

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Drug and Health Plan Choice  
7500 Security Boulevard, Mail Stop C4-23-07  
Baltimore, Maryland 21244-1850



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January 15, 2009

**VIA:**  
**FEDERAL EXPRESS DELIVERY**  
**EMAIL ([andy.corbin@bcbsks.com](mailto:andy.corbin@bcbsks.com))**  
**AND FACSIMILE (785-291-8997)**

Mr. Andrew C. Corbin  
President and CEO  
Blue Cross Blue Shield of Kansas  
1133 Topeka Boulevard  
Topeka, KS 66629  
Phone: 785-291-8733

Re: Notice of Immediate Imposition of Intermediate Sanctions (Suspension of Enrollment and Marketing) For Prescription Drug Plan Contract Number S5726

Dear Mr. Corbin:

Pursuant to 42 C.F.R. §423.756, the Centers for Medicare & Medicaid Service (CMS) is hereby providing notice to Blue Cross Blue Shield of Kansas (BCBS of Kansas) of the imposition of intermediate sanctions for contract number S5726. These intermediate sanctions will consist of suspension of enrollment of Medicare beneficiaries (42 C.F.R. §423.750(a)(1)) and suspension of all marketing activities to Medicare beneficiaries (42 C.F.R. §423.750(a)(3)).

CMS is imposing these intermediate sanctions immediately because it has determined that BCBS of Kansas' conduct poses a serious threat to the health and safety of Medicare beneficiaries. Based on this determination, the intermediate sanctions will be effective immediately, January 15, 2009, pursuant to 42 C.F.R. § 423.756(d)(2), 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.

## **Summary of BCBS of Kansas Noncompliance**

BCBS of Kansas, through its first tier, third party administrator for all Part D functions (WellPoint, Inc.), has demonstrated a longstanding and persistent failure to comply with CMS' requirements for the proper administration of its Prescription Drug Plan (PDP). As stated in CMS regulations at 42 C.F.R. § 423.505(i)(1), Notwithstanding any relationship a Part D sponsor has with its first tier or downstream entity's, the sponsor, BCBS of Kansas, is ultimately responsible for adherence to all terms and conditions of its contract with CMS.

The noncompliance of its delegated entity (WellPoint), has resulted in significant problems in serving its enrollees in the following areas, including, but not limited to: enrollment, administration of the Low Income Subsidy (LIS) benefit, charging of enrollee premiums, and marketing. For the reasons set forth below, CMS is imposing intermediate marketing and enrollment sanctions, and since BCBS of Kansas' conduct poses a serious threat to the health and safety of both its prospective and current Medicare beneficiaries, these intermediate sanctions are effective immediately.

Due to disclosures made on behalf of BCBS of Kansas by WellPoint, Inc. regarding beneficiaries being denied prescription drugs, CMS is taking this immediate action to ensure that BCBS of Kansas focuses its efforts on correcting its significant compliance problems before further expanding the number of enrollees in its PDP. The recent failures in BCBS of Kansas' information systems have resulted in beneficiaries not receiving necessary medications at their pharmacies for the new benefit year, due to incorrect enrollment information, including the inaccurate reporting of enrollees' LIS status, improper disenrollments of beneficiaries, and overcharging beneficiaries for their cost-sharing obligations. Based on disclosures WellPoint, Inc. made on behalf of BCBS of Kansas to CMS during the first 9 days in January 2009, CMS determined that Medicare beneficiaries were denied access to critical medications posing a serious threat to the health and safety of the beneficiaries

CMS has determined that these continuing system failures, including those in January 2009, are indicative of a serious, pervasive problem affecting S5726. Under CMS requirements, PDP plans are required to maintain accurate and up-to-date information regarding enrollment and billing for all of their enrollees. This is a critical part of delivering the prescription drug benefit because information about an enrollee's drug benefit must be communicated in real-time to a pharmacy in order for a pharmacy to process each prescription for each enrollee.

