

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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July 17, 2015

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

Re: Notice of Imposition of Non-Immediate Intermediate Sanctions (Suspension of Enrollment and Marketing) for Prescription Drug Plan Contract Numbers: S5580, S5755

Dear Mr. Herbel,

Pursuant to 42 C.F.R. § 423.756, the Centers for Medicare & Medicaid Services (CMS) is providing notice to First United Life Insurance Company and United American Insurance Company, both owned by parent organization Torchmark Corporation (Torchmark), that CMS has made a determination to impose intermediate sanctions on the following Prescription Drug Plan Contract Numbers: S5580, S5755.

These intermediate sanctions will consist of the suspension of enrollment of Medicare beneficiaries into Torchmark's contracts (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)). This determination to impose intermediate sanctions will be effective 14 calendar days from the date of receipt of this notice, or August 1, 2015, and will remain in effect until CMS is satisfied that the deficiencies upon which the determination was based have been corrected and are not likely to recur. CMS will provide Torchmark with detailed instructions regarding the marketing and enrollment suspensions in a separate communication.

A Medicare Prescription Drug Plan sponsor's central mission is to provide Medicare enrollees with prescription drug benefits within a framework of Medicare requirements that provide enrollees with a number of protections. CMS has determined that Torchmark has substantially failed to comply with requirements in 42 C.F.R. Part 423, Subpart M, after repeated warnings by CMS to correct these operational deficiencies.

**Summary of Noncompliance**

Torchmark has demonstrated a history of non-compliance over the past several years with the processing of its Part D coverage determinations, appeals and grievances, in violation of 42 C.F.R. 423, Subpart M. Torchmark's failures in these areas were first discovered in late 2012,

when CMS conducted a program audit of Torchmark's Medicare operations and reported substantial failures with numerous Part D requirements. As a result of those failures, CMS imposed a \$150,000 civil money penalty in April 2013. Subsequently, CMS conducted a validation audit to test whether Torchmark corrected the failures identified in the 2012 audit. CMS found a number of recurring issues as well as additional failures with the processing of Torchmark's Part D coverage determinations, appeals and grievances. CMS imposed an additional \$40,000 civil money penalty in September 2014 as a result of these failures.

In 2015, CMS conducted another audit of Torchmark's Medicare operations from May 18, 2015 through May 29, 2015. During the audit, CMS conducted reviews of numerous operational areas to determine if Torchmark is following CMS rules, regulations, and guidelines. CMS auditors again concluded that Torchmark substantially failed to comply with CMS requirements regarding Part D coverage determinations, appeals and grievances. CMS found that Torchmark's failures in these areas were widespread and systemic, and have remained uncorrected for more than two years despite numerous warnings and opportunities to correct. These violations resulted in enrollees experiencing delays in receiving coverage decisions, improper reviews of their coverage requests, and inappropriate and untimely resolution of their grievances.

#### **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 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 service or 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 identified violations of Part D coverage determination, appeal, and grievance requirements that resulted in Torchmark's enrollees experiencing delays in receiving coverage decisions, improper reviews of their coverage requests, and inappropriate and untimely resolution of their grievances.

Torchmark's violations include:

1. Misclassifying coverage determinations or redeterminations requests as grievances and/or customer service inquiries. As a result, enrollees' requests were not processed as coverage determinations or redeterminations, which may have resulted in an inappropriate delay or denial of prescription drugs. This is in violation of 42 C.F.R. §423.564(b) and IOM Pub. 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Sections 20.2, 20.2.4.1, 20.2.4.2, and 30.4
2. Failure to notify enrollees of the resolution of standard grievances within CMS required timeframes, or as expeditiously as the enrollee's case required. As a result, an enrollee could experience a delay in access to medications and/or financial hardship. This is in violation of 42 C.F.R. § 423.564(e) and IOM Pub. 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Section 20.3.
3. Failure to take appropriate actions, including full investigations, and/or appropriately addressing all issues raised in grievances. As a result, enrollees may be unaware of the approval status of his/her request, and could experience a lapse in coverage, a delay in access to medications, and/or financial hardship. This is in violation of 42 C.F.R. § 423.564(a) and IOM Pub. 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Section 20.3
4. Misclassifying redetermination requests as coverage determinations. As a result, enrollee requests were not processed as redeterminations, which provides for the right to have the case reviewed by an independent review entity. Enrollees may have experienced delays or inappropriate denials of prescription drugs without the protections of the redetermination process. This is in violation of 42 C.F.R. § 423.580 and IOM Pub. 100-18 Medicare Prescription Drug Manual, Chapter 18, Sections 30 and 70.
5. Failure to implement favorable expedited decisions by the Independent Review Entity (IRE) or other appeal entity within 24 hours of receipt. As a result, enrollees may have experienced a delay in access to medications. This is in violation of 42 C.F.R. §423.638(b) and IOM Pub. 100-18 Medicare Prescription Drug Manual, Chapter 18, Section 130.3.2.

