunity to contest this determination through the processes that currently apply to suspensions of enrollment imposed as an intermediate sanction.

Therefore, Care Improvement Plus may provide a response to this notice, pursuant to §§ 422.756(a) and 423.756(a), and/or request a hearing, pursuant to §§ 422.756(b) and 423.756(b).

Consistent with §§ 422.756(a) and 423.756(a), Care Improvement Plus has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by September 23¹, 2019. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case, September 12, 2019. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the address noted below. Note that the enrollment closure will not be stayed pending a rebuttal submission.

Consistent with §§ 422.756(b) and 423.756(b), Care Improvement Plus may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in §§ 422.650-662 and 423.650-662. A written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by September 27, 2019. Please note, however, a request for a hearing will not delay CMS' implementation of the enrollment closure. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

CMS notes that the statute does not provide any discretion in the imposition of the enrollment sanction described in this Notice. Further, the information underlying the MLR determination for the three relevant years has been provided by Care Improvement Plus. Therefore, we anticipate that any response to this notice or request for a hearing would be limited to mistakes or errors made by CMS in accepting the reports from Care Improvement Plus or arguments that we are misapplying the law.

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

Benjamin Cohen
CMS Hearing Officer
Office of Hearings
ATTN: HEARING REQUEST
Centers for Medicare & Medicaid Services
1508 Woodlawn Drive
Suite 100
Mail Stop: WD-02-15
Baltimore, MD 21244-2670
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:

Kevin Stansbury
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services

¹ The 22nd day fell on a weekend or holiday, therefore the date reflected in the notice is the next regular business day for you to submit your request.

7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-26
Email: Kevin.Stansbury@cms.hhs.gov

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

Sincerely,

/s/

John A. Scott
Acting Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Jennifer Shapiro, CMS/CM/MPPG
Kevin Stansbury, CMS/CM/MOEG/DCE
Ann Duarte, CMS/CMHPO/Region IX
Deanna Gee, CMS/CMHPO/Region IX
Nicole Edwards, CMS/CMHPO/Region IX