CMS has afforded WellPoint, on behalf of BCBS of Kansas, ample opportunity to bring its PDP contract into compliance with CMS requirements. While the January 2009 system failures are the most egregious examples of BCBS of Kansas' noncompliance, BCBS of Kansas has consistently failed to meet CMS requirements for the past year. In the last four months, despite CMS' substantial focused efforts in working closely with BCBS of Kansas Part D administrator WellPoint, Inc., to identify and correct its

compliance issues, including requiring WellPoint, Inc. to hire an independent systems and program operations auditor and meeting weekly with CMS management and oversight staff, BCBS of Kansas' PDP continues to be deficient. In 2008, WellPoint, Inc. acknowledged to CMS that, at least in part as a result of WellPoint, Inc.'s computer systems integration issues, it had many problems supporting Part D lines of business. In a letter dated August 28, 2008, CMS identified for WellPoint, Inc. three main areas of compliance weaknesses in WellPoint, Inc.'s organization that needed to be immediately addressed: information technology systems, effective implementation of program policies, procedures and operations, and effective management oversight from the highest levels of the organization. CMS further recommended that WellPoint, Inc. take certain steps to provide reasonable assurance that it was prepared to continue to accept enrollments in its Medicare plans without posing threats to the beneficiaries' health and their access to their health and prescription drug coverage. In a letter dated September 22, 2008, CMS again notified WellPoint, Inc. that it had serious concerns about its ongoing failure to operate its Part D plans in compliance with Medicare Part D program requirements.

To date, BCBS of Kansas continually has failed to meet CMS requirements and prevent new compliance issues from occurring. In accordance with CMS regulations at 42 C.F.R. §423.756(d)(3), the intermediate sanctions will remain in place until BCBS of Kansas demonstrates to CMS that the compliance problems described below have been corrected and are not likely to reoccur.

### **Basis of Intermediate Sanctions**

CMS has determined that BCBS of Kansas' compliance deficiencies, as described below, provide sufficient basis for intermediate sanctions (42 C.F.R. §423.752(b)). Furthermore, CMS has determined that a number of these deficiencies pose a serious threat to enrollees' health and safety, warranting these sanctions to be effective immediately (42 C.F.R. §423.756(d)(2)).

CMS' determination to impose intermediate sanctions is based on the following regulatory violations, each of which provides an independent basis for the imposition of an intermediate sanction, and which are supported by examples of BCBS of Kansas' noncompliance, as described below:

***BCBS of Kansas substantially failed to provide medically necessary services that the organization is required to provide to a Part D plan enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee. (42. C.F.R. §423.752(a)(1)).***

- BCBS of Kansas had numerous systems failures associated with the benefit year beginning January 1, 2009 that resulted in beneficiaries being unable to receive their Part D covered drugs. These system failures pose a serious threat to the

health and safety of Medicare beneficiaries by limiting their access to drugs to treat serious conditions or diseases.

***BCBS of Kansas imposed on plan enrollees' premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under the Social Security Act and Federal Regulations. (42 C.F.R. §423.752(a)(2)).***

- BCBS of Kansas inappropriately charged beneficiaries premiums in excess of the permitted monthly premium.

***BCBS of Kansas substantially failed to carry out the terms of its Medicare Advantage contracts and its Prescription Drug Plan contracts with CMS (42 C.F.R. §423.509(a)(1)) and is carrying out its contracts with CMS in a manner that is inconsistent with the effective and efficient implementation of the program (42 C.F.R. §423.509(a)(2)).***

- BCBS of Kansas failed to process timely and accurately beneficiary enrollment and disenrollment requests as required.
- BCBS of Kansas failed to properly administer the low income subsidy benefit.
- BCBS of Kansas failed to ensure its membership information matched CMS' membership information to ensure accurate administration of the benefit, within the required timeframes.
- BCBS of Kansas failed to properly charge enrollees the cost sharing, included premiums, co-payments.
- BCBS of Kansas failed to allow beneficiaries to pay full monthly premiums through the Social Security Administration (SSA) premium withhold process.
- BCBS of Kansas failed to properly conduct CMS required enrollment and payment reconciliation.
- BCBS of Kansas erroneously assigned inaccurate disenrollment dates to enrollees.

