

**CENTERS FOR MEDICARE AND MEDICAID SERVICES**  
**Hearing Officer Decision**

**In the Matter of**

Red Medica de Puerto Rico, Inc. )  
Initial Application ) Docket No. 2008-C/D-App-01  
Denial, H3420 )  
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**Jurisdiction**

This appeal is provided pursuant to 42 C.F.R. §422.660. The Centers for Medicare and Medicaid Services (CMS) Hearing Officer designated by the CMS Administrator to conduct this hearing is the undersigned, Benjamin Cohen.

**Statutory and Regulatory Background**

Section 101 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Pub.L. 108-173), amended Title XVIII of the Social Security Act (the Act) by establishing a voluntary prescription drug benefit and made changes to the Medicare managed care program known as Medicare Advantage (MA or Part C). Specifically, the MMA created coverage for prescription drug benefits and moved managed care toward a competitive bidding system, requiring submission of annual bids and annual contracting. Pursuant to 42 C.F.R. §§422.500 et seq. and 423.500 et seq.,<sup>1</sup> CMS has respectively established the general provisions for entities seeking to qualify as managed care organizations and/or Prescription Drug Plans (PDP or Part D).

MA applicants have their applications reviewed by CMS to determine whether they meet the application requirements to enter into such a contract. The regulation at 42 C.F.R. §422.501(b) states, in relevant part:

(b) Completion of an application.

(1) In order to obtain a determination on whether it meets the requirements to become an MA organization and is qualified to provide a particular type of MA plan, an entity, or an individual authorized to act for the entity (the applicant) must complete a certified application, in the form and manner required by CMS, including the following:

(i) Documentation of appropriate State licensure or State certification that the entity is able to offer health insurance or

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<sup>1</sup> 42 C.F.R. §422.500 indicates that MA organizations offering prescription drug plans must meet the requirements of Part 422 (Part C) and Part 423 (Part D) of the regulations. The Parts C and D regulations concerning contract determination and appeals are generally parallel.

health benefits coverage that meets State-specified standards applicable to MA plans, and is authorized by the State to accept prepaid capitation for providing, arranging, or paying for the comprehensive health care services to be offered under the MA contract; or

(ii) For regional plans, documentation of application for State licensure in any State in the region that the organization is not already licensed.

(2) The authorized individual must thoroughly describe how the entity and MA plan meet, or will meet, the requirements described in this part.

(Emphasis added).

Accordingly, for the 2009 contract year, CMS established an online application process for both Part C and Part D Plans called the Health Plan Management System (HPMS). All new applicants (and requests of existing MA plans to expand service areas) had to submit their applications through the HPMS by deadlines established by CMS. CMS provided training and technical assistance to plans in completing their application and plan applications were evaluated solely on the materials they submitted into the HPMS system within CMS established windows.

After the initial March 2008 filing window closed, CMS reviewed plan submissions and in April 2008, provided the plans with a listing of their deficiencies. The HPMS system was reopened for a second window to submit data into the HPMS to correct the deficiencies.

Upon review of the materials submitted within the second window, some plans still had alleged deficiencies. Prior to issuing a contract determination denial, the regulations at 42 C.F.R. §422.502(c) require CMS to formally send an intent to deny notice which provides the plan ten days to cure their application. The regulation states:

(c) Notice of determination. Within timeframes determined by CMS, it notifies each applicant that applies for an MA contract under this part of its determination and the basis for the determination. The determination is one of the following:

(1) Approval of application. If CMS approves the application, it gives written notice to the applicant, indicating that it qualifies to contract as an MA organization.

(2) Intent to deny.

(i) If CMS finds that the applicant does not appear to be able to meet the requirements for an MA organization and/or has not provided enough information to evaluate the application, CMS

gives the contract applicant notice of intent to deny the application for an MA contract and a summary of the basis for this preliminary finding.

(ii) Within 10 days from the date of the intent to deny notice, the contract applicant must respond in writing to the issues or other matters that were the basis for CMS' preliminary finding and must revise its application to remedy any defects CMS identified.

(Emphasis added).

