

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Medicare  
7500 Security Boulevard, Mail Stop C1-22-06  
Baltimore, Maryland 21244-1850



## **PROGRAM COMPLIANCE AND OVERSIGHT GROUP**

August 1, 2011

**VIA:**  
**FEDERAL EXPRESS DELIVERY (818)-676-6703**  
**EMAIL (Jay.M.Gellert@healthnet.com)**  
**FASCIMILE (818) 676-6616**

---

Mr. Jay M. Gellert  
President and Chief Executive Officer  
Health Net, Inc.  
21650 Oxnard Street  
Woodland Hills, CA 91367  
Phone (818) 676-6703

Re: Notice of Release of Intermediate Sanctions (Suspension of Marketing and Enrollment)  
For Medicare Advantage-Prescription Drug and Standalone Prescription Drug Plan  
Contracts: H0351, H0562, H5439, H5520, H6815 and S5678

---

Dear Mr. Gellert:

On November 19, 2010, the Centers for Medicare & Medicaid Services (CMS) imposed intermediate sanctions on Health Net, Inc. (Health Net), thereby suspending Health Net's marketing and enrollment activities for all Health Net Medicare Advantage-Prescription Drug (MA-PD) and standalone Prescription Drug Program (PDP) contracts. CMS' decision was based on Health Net's serious deficiencies in the following operational areas: prescription drug (Part D) formulary and benefit administration, coverage determinations, redeterminations and appeals, and compliance program.

On May 5, 2011, CMS received your attestation stating that Health Net's deficiencies were corrected and not likely to recur. On July 7, 2011 and July 8, 2011, CMS conducted extensive validation exercises at its Baltimore, Maryland headquarters to determine whether Health Net had corrected its deficiencies and whether they were not likely to recur. These exercises included a record and data review and remotely accessing Health Net's prescription drug claim and coverage determination, appeals and grievances systems.

Based on these exercises, as well as additional information and assurances from Health Net, CMS has determined that Health Net has demonstrated sufficient progress in correcting its

deficiencies to merit lifting the marketing and enrollment sanctions. Therefore, effective immediately, CMS is releasing the sanctions and Health Net may begin marketing to beneficiaries. Additionally, Health Net may begin enrolling beneficiaries with effective dates beginning September 1, 2011.

However, because CMS still considers Health Net to be a high-risk sponsor, CMS will continue to closely monitor and oversee Health Net's operational activities. Health Net will be subject to targeted monitoring, heightened surveillance and oversight. Periodically, CMS will ask Health Net for specific data to provide CMS with an assurance that Health Net has fully addressed its deficiencies. CMS expects Health Net to work directly with its Regional Office Account Manager to provide any information requested by CMS and to ensure appropriate reporting to CMS of any new issues identified by Health Net.

### **Enrollment of Low-Income Subsidy Beneficiaries**

Although Health Net is being released from the sanctions, CMS remains concerned about Health Net's capacity to accept the potentially high volume of enrollments associated with CMS auto-enrollment and reassignment processes for low-income subsidy (LIS) enrollees. Notably, in January 2010, CMS determined that Health Net did not have the capacity to properly serve LIS beneficiaries because Health Net failed to adjudicate the appropriate LIS copayments at point of sale. As we stated in our January 7, 2010 letter to Scott Kelly regarding contract S5678, these failures resulted in our considering PDPs offered under that contract not to be "available" to receive autoenrollments. Since that time, Health Net has been unable to demonstrate a sufficient administration of the LIS benefit to prove the problems identified in our January 7, 2010 letter have been resolved. Further, Health Net reported in June 2011 that it was not consistently reprocessing retrospective repayments and recoupments associated with members' LIS status from 2008 to 2011. Health Net's error affected approximately 125,000 LIS members.

Therefore, as a result of these concerns, CMS has determined that Health Net's prescription drug plan (PDP) will continue to be excluded from the PDPs into which CMS carries out daily auto-enrollments or annual reassignment of LIS-eligible beneficiaries until at least March 1, 2012. This prohibition will remain in place until CMS is able to verify that Health Net has consistently demonstrated an ability to sufficiently administer its LIS benefit to its current enrollees. Thus, until further notice, Health Net will not receive any LIS-eligible individuals from CMS, and should not process enrollments for any LIS-eligible enrollees, unless those individuals affirmatively choose to enroll into a Health Net plan.

Although Health Net has assured CMS that its operational deficiencies (noted in the November 19, 2010 letter) have been corrected, CMS will monitor Health Net as it engages in marketing and enrollment for the 2011/2012 plan years before CMS concludes that it can entrust Medicare's most vulnerable enrollees to Health Net. If Health Net continues to demonstrate to CMS that its deficiencies do not recur, CMS will reevaluate Health Net's ability to administer the LIS benefit and may revise Health Net's status at a later date. CMS' evaluation may include, but is not limited to, Health Net's ability to meet CMS LIS performance indicators and/or successfully perform during a CMS LIS Readiness Audit.

Mr. Jay Gellert  
August 1, 2011  
Page 3 of 3

**Corrective Action Required**

During the sanction validation activities, CMS found several deficiencies, none of which prevent CMS from releasing Health Net from sanctions, but all of which merit corrective action. CMS will separately issue a notice of these deficiencies and provide an opportunity for your organization to demonstrate to CMS that these deficiencies are corrected. CMS expects Health Net to work directly with its Regional Office Account Manager to provide the information requested and to ensure ultimate correction of these identified deficiencies.

Please note that any further failures by Health Net to comply with these or any other CMS requirements may subject Health Net to other applicable remedies available under law, including the imposition of intermediate sanctions, civil money penalties and/or contract termination or non-renewal as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If you have any questions about this notice, please call or email your designated point of contact within CMS.

Sincerely,

/s/

Brenda J. Tranchida  
Director