

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Beneficiary Choices
7500 Security Boulevard, Mail Stop C4-23-07
Baltimore, Maryland 21244-1850



January 16, 2008

Mr. Mark El-Tawil
President, HealthNet Senior Products Division
Health Net Life Insurance Company
Mail Stop CA-175-02-02
10540 White Rock Road, Suite 280
Rancho Cordova, CA 95670

Re: Prescription Drug Plan Contract Number S5678

Dear Mr. El-Tawil:

This notice serves to inform you of the Center for Medicare & Medicaid Services (CMS) decision to suspend the marketing and enrollment activities of Health Net Life Insurance Company's Prescription Drug Plan (PDP) Sponsor Contract Number S5678, effective on the date of this letter.

Nature and Basis of Proposed Sanctions

As summarized below, CMS is very concerned about several compliance failures by HealthNet which pose a serious threat to the health and safety of Health Net's Medicare enrollees.

Enrollment Errors

- As of January 8, 2008, Health Net had a backlog of 7,888 enrollment applications. Beneficiaries submitting these applications relied on the timely processing of applications so that their enrollment in Health Net's PDP would be effective January 1, 2008.
- Of those 7,888 enrollment applications 1,435 enrollment applications were over 10 days old.
- New York State's pharmacy assistance program (SPAP), EPIC, submitted Health Net PDP enrollment applications on behalf of 4,482 of their clients in mid-December 2007 for an effective date of January 1, 2008. We understand that a combination of systems problems and inadequate management oversight caused

Health Net's subcontractor, Instil, to delay enrollment processing completion until January 10, 2008.

- Health Net failed to submit 4Rx data to CMS timely (within 72 hours of receipt of enrollment data from CMS) for its auto-enrollment and reassigned enrollments in December 2007. As of January 4, 2008, Health Net still had outstanding Rx data for at least 2,100 beneficiaries.

Issuance of Erroneous Notices to Medicare Enrollees

- In the fall of 2007, Health Net initially delivered an inaccurate 2008 Annual Notice of Change (ANOC) to 8,627 beneficiaries. This was the result of Health Net's vendor matching its mailing lists with the wrong ANOC texts. The CMS San Francisco Regional Office completed their approval of revised letters January 11, 2008.
- The premium specified in Health Net's 2008 Summary of Benefits (SBs) for its PDP Orange Option 2 product was incorrect. The SB listed a \$30.80 premium when the correct amount is \$38.00. This SB mailing adversely affected Medicare beneficiaries in Illinois, Indiana, Kentucky, and North Carolina by providing them with incorrect and confusing information.

In February 2007, CMS imposed Civil Money Penalties on Health Net's contract numbers H0755 and S5678 for Health Net's failure to issue its 2007 ANOCs in a timely manner. CMS understood that Health Net committed at that time to taking action to make sure that these notice problems did not recur. CMS is very concerned that Health Net did not improve its management and internal controls processes to ensure that these errors did not recur.

CMS Actions

CMS is very concerned that the numerous and repeated compliance failures by Health Net, as cited in this letter, have had a significant adverse impact on Health Net's Medicare enrollees. Health Net failed to enroll more than 1,400 Medicare beneficiaries who should have been enrolled effective January 1, 2008. These beneficiaries were denied access to the Part D drug coverage that they were entitled to receive. This egregious compliance failure by Health Net has resulted in a serious threat to the health and safety of affected Medicare beneficiaries. To obtain prescriptions under the Part D program, beneficiaries must be enrolled in a Part D plan offered by an organization that contracts with CMS. Unlike the Part C program, where beneficiaries who lose their enrollment in a Medicare Advantage plan are automatically afforded coverage by original (fee-for-service) Medicare for Part A and Part B services, the Part D program provides beneficiaries no such option for maintaining outpatient prescription drug coverage. As a result, Part D sponsor enrollment operations have a direct impact on beneficiary health and safety, as beneficiaries without Part D plan enrollment are denied access to needed medications.

Federal regulations at 42 C.F.R. § 423.752(b) permit CMS to impose marketing and enrollment sanctions for determinations made under §423.509(a). Accordingly, CMS has determined that pursuant to 42 C.F.R. §423.509(a) that Health Net has failed substantially to carry out the terms of its contract with CMS, is carrying out its contract in a manner that is inconsistent with the effective and efficient implementation of this part by failing to process enrollment transactions in a timely manner as required under 42 C.F.R. § 423.32(c); and has failed to comply with CMS requirements pertaining to the dissemination of plan information under 42 C.F.R. § 423.128(e). See 42 C.F.R. §423.509(a)(1), §423.509(a)(2), and §423.509(a)(9)).

Based on these determinations and pursuant to our authority at 42 C.F.R. §423.752(b), CMS is freezing the marketing to, and enrollment of, beneficiaries into Health Net's Part D Drug Plan, contract number, S5678. Further, CMS has determined that these deficiencies pose a serious threat to the health and safety of Medicare beneficiaries. Therefore, pursuant to 42 C.F.R. §423.756(d)(2) this sanction will go into effect on the date of this letter. This sanction will remain in effect until CMS is convinced that Health Net complies with Medicare program requirements and that Health Net has taken all actions necessary to ensure that violations are unlikely to recur. CMS will provide to Health Net shortly a request for a corrective action plan (CAP) which will outline the improvements in Health Net's performance that would justify our lifting the sanction.

Federal regulations at 42 C.F.R. §423.756(a)(2) provide Health Net with the opportunity to submit a written rebuttal to the information upon which this sanction is based within 10 calendar days from the date of this letter. Submission of a written rebuttal does not delay the date specified by CMS when the sanction becomes effective.

Federal regulations at 42 C.F.R. §423.756(b) also provide that Health Net may request a hearing before a CMS hearing officer within 15 calendar days of receipt of the notice of intent to impose this sanction. If this hearing is requested, it is conducted in accordance with procedures outlined at 42 C.F.R. §423.650 through 423.665. Submission of a request for a hearing does not delay the date specified by CMS when the sanction becomes effective.

Health Net's written rebuttal or hearing request should be sent to:

Ms. Cynthia E. Moreno
Director, Plan Oversight and Accountability Group
Centers for Medicare & Medicaid Services
7500 Security Blvd., C4-18-07
Baltimore, MD 21244

As required by 42 C.F.R. § 423.756(a), CMS will notify the Office of Inspector General, Department of Health and Human Services, of this intermediate sanction determination and the information upon which it is based.

CMS has the authority to immediately impose additional sanctions and penalties and other enforcement actions as described in Federal regulations at 42 C.F.R. §423 Subparts K and O. We are closely monitoring your progress in resolving all of the deficiencies

cited in this letter to determine whether additional sanctions and penalties are appropriate.

If you have any questions about this letter, please contact me directly.

Sincerely,

/s/

Abby L. Block

Director

cc: Ms. Joan Dailey, DHHS, OGC
Ms. Nancy Brown DHHS/OIG/OCIG
Ms. Cynthia Moreno, Director, Plan Oversight and Accountability Group
Ms. Cynthia Tudor, Director, Medicare Drug Benefit Group
Mr. Jim Kerr, Consortium Administrator