During the ten day period, plans were given a final opportunity to submit data into the HPMS to correct their deficiencies. On May 19, 2008, the window closed and plans were unable to formally file materials through the HPMS. CMS reviewed the materials which were timely filed through the HPMS and on June 3, 2008 issued denial letters to the plans which had failed to correct their deficiencies.

If CMS denies a MA applicant, they have a right to a hearing before a CMS Hearing Officer under 42 C.F.R. §422.660. The regulation states:

- (a) The following parties are entitled to a hearing:
  - (1) A contract applicant that has been determined to be unqualified to enter into a contract with CMS under part C of Title XVIII of the Act pursuant to 422.501.
  - (2) An MA organization whose contract has been terminated pursuant to § 422.510.
  - (3) An MA organization whose contract has not been renewed pursuant to §422.506.
  - (4) An MA organization who has had an intermediate sanction imposed pursuant to § 422.752(a) through (b).
  
- (b) The MA organization bears the burden of proof to demonstrate that it was in substantial compliance with the requirements of the MA program on the earliest of the following three dates:
  - (1) The date the organization received written notice of the contract determination or intermediate sanction.
  - (2) The date of the most recent on-site audit conducted by CMS.
  - (3) The date of the alleged breach of the current contract or past substantial noncompliance as determined by CMS

(Emphasis added).

### Network Requirements

Federal regulations at 42 C.F.R. §422.112(a)(i) require coordinated care plans (such as Red Medica de Puerto Rico) to “[m]aintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to covered services to meet the needs of the population served. These providers are typically used in the network as primary care providers (PCPs), specialists, hospitals, skilled nursing facilities, home health agencies, ambulatory clinics, and other providers.”

In order to be approved as an MA Organization, an applicant must document that it has a network of health care providers sufficient to ensure that covered benefits are available and accessible to each enrolled individual within the plan’s service area as required under both §1852(d)(1)(A) of the Act and 42 C.F.R. §422.112(a)(1)(i).

### **Procedural Background**

Red Medica de Puerto Rico, Inc. (Red Medica) filed an initial application for the island of Puerto Rico by the March 10, 2008 due date for the 2009 contract year. By letter dated March 28, 2008, CMS informed Red Medica that its application was incomplete and requested information concerning a number of deficiencies. (CMS Exhibit 1). On April 15, 2008, CMS informed Red Medica that, based on an intensive evaluation of its application, its application still contained a number of deficiencies. (CMS Exhibit 2).

On May 9, 2008, CMS notified Red Medica of its intent to deny its application. (CMS Exhibit 3). Red Medica was afforded ten days to “cure” all remaining deficiencies.

On June 3, 2008, CMS denied Red Medica’s application for the following deficiencies.

1. The proposed network does not include any physicians with hospital privileges
  - Physicians are privileged only in the San Juan metropolitan area and mostly in one hospital system - University of Puerto Rico.
  - There are no listed physicians with privileges in any other area of Puerto Rico, including Ponce and Mayaguez where members receive care and hospitals are listed as contracted in the network.
2. Applicant failed to show contracted hospitals in the municipalities of Aguadilla, Arecibo, Bayamon, and Caguas, where Medicare certified hospitals are available.
3. Home Health Services – Applicant failed to show contracted providers of this required service listed for Ponce – a major population center.
4. Mental Illness – Inpatient:
  - There are no identifiable providers of this required service in the proposed network.
  - None of the facilities shown by the applicant as being such a provider is, in fact, certified by Medicare to provide this service.
5. Dialysis:
  - There are no ESRD facilities listed for Fajardo, Mayaguez and Ponce where facilities are available.

Applicant erroneously identified many facilities, such as labs and DME providers, as providing this service. There are 39 Medicare certified facilities in Puerto Rico including facilities in Fajardo, Mayaguez and Ponce.

6. Skilled Nursing Facility (SNF): Vega Baja, Hormigueros, Ponce and Humacao.  
Insufficient SNFs

The two facilities listed by the applicant as SNFs are not identifiable as SNFs

Applicant erroneously listed many labs as providing SNF services  
Applicant has contracts with only 2 out of 8 available SNFs, both in the San Juan metropolitan area. There are available facilities in the Vega Baja, Hormigueros, Ponce and Humacao areas that are available for serving the beneficiaries who live in these areas.