***BCBS of Kansas substantially failed to comply with the coordination with plans and programs that provide prescription drug coverage (42 C.F.R. §423.509(a)(10)).***

- BCBS of Kansas failed to appropriately perform coordination of benefits for its enrollees.

***BCBS of Kansas substantially failed to comply with the requirements in subpart M of Part 423 related to appeals and grievances. (42 C.F.R. §423.509(a)(6)).***

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- BCBS of Kansas failed to utilize a statutorily required compendium (DrugDex) when making coverage determinations based on medical necessity. By failing to use the proper compendium, BCBS of Kansas denied payment for beneficiary drugs for medically accepted indications listed in the compendium, contrary to statutory requirements.

***BCBS of Kansas substantially failed to comply with the marketing requirements in 42 C.F.R. §423.128. (42 C.F.R. §423.509(a)(9)).***

- BCBS of Kansas failed timely distribute Explanation of Benefits to enrollees.
- BCBS of Kansas failed to issue a comprehensive formulary when specifically requested by members.
- BCBS of Kansas distributed marketing materials that were not approved by CMS, as required.
- BCBS of Kansas failed to meet CMS required call center performance requirements.

### **Opportunity to Respond to Notice**

Pursuant to 42 C.F.R. §423.756(a)(2), BCBS of Kansas has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by January 26, 2009. Please note that CMS considers receipt of notice as the day after notice is sent by fax, e-mail, or overnight mail, or in this case, January 16, 2009.

### **Right to Request a Hearing**

BCBS of Kansas may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. §§423.650 through 662. Pursuant to 42 C.F.R. §423.756(b), your written request for a hearing must be received by CMS within 15 calendar days of your receipt of this notice, or by January 31, 2009. Please note, however, a request for a hearing will not delay the date specified by CMS when the sanction becomes effective. 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. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

BCBS of Kansas must submit a request for hearing to the following CMS official:

Brenda J. Tranchida  
Director, Program Compliance and Oversight Group

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Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
MAIL STOP: C1-22-06  
Baltimore, MD 21244  
Email: [brenda.tranchida@cms.hhs.gov](mailto:brenda.tranchida@cms.hhs.gov)  
FAX: 410-786-6301

You must also send a courtesy copy of your request by e-mail to the CMS Hearing Officer on the date you mail your request. CMS will consider the date the Office of Hearings receives your e-mail or the date it receives the fax or traceable mail document, whichever is earlier, as the date of receipt of your request. Your request for a hearing must include the name, fax number and e-mail address of the contact within your organization (or the attorney who has a letter of authorization to represent your organization) with whom you wish us to communicate regarding the hearing 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 20244-2670  
Phone: (410) 786-3169  
E-Mail: [Benjamin.Cohen@cms.hhs.gov](mailto:Benjamin.Cohen@cms.hhs.gov)

Please note that we are closely monitoring your organization and BCBS of Kansas 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.

If you have any questions about this determination, please do not hesitate to contact Brenda Tranchida directly at (410) 786-2001.

Sincerely,



Abby L. Block  
Director, Center for Drug and Health Plan Choice

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cc: Ms. Krista Bowers, WellPoint, Senior VP  
Ms. Brenda J. Tranchida, CMS/CPC/PCOG  
Ms. Carol Bennett, DHHS/OS/OGC  
Mr. James Kerr, CMS/OA/CMHPO  
Ms. Nancy Brown DHHS/OIG/OCIG  
Mr. Peter Ashkenaz, CMS/OEA  
Ms. Laurie McWright, CMS/OL  
Ms. Mary Agnes Laurenno, CMS/OBIS  
Ms. Kimberly Brandt, CMS/OFM/Program Integrity  
Mr. Louis Polise, CMS/CPC/MCAG  
Ms. Cynthia Tudor, CMS/CPC/MDBG  
Mr. Anthony Culotta, CMS/CPC/MEAG  
Ms. Candace Arnold, CMS/CMHPO/Region V  
Mr. Randy Brauer, CMS/CPC/MPPG