



MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP

October 12, 2018

Brad Buechler
President & CEO
Omaha Health Insurance Company
3300 Mutual of Omaha Plaza
Omaha, NE 68175

Re: Notice of Immediate Imposition of Intermediate Sanction (Suspension of Enrollment and Marketing) for Prescription Drug Plan Contract Numbers: S7126 – **State of Florida Only**

Dear Mr. Buechler:

Pursuant to 42 C.F.R. § 423.756, the Centers for Medicare & Medicaid Services (CMS) hereby informs Omaha Health Insurance Company (OHIC) of its determination to immediately impose an intermediate sanction on the following Prescription Drug Plan Contract: S7126 (Service areas within the state of Florida only).

This intermediate sanction will consist of the suspension of enrollment of Medicare beneficiaries into OHIC's contract (42 C.F.R. § 423.750(a)(1)), and the suspension of all marketing activities to Medicare beneficiaries (42 C.F.R. § 423.750(a)(3)). CMS is imposing these intermediate sanctions immediately, effective October 12, 2018 at 11:59 p.m. EDT, pursuant to 42 C.F.R. § 423.756(c)(2).

These sanctions are in effect because OHIC has not provided CMS with evidence that it has received a valid license to accept enrollments in the State of Florida. Pursuant to 42 C.F.R. § 423.756(c)(3), these sanctions will remain in effect until CMS receives notification from the Florida Office of Insurance Regulation (FL OIR) that OHIC's state license is valid and that it is free to accept enrollments into its PDP.

Summary of Noncompliance

On October 10, 2018, OHIC informed CMS that its license to conduct business in the State of Florida was not complete. OHIC stated that at the time it entered into a contract with CMS, it believed that it had the appropriate license from the State of Florida to offer its PDP to Florida residents. However, in mid-September, OHIC was told by the FL OIR that it needed to submit an amendment application for additional lines of business (health and accident) on its license. As a result, OHIC was informed by the FL OIR that it is not permitted to accept enrollments into its PDP product until the amendment application has been approved for the additional lines of

business.

The statute (at section 1860D-12(a)(1) of the Act) and Part D regulation (at 42 C.F.R. § 423.401(a)(b)), require each PDP sponsor to have a license under state law as a risk bearing entity eligible to offer health insurance or health benefits coverage in each state in which the sponsor offers a PDP. OHIC has admitted that it does not have a valid license to offer those benefits in the State of Florida. Therefore, OHIC is noncompliant with CMS's contract requirements.

Legal Basis for Immediate Imposition of Enrollment Sanctions

CMS has determined that OHIC's deficiencies provide a sufficient basis for the immediate imposition of intermediate sanctions (42 C.F.R. § 423.752(b)). CMS has determined that OHIC no longer substantially meets the applicable conditions to carry out its contract with CMS (42 C.F.R. § 423.509(a)(3)).

Corrective Action Steps

Pursuant to 42 C.F.R. § 423.756(c)(3), the sanctions will remain in effect until CMS is satisfied that the basis for the sanction determination has been corrected and is not likely to recur. OHIC has no more than 30 days (or by November 12, 2018) to produce a valid license from the State of Florida as well as notification from the FL OIR that OHIC is permitted to accept enrollments.

Opportunity to Respond to Notice

Pursuant to 42 C.F.R. § 423.756(a)(2), OHIC has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by October 23, 2018. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case October 13, 2018. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the address noted below. Note that the sanctions imposed pursuant to this letter are not stayed pending a rebuttal submission.

Right to Request a Hearing

OHIC may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. § 423.650-662. Pursuant to 42 C.F.R. § 423.756(b), a written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by October 29, 2018.¹ Please note, however, a request for a hearing will not delay the date specified by CMS when the sanctions become effective. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

¹The 15th 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.

The request for a hearing must be sent to the CMS Hearing Office 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
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-26
Email: Kevin.Stansbury@cms.hhs.gov

CMS will consider the date the Office of Hearings receives the email or the date it receives the fax or traceable mail document, whichever is earlier, as the date of receipt of the request. The request for a hearing must include the name, fax number, and e-mail address of the contact within OHIC (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request.

Please note that if we do not receive confirmation of a valid license and the approval to accept enrollments from the FL OIR no later than 30 days from this notice, OHIC may also be subject to other applicable remedies available under law, including termination or the imposition of additional sanctions and penalties as described in 42 C.F.R. Part 423, Subparts K and O.

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

Sincerely,

Judy Geisler
Deputy Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Cheri Rice, CMS/CM
Amy Larrick, CMS/CM/MDBG
John Scott, CMS/CM/MOEG
Kevin Stansbury, CMS/CM/MOEG/DCE
Judith Flynn, CMS/CMHPO/Region VII
Dale Ferguson, CMS/CMHPO/Region VII
Ann Davis, CMS/CMHPO/Region VII