See CMS' June 3, 2008 denial letter. (CMS Exhibit 4).

Red Medica filed a timely appeal on June 5, 2008.

Red Medica submitted a statement in support of its position on June 19, 2008. (Plan Brief dated June 19, 2008). It included a list of 13 exhibits, however, Plan Exhibits 5 (Mental Illness – Inpatient) and 7 (SNF Facilities) were not provided either before or at the hearing. (Plan Exhibits 1-4, 6, and 8-13).

CMS submitted a statement in support of its denial on June 19, 2008. (CMS Brief dated June 19, 2008). It included a list of six exhibits. (CMS Exhibit 1-6).

A hearing was conducted on June 24, 2008. As Red Medica alleged it timely uploaded relevant information into the HPMS which was not in the hearing record, the Hearing Officer permitted Red Medica to submit additional information after the hearing. Red Medica submitted additional information on June 25, 2008. (Plan Supplemental (Supp.) Brief dated June 25, 2008 and Plan Supp. Exhibits 1-6).

CMS was provided with an opportunity to respond to Red Medica's supplemental documentation. CMS submitted additional information on July 1, 2008. (CMS Supp. Brief and CMS Supp. Exhibits 1-7).

### Issue

Was the CMS denial of Red Medica's application for its MA-PD plan for program year 2009, proper?

### Parties' General Contentions

#### CMS' Contentions

CMS contends that a plan must document that it has an adequate provider network during the application process and that Red Medica's provider network was deficient in the areas

indicated in its June 3, 2008 denial letter. CMS contends that it reviewed Red Medica's submissions into the HPMS system prior to the May 19, 2008 deadline and did not find adequate documentation that it had corrected the deficiencies in its May 9, 2008 intent to deny letter. At the hearing, and in its post-hearing submissions, CMS indicated that Red Medica's documentation was insufficient except for the previously identified deficiency of home health services. (CMS Supp. Brief at 3).

CMS contends that applicants have no basis to believe that they could submit additional information after the application deadlines, simply because they filed an appeal to a Hearing Officer. CMS maintains that plans should not be afforded an opportunity based on 42 C.F.R. §422.660 to submit to the Hearing Officer documentation concerning its qualifications that have not previously been reviewed by CMS by May 19, 2008 during the 2009 application process and to permit the submission of such information would, in effect, extend the deadline for submitting an approvable application. CMS noted that pursuant to 42 C.F.R. §422.501(b), it has the right to set the application filing requirements and to expect such requirements to be fully met.

CMS indicates that upon the issuance of a notice of intent to deny, applicants are afforded no more than 10 days to respond to the issues identified in the notice, per 42 C.F.R. §422.502(c)(2)(ii). The date of expiration of the 10-day window is the time in which any information must have been submitted to be considered in the application approval decision for the following calendar year. Accordingly, CMS closed the HPMS system on May 19, 2008. CMS has no obligation to consider any materials beyond the May 19<sup>th</sup> deadline or materials which were not submitted through HPMS. Therefore, neither CMS nor the Hearing Officer should give consideration to any plan's submission of contracts after the May 19, 2008 deadline.

CMS notes that plans are permitted to update their applications during the application process, usually to add information in response to CMS' identification of missing or deficient documentation. CMS notes that in many instances the documentation submitted by Red Medica into the hearing record, specifically HSD tables, were from earlier versions of its uploads to the HPMS for March 10 and 31, 2008 and that it did not submit evidence from its final upload into the HPMS. CMS contends that the only final application (as revised by a plan and uploaded into the HPMS prior to the May 19, 2008 deadline) should be considered in making a final determination as it represent their most complete, accurate and current application submission. While CMS commented on the adequacy of the earlier submitted documentation, it also presented documentation on what was contained in Red Medica's application on May 19, 2008.

CMS notes that Red Medica previously operated a MA plan, under another contract number, in Puerto Rico but that it transferred that contract to another entity. In any event, CMS contends that Red Medica is applying for a new initial application and can not rely on facts concerning the other contract in this new application.

CMS notes that it conducted an on-site review of the Red Medica and identified further contract deficiencies for it to correct. Tr. at 134-136. CMS points out, however, that this

visit was only conducted in the event that its contract determination was overturned on appeal. CMS' visit should not be construed as an acceptance of Red Medica's network or its lack of contracted providers.