6. Failure to auto-forward or timely auto-forward coverage determinations and/or redeterminations to the Independent Review Entity (IRE) for review and disposition. As a result, enrollees were delayed or denied access to an independent review, which could result in a lapse in coverage or a delay in access to medications. This is in violation of 42 C.F.R. § 423.568(h), §423.572(d), 423.578(c), 423.590(c), 423.590(e); and IOM Pub. 100-18 Medicare Prescription Drug Manual, Chapter 18, Sections 40.4, 50.6, 70.7.1., 70.8.2, and 70.10.
7. Failure to perform Part B vs. Part D determinations for transplant medications, which resulted in improper denials of payment under Part D. As a result, enrollees experienced delays in access to medications, and may have experienced financial hardship due to medication being billed to the incorrect payer. This in violation of 42 C.F.R. § 423.120(b)(2); and IOM Pub. 100-18 Medicare Prescription Drug Manual, Chapter 6, Sections 20.2 and 20.2.2.
8. Failure to include adequate rationale or correct information specific to the denial in enrollees' denial letters. As a result, enrollees did not have adequate or understandable information concerning the requirements for coverage. This is in violation of 42 C.F.R. § 423.568(g), § 423.572(c)(2), 423.590(g).

Most of these violations have remained uncorrected since the initial audit in late 2012. These failures are mainly a result of inadequate staffing and training of Torchmark's current employees to correctly execute certain crucial Part D requirements. In addition, it is apparent from the audit results that Torchmark has substantial issues with the appropriate and timely resolution of its grievances. This issue is further exacerbated by the fact that Torchmark has the highest complaint rate among all Part D sponsors as recorded in CMS' complaint tracking module. Given that these issues have been ongoing for a number of years, the number of beneficiaries impacted by these failures is unknown.

### **Basis for Intermediate Sanctions**

CMS has determined that Torchmark's deficiencies provide a sufficient basis for the imposition of intermediate sanctions (42 C.F.R. § 423.752(b)). Torchmark failed substantially:

- To carry out the terms of its contracts with CMS (42 C.F.R § 423.509(a)(1));
- To comply with the requirements in 42 C.F.R. Part 423 Subpart M related to grievances and appeals (42 C.F.R. § 423.509(a)(4)(ii)).

The nature of Torchmark's substantial noncompliance and Torchmark's inability to correct numerous violations despite previous warnings and opportunities to correct supports the suspension of Torchmark's enrollment and marketing activities. Consequently, these sanctions are effective on August 1, 2015, pursuant to the authority provided by 42 C.F.R. § 423.756(c)(1).

## **Opportunity to Correct**

Pursuant to 42 C.F.R. § 423.756(c)(3), the sanctions will remain in effect until CMS is satisfied that the deficiencies that are the basis for the sanctions determination have been corrected and are not likely to recur. Torchmark is solely responsible for the identification, development, and implementation of its Corrective Action Plan, and for demonstrating to CMS that the underlying deficiencies have been corrected and are not likely to recur. Attached to this notice is a Corrective Action Plan template with instructions for Torchmark to complete. Torchmark should submit its Corrective Action Plan to CMS within seven (7) calendar days from the date of receipt of this notice, or by July 25, 2015. If Torchmark needs additional time beyond seven (7) days to submit its Corrective Action Plan, contact your enforcement lead.

Once Torchmark has fully implemented its Corrective Action Plan, it must submit to CMS an attestation from Torchmark's Chief Executive Officer, or most senior official, stating that Torchmark has corrected the deficiencies that are the basis for the sanction and they are not likely to recur.

## **Hiring of an Independent Auditor**

Pursuant to 42 C.F.R. § 423.756(c)(3)(i), CMS is requiring Torchmark to hire an independent auditor to conduct a validation audit of all operational areas cited in this notice and to provide a written report to CMS. Upon completion of the validation audit, CMS will make a determination about whether the deficiencies that are the basis for the sanctions have been corrected and are not likely to recur. CMS will send additional information about the use of an independent auditor in a separate communication.

## **Opportunity to Respond to Notice**

Pursuant to 42 C.F.R. § 423.756(a)(2), Torchmark has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by July 28, 2015. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case July 18, 2015. If you choose to submit a rebuttal, please send it to the attention of Michael DiBella 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**

Torchmark 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 August 3, 2015.<sup>1</sup> 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.

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<sup>1</sup> If the 15<sup>th</sup> day falls on a weekend or federal holiday, you have until the next regular business day 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  
2520 Lord Baltimore Drive  
Suite L  
Mail Stop: LB-01-22  
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:

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

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 Torchmark (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 we are closely monitoring your organization and Torchmark may also be subject to other applicable remedies available under law, including the imposition of additional sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 423, Subparts K and O. CMS will consider taking action to immediately terminate your contract if issues that pose a serious threat to the health and safety of Medicare beneficiaries are identified or left uncorrected.

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

Sincerely,

/s/

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

Enclosure:  
Attachment A – Corrective Action Plan Template

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