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

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICARE

MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP

September 26, 2017

Mr. Curtis Barnett
Chief Executive Officer
USAble Mutual Insurance Company
601 Gaines Street
Little Rock, AR 72201

Re: Notice of Enrollment Suspension for Prescription Drug Plan Contract Number S5795

Dear Mr. Barnett:

Pursuant to 42 C.F.R. § 423.2410(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to USAble Mutual Insurance Company ("USAble") that CMS has made a determination to prohibit the enrollment of new enrollees under the Medicare Part D Prescription Drug Plan (PDP) contract S5795 for contract year (CY) 2018.

Medical Loss Ratio (MLR) Relevant Requirements

Section 1857(e)(4) of the Social Security Act ("the Act") requires Medicare Advantage organizations to maintain a medical loss ratio (MLR) of at least 85%, a requirement made applicable to Medicare Part D contracts through section 1860D-12(b)(3)(D) of the Act. The statute further provides, at section 1857(e)(4)(B) of the Act, that when an organization fails for three consecutive years to meet the 85% threshold, CMS must suspend for the contract year following submission of the report (i.e., the second contract year after the third consecutive year in which the organization failed to meet the minimum MLR) that organization's ability to accept new enrollments in the plans it offers under the non-compliant contract.

CMS administers the MLR review process for Part D sponsors through the application of regulations at 42 C.F.R. part 423, Subpart X. In particular, Part D sponsors are required, per § 423.2410(a), to report an MLR each year for each of their contracts, and § 423.2460 obligates sponsors to make such reports consistent with guidance provided by CMS. CMS has published MLR instructions and workbooks on April 4, 2015 (for CY 2014 data), May 31, 2016 (for CY 2015 data), and June 27, 2017 (for CY 2016 data).

Violation Related to MLR Requirements

USAble has reported to CMS the following MLRs for PDP contract S5795: 79.8% for CY 2014, 81.3% for CY 2015, and 84.0% for CY 2016. Based on this plan sponsor-reported information, CMS has determined that USAble has failed to meet the 85% MLR threshold for three consecutive years.

As a result of this determination, USAble will be prohibited from accepting any Part D plan enrollments which would be effective January 1, 2018, through December 1, 2018. This action will include the removal of S5795 from the list of PDPs from which beneficiaries may make an election during the CY 2018 annual election period (AEP), which runs between October 15, 2017, and December 7, 2017. However, USAble may continue to accept and process enrollments that become effective on or before December 1, 2017.

During CY 2018, all individual market plans offered under S5795 will be precluded from accepting any new enrollees, including those beneficiaries already enrolled in a USAble PDP who may want to elect a different plan offered under the same contract. Pursuant to sections 1857(i) and 1860D-22(b) of the Act, USAble may apply for and be granted an employer group waiver in order to continue to enroll members into their existing employer group plans, although CMS will not permit USAble to add new employer group plans to contract S5795 for CY 2018.

USAble must ensure that its marketing materials and activities are not misleading to beneficiaries, and therefore must accurately reflect the fact that the plans USAble administers under S5795 are not available for enrollment during 2018. Enforcement actions, as described in 42 C.F.R. Part 423 Subparts K and O, may be imposed if CMS finds that USAble has engaged in activities that could mislead or confuse Medicare beneficiaries or misrepresent the plan pursuant to 42 C.F.R. § 423.2268.

Should USAble submit a CY 2017 report in 2018 for S5795 that demonstrates it has achieved an MLR of at least 85%, CMS will allow the sponsor to resume accepting enrollments that become effective on or after January 1, 2019. In such an instance, CMS would allow USAble to offer plans under S5795 to beneficiaries during the CY 2019 AEP, which will be held between October 15, 2018, and December 7, 2018. In the event that the CY 2017 MLR report for S5795 again shows an MLR below 85%, enrollment under that contract will remain closed during CY 2019. Furthermore, CMS reminds USAble that if it fails to report an MLR of at least 85% for five consecutive years for S5795, CMS must terminate that contract, pursuant to sections 1860D-12(b)(3)(D) and 1857(e)(4)(C) of the Act.

Opportunity to Respond and Right to Request a Hearing

In accordance with our statement in the May 23, 2013, final rule (78 FR 31287-88), through which CMS adopted the Part D MLR regulations, CMS is affording USAble the opportunity to contest this determination through the processes that currently apply to suspensions of enrollment imposed as an intermediate sanction. Therefore, USAble may provide a response to this notice, pursuant to § 423.756(a), or request a hearing, pursuant to § 423.756(b).

Consistent with § 423.756(a), USAble has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by October 10, 2017.[1] Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case, September 27, 2017. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the address noted below. Note that the enrollment closure will not be stayed pending a rebuttal submission.

Consistent with § 423.756(b), USAble may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in §§ 423.650-662. A written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by October 12, 2017. Please note, however, a request for a hearing will not delay CMS' implementation of the enrollment closure. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

CMS notes that the statute does not provide any discretion in the imposition of the enrollment sanction described in this Notice. Further, the information underlying the MLR determination for the three relevant years has been provided by USAble. Therefore, we anticipate that any response to this notice or request for a hearing would be limited to mistakes or errors made by CMS in accepting the reports from USAble or arguments that we are misapplying the law.

The request for a hearing must be sent to the CMS Hearing Officer 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
Acting 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

[1] If the 10th day falls on a weekend or federal holiday, you have until the next regular business day to submit your request.

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

Sincerely,

Vikki Ahern
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Cheri Rice, CMS/CM
Jennifer Harlow, CMS/CM/MPPG
Judy Geisler, CMS/CM/MOEG
Kevin Stansbury, CMS/CM/MOEG/DCE
Arthur Pagan, CMS/CMHPO/Region VI
April Forsythe, CMS/CMHPO/Region VI
Eric Hansen, CMS/CMHPO/Region VI