### Red Medica's Contentions

Red Medica contends that during the application process it uploaded into HPMS documentation to refute each of CMS' alleged deficiencies.

Red Medica also indicated that it previously operated as a MA plan for all of Puerto Rico and that even though it transferred that contract to another entity, it is in the process of establishing a similar network of providers for its current application.

Red Medica also indicates that on June 12 and 13, 2008, CMS conducted a site visit at which time it requested that it obtain updated contracts with its provider network. (Tr. at 131). Red Medica contends that it has requested the required documentation. Id.

## **Summary of Evidence Presented by the Parties by Deficiency**

### 1. Physician Privileges Outside of San Juan

At the hearing, Red Medica presented a list of hospitals that covered many areas in Puerto Rico. (Plan Brief Exhibit 3). Red Medico noted that this list was not part of the materials uploaded to the HPMS prior to May 19, 2008. (Tr. at 48). Red Medica indicates that since it had contracts with these hospitals, they had privileges to provide services in these hospitals. (Tr. at 62-63). Also, Red Medica indicated that information about physician hospital privileges is confidential and they do not need to disclose it publicly. (Tr. at 67). After the hearing, Red Medica presented HSD-2 and 3 tables it uploaded into the HPMS during the application process. (Plan Supp. Exhibits 1a through r). It states that these tables include a sample of 33 physicians located in Ponce and Mayaguez and claims that they have privileges in those areas. (Plan Supp. Brief at 2).

CMS indicates that some of the supplemental exhibits submitted by Red Medica (Plan Supp. Exhibit 1a, 1b, 1n, 1o, and 1p) are HSD-3 tables that do not have information about physician hospital privileges. Information about physician hospital privileges is contained in HSD-2 tables in Column J. CMS notes that Red Medica uploaded some HSD-2 tables (Plan Supp. Exhibits 1c-1m and 1q-1r) but they are from an earlier upload on March 31, 2008 and only included Columns A-G, leaving out the critical Column J where physician hospital privilege information is indicated. CMS presented complete copies of Red Medica's March 31, 2008 HSD-2 tables which include Column J. (CMS Supp. Exhibit 1C-1R). CMS indicates that in every instance, Red Medica left Column J blank. In addition, CMS submitted copies of Red Medica's HSD-2 tables upload on May 19, 2008 (CMS Exhibit 1S), which represents its last and final HPMS submission and notes that none of Red Medica's physicians had privileges outside of San Juan.

### 2. Hospitals in the Municipalities of Aguadilla, Arecibo, Bayamon, and Caguas

Red Medica indicates that it contracted with all Hima Hospital facilities in Puerto Rico, including its facility in the Caguas area. (Plan Exhibit 2). The dates for the contract provided are from January 1, 2007 to December 31, 2007. (Id. in Section 2.01) It also presented a list of subcontracted hospitals. (Plan Exhibit 3). After the hearing, Red Medica submitted HSD-2 and 3 tables it uploaded into the HPMS system during the application process which show contracted hospitals in the areas CMS says are deficient. (Plan Supp. Brief at 2 and Plan Supp. Exhibits 2a through 2r).

CMS states that HSD-2 tables are used to list physicians and other practitioners by county but that they are not used to submit lists of contracted hospitals and cannot be used for that purpose. CMS acknowledges that Red Medica submitted some HSD-3 tables with hospitals listed in the deficient areas but points out that the HSD-3 tables are from its March 10 and 31, 2008 uploads. (Plan Supp. Exhibits 2b, 2d, 2f, 2h, 2j, 2l, 2n and 2p). CMS presented Red Medica's HSD-3 tables from its final submission on May 19, 2008, and they did not include any hospitals in the areas of Aguadilla, Arecibo, Bayamon and Caguas. (CMS Supp. Exhibits 2A through 2I).

### 3. Home Health Services

Upon further review, CMS indicated that Red Medica was not deficient in home health services. (CMS Supp. Brief at 3).

