

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 19, 2014

Vern D. Herbel
Chief Executive Officer
Torchmark Corporation
3700 S. Stonebridge Drive
McKinney, TX 75070

Re: Notice of Imposition of Civil Money Penalty for Prescription Drug Plan Contract
Numbers: S5580 and S5755

Dear Mr. Herbel,

Pursuant to 42 C.F.R. § 423.752(c)(1) and § 423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Torchmark Corporation (Torchmark) that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of **\$40,000** for Prescription Drug Plan Contract Numbers: S5580 and S5755.

CMS has determined that Torchmark failed to provide its enrollees with Medicare benefits in accordance with CMS requirements. A Medicare Prescription Drug Plan sponsors' central mission is to provide Medicare beneficiaries with prescription drug benefits within a framework of Medicare requirements that provide plan enrollees with a number of protections.

Summary of Noncompliance

CMS conducted an audit of Torchmark's Medicare operations from December 3, 2012 through December 12, 2012. CMS auditors reported in the Medicare Prescription Drug Program Audit report issued February 25, 2013 that Torchmark failed to comply with Medicare requirements related to Part D formulary and benefit administration, coverage determinations, appeals, and grievances in violation of 42 C.F.R. Part 423, Subparts C and M. Torchmark's failures in these areas were systemic and resulted in enrollees experiencing inappropriate delays or denials in receiving covered benefits and increased out-of-pocket costs. Based on those findings, CMS imposed a Civil Money Penalty in the amount of \$150,000 on April 3, 2013.

In 2013, CMS conducted two audits to validate that Torchmark had corrected the deficiencies contained in the report issued February 25, 2013. On August 2, 2013, CMS determined that Torchmark had corrected and passed all Immediate Corrective Action violations. However, on September 20, 2013, CMS' validation audit found that several other deficiencies remained uncorrected. The CMP imposed in the notice is based on the violations found in that validation.

Part D Coverage Determination, Appeal, and Grievance Relevant Requirements

(42 C.F.R. Part 423, Subpart M; IOM Pub. 100-18 Medicare Prescription Drug Benefit Manual Chapter 18)

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 to which the enrollee believes he or she is entitled.

Sponsors are required to classify general complaints about benefits or the sponsor's operations or activities as grievances. Sponsors are required to classify complaints about coverage for drugs as coverage determinations. It is critical for a sponsor to properly classify each complaint as a grievance or a coverage determination or both. Improper classification of a coverage determination denies an enrollee the applicable due process and appeal rights and may delay an enrollee's access to medically necessary or life-sustaining drugs.

The enrollee, the enrollee's appointed representative, or the enrollee's prescribing physician or other prescriber may make a request for a coverage determination. The first level review is the coverage determination, which is conducted by the plan sponsor, and the point at which beneficiaries or their physicians submit justification for the benefit.

If the coverage determination is adverse (not in favor of the enrollee), the enrollee has the right to file an appeal. The first level of appeal - called a redetermination - is handled by the plan sponsor and must be conducted by a physician who was not involved in the coverage determination decision. The second level of appeal is made to an independent review entity (IRE) contracted by CMS.

There are different decision making timeframes for the review of coverage determinations and appeals. CMS has a beneficiary protection in place that requires plans to forward coverage determinations and appeals to the IRE when the plan has missed the applicable adjudication timeframe.

Violations Related to Part D Coverage Determinations, Appeals, and Grievances

CMS' validation audit identified serious violations of Part D coverage determination, appeal, and grievance requirements that resulted in Torchmark's enrollees being inappropriately delayed or denied or facing the substantial likelihood of being delayed or denied access to their medications. Torchmark's violations include:

1. Failure to appropriately auto-forward coverage determinations to the independent review entity (IRE) within CMS timeframes. This is in violation of 42 C.F.R. § 423.568(h), § 423.572(d), and IOM Pub. 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Sections 40.4, 50.6, 70.30, and 70.40.
2. Failure to effectuate decisions and notify beneficiaries (or prescribers as appropriate) of its determination within CMS required timeframes for standard and expedited coverage determination requests. This is in violation of 42 CFR § 423.568(b), § 423.572(a) and

(b); and IOM Pub. 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Sections 40.2, 40.3.3, 40.3.4, 40.3.5, 50.4 and 130.1.

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 423.752(c)(1) and § 423.760(b), CMS has determined that Torchmark's violations of Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees and warrants the imposition of a CMP. Torchmark's failed substantially:

- To carry out the terms of its contract with CMS (42 C.F.R. § 423.509(a)(1));
- To comply with the requirements in Subpart M relating to grievances and appeals (42 C.F.R. § 423.509(a)(5))

Right to Request a Hearing

Torchmark may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. Part 423, Subpart T. Torchmark 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 November 19, 2014. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Torchmark disagrees. Torchmark 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

A copy of the hearing request should also be sent to CMS at the following address:

Michael DiBella
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-06
Email: Michael.Dibella@cms.hhs.gov

If Torchmark 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 November 20, 2014. Torchmark 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 Torchmark 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. Part 423, Subparts K and O.

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

Sincerely,

/s/

Gerard J. Mulcahy
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Ms. Julie Kennedy, CMS/CMHPO/Region VI
Mr. Arthur Pagan, CMS/CMHPO/Region VI
Ms. Sandra Mason, CMS/CMHPO/Region VI