

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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June 21, 2017

Mr. Alexander Balko  
President  
Elderplan, Inc.  
6323 Seventh Avenue  
Brooklyn, New York 11220

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription  
Drug Contract Number: H3347

Dear Mr. Balko:

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 Elderplan, Inc. (Elderplan), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$132,000** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H3347.

CMS has determined that Elderplan failed to provide accurate benefit information to its enrollees in the combined Contract Year (CY) 2017 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents.

**Summary of Noncompliance**

Elderplan reported to CMS that it sent inaccurate ANOC/EOC documents for the 2017 plan benefit year to 2,400 enrollees. The ANOC/EOC documents incorrectly stated that enrollees:

- Have a yearly deductible of \$166, when the correct amount is \$183;
- Have a deductible of \$166 for Part D prescription drugs, when the correct amount is \$400; and
- For in-patient hospital stays, have for each benefit period either a \$0 or \$1,228 deductible for days 1-60, a daily copayment of \$322 for days 61-90, and a daily copayment of \$644 for days 91-150. The correct amounts are \$1,316 deductible per benefit period, \$0 daily copayment for days 1-60, \$329 daily copayment for days 61-90, and \$658 daily copayment for days 91-150.

Elderplan mailed an errata sheet correcting these errors on February 17, 2017, which was more than 10 weeks after the end of the Annual Election Period (AEP). Therefore, affected enrollees

did not have accurate information during the AEP and were unable to make fully informed decisions about their Medicare health care and prescription drug coverage for the 2017 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 2017 plan year, Sponsors were required to deliver ANOC/EOC documents to enrollees by September 30, 2017. 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 mail errata sheets 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 Elderplan violated the disclosure and information dissemination requirements, which had the substantial likelihood of adversely affecting its enrollees. Elderplan's violation includes:

1. Failure to provide clear and accurate benefit information to its enrollees for the 2017 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 2017 plan benefit year. This is in violation of 42 C.F.R. §§ 422.111(a) and 423.128(a).

### **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 Elderplan's violation of Parts C and D requirements had the substantial likelihood of adversely affecting enrollees and warrants the imposition of a CMP. Consequently, CMS has concluded that Elderplan is 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**

Elderplan 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. Elderplan 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 August 21, 2017). The request for hearing must identify the specific issues, findings of fact, and conclusions of law with which Elderplan disagrees. Elderplan 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:

Kevin Stansbury  
Acting Director, Division of Compliance Enforcement  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail Stop: C1-22-27  
Email: Kevin.Stansbury@cms.hhs.gov

If Elderplan 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 August 22, 2017. Elderplan 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.

### **Impact of CMP**

Please note, this action will factor into Elderplan's Past Performance calculation. As a result of this action, your organization will receive one negative past performance point.

Further failures by Elderplan to provide its enrollees with clear and accurate benefit information in accordance with CMS requirements may result in CMS imposing additional remedies available under law, including contract termination, intermediate sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If Elderplan has any questions about this notice, please call or email the enforcement contact provided in the email notification.

Sincerely,

/s/

Vikki Ahern, Director  
Medicare Parts C and D Oversight and Enforcement Group

cc: Reginald Slaten, CMS/ CMHPO/Region II  
Rachel Walker, CMS/ CMHPO/Region II  
Joaquin Clinton-Clemens, CMS/CMHPO/Region II  
Kevin Stansbury, CMS/CMS/MOEG/DCE