### 4. Mental Illness – Inpatient

Red Medica indicates that it had inpatient mental health services but did not provide documentation either before or at the hearing. After the hearing, Red Medica submitted HSD-3 tables (Plan Supp. Exhibits 4a through 4k) which it states contains mental health providers and notes that some of them are hospitals. In addition, they state that any providers, including inpatient mental health providers, who render services to its enrollees are paid as fee-for-service providers and therefore, its enrollees have access to this care.

CMS indicates that Red Medica's submission was from its earlier March 31, 2008 upload into the HPMS. CMS acknowledged that some of the facilities listed (Plan Exhibits 4a, 4f and 4g) are Medicare certified mental health facilities in the areas of Fajardo, Cida and San Juan. CMS Supp. Brief at 4. CMS notes, however, that the HSD-3 tables supplied by Red Medica (Plan Supp. Exhibits 4c, 4d, 4g, 4i, 4j and 4k) do not include Column N in which a plan would indicate that a facility provides mental illness inpatient treatment. CMS presented Red Medica's complete March 31, 2008 submission which shows that it did not check Column N for these facilities. (CMS Supp. Exhibits 4C, 4D, 4G, 4I, 4J and 4K). Even based on its March 31, 2008 HSD-3 tables, CMS asserts that Red Medica only met the requirement for the areas of Fajardo, Cida and San Juan but not the areas of Ponce and Mayaguez in which Medicare certified facilities were available. Finally, CMS noted that Red Medica resubmitted its HSD-3 tables during the final upload prior to the May 19, 2008. In this final upload, CMS indicates that Red Medica's revised HSD-3

tables only had inpatient mental health services in San Juan and Fajardo. (Plan Exhibits 4e and 4b). Of the 11 providers it listed as providing mental health services, six are not facilities where mental health services are provided and four are not Medicare certified. (CMS Supp. Exhibit 4L). The one facility that is Medicare certified only provides services in San Juan and Fajardo and therefore, its network of providers for this service is still deficient.

## 5. Dialysis

Red Medica presented a table of ESRD facilities which includes all of the Fresenius facilities, which include facilities in the following areas: Mayaguez, Aguadilla, Arecibo, and San German and asserted that it had been uploaded into the HPMS. (Plan Exhibit 6 and Tr. at 188). After the hearing, Red Medica presented HSD-3 tables uploaded through-out the application process which included all of the Fresenius facilities. (Plan Exhibits 5a through 5c).

CMS points out that Red Medica's supplemental exhibits did not include Column Q in which plans indicate that facilities provide "Renal/Dialysis" services. CMS provided the full HSD-3 tables and notes that there was no check mark for any of the facilities in Column Q. (CMS Supp. Exhibits 5A, 5B and 5C). Also, CMS presented Red Medica's final upload of its HSD-3 table prior to the May 19, 2008 deadline showing all ESRD facilities. (CMS Supp. Exhibit 5D). It does not contain any ESRD facilities in Fajardo and Mayaguez and the sole facility listed for Ponce was not Medicare certified. (See CMS Supp. Exhibit 7). CMS maintains that Red Medica did not have dialysis services for the areas of Fajardo, Mayaguez and Ponce.

## 6. Skilled Nursing Facilities

Red Medica did not supply any list of SNFs with its initial brief or at the hearing. Red Medica indicated that it previously had a MA contract in which it initially covered 19 municipalities and subsequently all of Puerto Rico. (Plan Exhibits 10 and 11). Under that contract, Red Medica states it had a contract to use the network of providers of the International Managed Care Services (IMCS) to provide SNF services. Even though Red Medica transferred the rights to its old contract, it planned to continue using IMCS under its new contract. After the hearing, Red Medica indicated that there are only eight Medicare certified SNFs in Puerto Rico. (See Plan Supp. Brief at 4). Red Medica also provided the HSD-3 tables it submitted during the application process. (Plan Exhibits 6a through 6f). Red Medica contends that five SNFs were listed in the HSD-3 tables and they are part of the subcontract with IMCS' network of providers. Red Medica also states that it has sent contracts to the other two SNFs. (Plan Supp. Paper at 4-5).

