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

April 23, 2014

VIA EMAIL: (nfeldman@ucare.org)

Ms. Nancy Feldman
Chief Executive Officer
UCare Minnesota
500 Stinson Boulevard NE
Minneapolis, MN 55413
Phone: 612-676-3376

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug Contract Numbers: H2456, H2459 and H4270

Dear Ms. Feldman:

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 UCare Minnesota (UCare) that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of **$30,000** for violations found in the following Medicare Advantage-Prescription Drug (MA-PD) Contract numbers: H2456, H2459 and H4270.

CMS has determined that UCare failed to provide its enrollees with benefits in accordance with CMS requirements. A Medicare Advantage organization's central mission is to provide Medicare beneficiaries 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 of UCare's Medicare Part C and Part D operations from April 8, 2013 through April 18, 2013. During the audit, CMS conducted reviews of UCare's operational areas to determine if UCare was following CMS rules, regulations, and guidelines. CMS auditors reported that UCare failed to comply with Medicare requirements related to Part D coverage determinations, appeals, and grievances in violation of 42 C.F.R. Part 423, Subpart M. CMS found that UCare's failures in these areas were widespread and systemic, and resulted in enrollees experiencing inappropriate delays or denials in receiving prescription drugs and increased out of pocket costs. These violations directly adversely affected (or had the substantial likelihood of adversely affecting) UCare's enrollees.

Part D Grievance, Coverage Determination and Appeal Relevant Requirements
(42 C.F.R. Part 423, Subpart M; Internet Only Manual 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 or services to which the enrollee believes he or she is entitled. Sponsors are required to classify general complaints about services, 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 services or 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 and Appeals

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

- Inappropriately denied coverage determinations by applying utilization management criteria applicable to new starts of medication when physician documentation stated that enrollees had been stable on the medication for an extended period of time. This is in violation of 42 CFR § 423.566(a) and (b); and IOM 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Section 30.

- Denied coverage determinations prior to conducting adequate outreach to physicians or enrollees to obtain necessary information to make appropriate clinical decisions. This is

in violation of 42 CFR § 423.566)(a); and IOM 100-18 Medicare Prescription Drug Benefit Manual, Chapter 18, Sections 10.2, 30.2.1, 30.2.2, and 70.7.

- Inappropriately denied coverage determinations by failing to consider available clinical information when rendering coverage decisions. This is in violation of 42 CFR § 423.578(a) and (b), 42 CFR § 423.586; Medicare Prescription Drug Benefit Manual, IOM Pub. 100-18, Chapter 18, Sections 10.2, 30.2.1.1, 30.2.1.4, 30.2.2.1, 30.2.2.4, 50.2.1, 70 and 70.5.

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 422.752(c) and § 423.752(c), CMS has determined that UCare's violations of Part D requirements are significant enough to warrant the imposition of a CMP. In violating Parts D requirements, UCare failed substantially to carry out the terms of its MA-PD contracts with CMS and failed to carry out its contracts with CMS in a manner 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). UCare's violations directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees. 42 C.F.R § 422.760 (b) and § 423.760(b).

Right to Request a Hearing

UCare may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. § 422 and 423, Subpart T. UCare 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 June 23, 2014. 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 UCare disagrees. UCare 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 UCare 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 June 24, 2014. UCare 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 UCare 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 UCare 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: Mr. Todd Stankewicz CMS/CMHPO/Region V
Ms. Dolores Perteet CMS/CMHPO/Region V
Mr. Gregory Bublitz, CMS/CMHPO/Region V