

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



**PROGRAM COMPLIANCE AND OVERSIGHT GROUP**

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December 14, 2012

**VIA:**

**EMAIL ([pfrawley@fideliscare.org](mailto:pfrawley@fideliscare.org))  
AND FACSIMILE (718-896-2755)**

The Reverend Patrick J. Frawley  
Interim Chief Executive Officer  
The New York State Catholic Health Plan, Inc.  
95-25 Queens Blvd.  
8<sup>th</sup> Floor  
Rego Park, NY 11374  
Phone: 718-393-6105

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage - Prescription Drug  
Plan Contract Number: H3328

Dear Reverend Frawley:

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 The New York State Catholic Health Plan, Inc. (NYSCHP) 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 Contract Number: H3328.

CMS has determined that NYSCHP failed to provide its enrollees with services and benefits in accordance with CMS requirements. An MA-PD 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 NYSCHP's Rego Park, New York offices from August 27, 2012, through August 31, 2012. During the audit, CMS conducted reviews of NYSCHP's operational areas to determine if NYSCHP is following CMS rules, regulations and guidelines. After conducting an extensive review, CMS auditors concluded that NYSCHP failed to comply with

CMS requirements governing the processing of Part C and D organization/coverage determinations and Part C and Part D appeals-set forth at 42 C.F.R. Parts 422 and 423, Subpart M. 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) NYSCHP'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. 42 C.F.R. §§ 422.566 and 423.566. 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. §§ 422.580 and 423.580. The first level of appeal is called a reconsideration (Part C) or redetermination (Part D). Reconsiderations and redeterminations are processed by the plan sponsor and must be conducted by an individual who was not involved in the organization determination or coverage determination decision. If the denial was based on a lack of medical necessity, the redetermination must be made by a physician with the appropriate expertise. 42 C.F.R. §§ 422.590(g) and 423.590(f). The second level of appeal is made to an independent review entity (IRE) contracted by CMS. 42 C.F.R. §§ 422.592 and 423.600.

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. CMS has a beneficiary protection in place that requires plans to forward Part D coverage determinations, Part C reconsiderations and Part D redeterminations to the IRE when the plan has missed the applicable adjudication timeframe, and when the plan issues a Part C reconsideration that affirms, in whole or in part, its adverse organization determination. 42 C.F.R. §§ 422.590(a-d), (f) and 423.568(h), 423.572(d) and 423.590(c), (e).

### **Deficiencies Related to Organization Determinations, Coverage Determinations and Appeals**

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

### **Part C**

- Failure to forward standard and expedited reconsideration requests to the IRE when adverse organization determinations are upheld on reconsideration, in violation of 42 C.F.R. §§ 422.590(a)(2) (b)(2),(c), (d)(5) and (f).

### **Part D**

- Failure to ensure that standard and expedited coverage determinations and plan redeterminations were processed and enrollees were notified within the required timeframes, in violation of 42 CFR §§ 423.568(b), 423.572(a), and 423.590(a) and (d).
- Failure to effectuate standard and expedited coverage determinations and plan redeterminations within the CMS required timeframes. This is in violation of 42 CFR §§ 423.636 and 423.638.

### **Basis for Civil Money Penalty**

Pursuant to 42 C.F.R. §§ 422.752(c) and 423.752(c), CMS has determined that NYSCHP's violations of Medicare Parts C and D requirements are significant enough to warrant the imposition of a CMP. NYSCHP failed substantially to carry out the terms of its contract with CMS, and failed to carry out its contract 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**

NYSCHP 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. NYSCHP 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 NYSCHP disagrees. NYSCHP must also specify the basis for each contention that the finding or conclusion of law is incorrect. The request should 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

Reverend Patrick J. Frawley

December 14, 2012

Page 4 of 4

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 NYSCHP 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. NYSCHP 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 NYSCHP 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 NYSCHP 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