CMS indicates that Red Medica is applying for a new initial application to become a MA-PD plan and that it can not rely on facts concerning its previous contract in this new contract. CMS notes that after the hearing, Red Medica submitted a list of eight SNFs and claims to have included five in its HSD-3 tables. CMS points out that one of the facilities stated as being listed, Auxilio Mutuo at Hato Rey is not in fact listed in the

plan's exhibits. CMS also notes that Red Medica did not provide full screens for all of its HSD-3 tables. Red Medica's HSD tables did not include Column R in which plans indicate that facilities provide SNF services. (Plan Supp. Exhibits 6a- 6e). CMS presented complete copies of Red Medica's March 31, 2008 HSD-3 tables and notes that Column R was left blank for all SNF facilities except those in San Juan. (CMS Supp. Exhibit 6A and 6B). CMS also presented the Plan's final HSD-3 table uploaded into HPMS prior to the May 19, 2008 deadline. (CMS Supp. 6C). This HSD-3 table lists all SNF that Red Medica claimed as contracted. There were four SNFs listed – two in San Juan and two outside of San Juan. CMS notes that the two SNFs outside of San Juan were not on the list of Medicare certified SNFs. Therefore, CMS continues to maintain that Red Media has not submitted any evidence that it has SNF services outside of San Juan.

### **Decision**

CMS' June 3, 2008 denial is upheld as Red Medica did not demonstrate that it was in substantial compliance with the requirements of the MA-PD program.

The Hearing Officer finds that the appeal regulations at 42 C.F.R. §422.660 establish a substantial compliance standard that applies to both applicants and existing contractors. With regard to what evidence the Hearing Officer may consider when evaluating "substantial compliance" on the date of the June 3, 2008 contract determination, the Hearing Officer notes that pursuant to 42 C.F.R. §422.501(b), CMS may set deadlines and dictate the form and manner of the application process (e.g., CMS has the right to require the use of the HPMS). In addition, 42 C.F.R. §422.502(c)(2)(ii) requires that plans revise their applications within 10 days from the date of the intent deny letter. Accordingly, CMS was within its authority to only consider documentation which was filed through its HPMS system by May 19, 2008, the last day of the 42 C.F.R. §422.502(c)(2)(ii) cure window. Therefore, when deciding if a plan was in substantial compliance on June 3, 2008, the Hearing Officer will evaluate whether the materials timely and properly filed with the agency by May 19, 2008 substantially complied with program requirements.<sup>2</sup>

The Hearing Officer notes that Red Medica did not provide complete copies of the HSD tables it submitted into the HPMS by the May 19, 2008 deadline. Red Medica alleged that it uploaded relevant information into HPMS by the May 19, 2008 deadline which

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<sup>2</sup> Reading 42 C.F.R. §422.660(b) in isolation could be misleading as it suggests that the Hearing Officer may consider any documentation which was submitted to CMS (or which potentially existed) up to the date of denial, i.e. June 3, 2008. However, such reading would require reading this section within a vacuum and would effectively invalidate the necessity to comply with all other regulatory (and instructional) filing requirements and deadlines. The Hearing Officer, accordingly finds, to interpret 42 C.F.R. §422.660, one must read the regulations, application, determination and appeals scheme together. Moreover, the Hearing Officer notes that 42 C.F.R. §422.660(a)(1) does explicitly reference 42 C.F.R. §422.501 which addresses the application process.

CMS did not consider. Red Medica did not present this argument prior to the hearing. Accordingly, after the hearing, CMS filed complete copies of the HSD tables to rebut this assertion. The Hearing Officer relied on this submission in reaching this decision.

The Hearing Officer concurs with CMS that a plan's upload into the HPMS before the May 19, 2008 deadline represents its final opportunity to submit a complete and revised application. 42 C.F.R. §422.502(c)(2)(ii). As such, CMS properly evaluates whether the latest submission meets the application requirements. The Hearing Officer notes that some of Red Medica's earlier submissions to the HPMS contained lists of providers not in its final application as of May 19, 2008. Although this information is noted in the decisions concerning the specific deficiencies below, the Hearing Officer's decision is based on the information in Red Medica's May 19, 2008 final application.

The Hearing Officer concurs with CMS that Red Medica's application for a new initial contract must be judged on the information in its application, as opposed to its record under another contract..

With respect to the specific deficiencies, the Hearing Officer makes the following findings:

#### 1. Physician Privileges Outside of San Juan

The Hearing Officer finds that because the information concerning the list of hospitals (Plan Exhibit 3) was not uploaded into the HPMS prior to the May 19, 2008 deadline it should not be considered. Also, the existence of contracts with hospitals does not assure that Red Medica's physicians had privileges at those hospitals. The Hearing Officer notes that applicants are required to provide information on physician hospital privileges in Column J of the HSD-2 tables. The Hearing Officer finds that Red Medica's final application uploaded into the HPMS prior to May 19, 2008 deadline did not show any physicians with privileges in contracted hospitals outside of San Juan. The Hearing Officer finds that CMS' determination regarding this deficiency was proper and that based on this deficiency alone Red Medica's application was not in substantial compliance on the date of CMS' determination.

#### 2. Hospitals in the Municipalities of Aguadilla, Arecibo, Bayamon, and Caguas

The Hearing Officer notes that the Red Medica's HSD-3 tables uploaded into the HPMS on March 10 and 31, 2008 listed hospitals in all four areas found deficient by CMS. (See Plan Supp. Exhibits 2d (line 15 for Aguadilla); 2f (line 52 for Arecibo); 2h (lines 85 and 86 for Arecibo); 2l (lines 88-91 for Bayamon); and 2p (lines 43, 45 and 46 for Caguas)). The Hearing Officer also notes that Red Medica's final submission of its HSD-3 table did not contain any of the hospitals it previously listed for these four areas. The record does not indicate why Red Medica's final submission did not include these previously listed hospitals. Relying on Red Medica's final updated submission into the HPMS on May 19, 2008, the Hearing Officer finds that it did not contain hospitals in the four deficient areas. The Hearing Officer finds that CMS' determination regarding this deficiency was proper

and that based on this deficiency alone Red Medica's application was not in substantial compliance on the date of CMS' determination.

### 3. Home Health Services

The Hearing Officer notes that CMS subsequently indicated that Red Medica was not deficient in home health services. (CMS Supp. Brief at 3).

### 4. Mental Illness – Inpatient

Based on the documentation in the record, the Hearing Officer finds that the HSD-3 tables uploaded by Red Medica into the HPMS on March 31, 2008 or on May 19, 2008, showed mental illness inpatient treatment in, at most, three areas - Fajardo, Cida and San Juan. (Plan Exhibits 4a, 4f, and 4g). There was no evidence that Red Medica's network included providers of mental illness inpatient treatment in either Ponce or Mayaguez. The Hearing Officer finds that CMS' determination regarding this deficiency was proper and that based on this deficiency alone Red Medica's application was not in substantial compliance on the date of CMS' determination.

### 5. Dialysis

The Hearing Officer notes that there is no evidence that the facility list presented by Red Medica at the hearing was uploaded into the HPMS prior to the May 19, 2008 deadline and therefore, should not be considered. The evidence in the record demonstrates that Red Medica's earlier uploads to the HPMS did not have check marks in Column Q which indicates that the facilities provide "Dialysis/Renal" services. (CMS Supp. Exhibits 5A, 5B and 5C). In addition, Red Medica's final upload into the HPMS prior to the May 19, 2008 deadline did not contain facilities in the three areas of Fajardo, Mayaguez and Ponce. The Hearing Officer finds that CMS' determination regarding this deficiency was proper and that based on this deficiency alone Red Medica's application was not in substantial compliance on the date of CMS' determination.

### 6. Skilled Nursing Facilities

The Hearing Officer notes that Red Medica is filing a new application which must stand on its own merits. The evidence in the record demonstrates that Red Medica's earlier uploads to the HPMS did not have check marks in Column R which indicates that the facilities provide "SNF" services. In addition, Red Medica's final upload into the HPMS prior to the May 19, 2008 deadline did not contain Medicare certified SNF facilities outside of the San Juan area. The Hearing Officer finds that CMS' determination regarding this deficiency was proper and that based on this deficiency alone Red Medica's application was not in substantial compliance on the date of CMS' determination.

**Conclusion**

The Hearing Officer finds that Red Medica's application was not in substantial compliance with the MA-PD program.

Benjamin Cohen  
Hearing Officer

Date: August 14, 2008