

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



PROGRAM COMPLIANCE AND OVERSIGHT GROUP

September 15, 2008

VIA FEDERAL EXPRESS DELIVERY

Mr. Antonio Marrero
Chairman and CEO
MD Medicare Choice
5501 West Waters Avenue
Suite 401
Tampa, FL 33634
Email Address: amarrero@mdmedicarechoice.com
FAX: 813-901-9209

Re: Notice of Intent to Impose Intermediate Sanctions (Suspension of Enrollment and Marketing) For: Medicare Advantage Organization Contract Number H5729

Dear Mr. Marrero:

Pursuant to 42 C.F.R. §422.752(b), the Centers for Medicare & Medicaid Service (CMS) is hereby providing notice to your Medicare Advantage organization, MD Medicare Choice ("MDMC"), of its intent to impose intermediate sanctions for contract number H5729. These intermediate sanctions will consist of suspension of enrollment of Medicare beneficiaries (42 C.F.R. §422.750(a)(1)) and suspension of all marketing activities to Medicare beneficiaries ((42 C.F.R. §422.750(a)(3)). This determination to impose intermediate sanctions will be effective 15 calendar days after MDMC receives notice of the sanctions, or on October 1, 2008, 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.¹

Background

On August 18, 2008, the State of Florida's Office of Insurance Regulation (OIR) notified CMS that MD Medicare Choice failed to meet State of Florida solvency standards, as

¹ Please note that CMS considers receipt of notice as the day after notice is sent by fax, e-mail, or overnight mail.

reported on its most recent un-audited and audited financial statements for 2008. In order to comply with Chapter 641, Florida Statutes, MDMC has implemented a voluntary marketing and enrollment suspension until such time as MDMC comes into compliance with Florida's minimum capital surplus requirements.

In June 2008, officials in CMS' Atlanta regional office received complaints from health care providers participating in MD Medicare Choice's health service delivery network. The complainants alleged that MD Medicare Choice was not paying health care claims timely. As a result of these complaints, CMS conducted a program compliance audit from June 23 - 27, 2008. In the attached report of audit findings issued on August 11, 2008, your organization was notified that it failed to meet program requirements in a number of areas, including enrollment and disenrollment, marketing, provider payment and relations, contracts, grievances, organizational determinations and appeals.

Basis of Proposed Intermediate Sanctions

CMS' determination is based on our conclusion that the findings of the CMS audit and the aforementioned State of Florida financial solvency issues provide sufficient bases under Federal regulations to impose intermediate sanctions as summarized below:

- The aforementioned State of Florida financial solvency issues demonstrate the degree and severity of MDMC's financial difficulties. CMS has determined, pursuant to 42 CFR 422.510(a)(5), that MDMC's ability to make health services available to Medicare beneficiaries is sufficiently impaired to impose marketing and enrollment sanctions.
- In addition, the results of CMS' audit indicate that MDMC demonstrates a pattern of widespread deficiencies in its administration and operation of its MA contract leading CMS to conclude that MDMC has substantially failed to carry out the terms of its Medicare Advantage contract with CMS and/or is carrying out its contract with CMS in a manner that is inconsistent with the effective and efficient implementation of the program. 42 C.F.R. §422.510(a)(1), 42 C.F.R. §422.510(a)(2). Also, pursuant to 42 C.F.R. §422.510(a)(6), (a)(9), and (a)(12), CMS has the authority to suspend MDMC's marketing and enrollment for contract H5729 based on the audit findings that MDMC has substantially failed to comply with the requirements related to grievances, organization determinations and appeals in 42 C.F.R. Part 422, Subpart M, the prompt payment requirements in 42 C.F.R. §422.520, and the marketing requirements in 42 C.F.R. §422.80.

More specifically, CMS' audit findings found that in a number of instances MDMC failed to comply with the following contractual requirements:

- MDMC failed to issue notifications to beneficiaries of enrollment and disenrollment elections and confirmation of enrollment and disenrollment

acceptances and/or to issue these notifications within timeframes specified by CMS;

- MDMC failed to properly and timely accept enrollment elections and issue enrollment acknowledgements, including ensuring the correct enrollment election effective date and election period type based on the appropriate election period made by beneficiaries, ensuring enrollment acknowledgements contain accurate information, ensuring enrollment election forms are properly executed by beneficiaries or their authorized representatives and following proper requirements for submitting enrollment transactions to CMS;
- MDMC failed to properly collect beneficiary premiums and to document that any beneficiary premiums that were improperly collected were promptly refunded to affected beneficiaries;
- MDMC failed to follow proper procedures for ensuring beneficiaries permanently reside in its service area and for involuntarily disenrolling beneficiaries identified as no longer residing in the service area;
- MDMC failed to ensure prompt provider payments, to properly and timely process grievances, organization determinations and appeals and to comply with CMS marketing requirements;
- MDMC failed to ensure that physician and other health care professionals follow a documented process for initial credentialing and re-credentialing, including requirements for licensure, malpractice insurance, and board certification;
- MDMC failed to ensure all of its written contracts with first tier and downstream entities contain required provisions, including prompt payment provisions, beneficiary hold harmless payment provisions and provisions to agree to comply with all Medicare laws, regulations, reporting requirements and instructions, including provisions that require agreement to be subject to audits, inspections and to maintain records a minimum of 10 years;
- MDMC failed to follow proper procedures for processing grievances, including the requirement to timely process beneficiary grievances within 30 days;
- MDMC failed to follow proper procedures for processing claims reconsiderations, including the requirement to timely process requests for claims payment reconsiderations within 60 days and/or to forward the request to the independent review entity (IRE) within required time periods;
- MDMC failed to follow proper procedures for properly and timely processing of organization determinations, including the requirement to state the service denied and the reasons for the denial and to process these requests within 14 days;
- MDMC failed to adhere to the requirements for prompt provider payments, including the requirements to pay (or deny) 95% of claims from

non-contracted providers within 60 calendar days of the request, to pay “clean claims” within 30 calendar days of receipt and/or to properly pay interest when applicable;

- MDMC failed to adhere to the requirement to ensure all of its written contracts with first tier and downstream entities contain a prompt payment provision; and
- MDMC failed to adhere to the requirement to properly and timely ensure that its sales agents and brokers meet State licensure and appointment requirements.

Opportunity to Respond to Notice

Pursuant to 42 C.F.R. §422.756(a)(2), MD Medicare Choice has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by September 26, 2008.

Right to Request a Hearing

MDMC may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. §§422.660 through 684. Pursuant to 42 C.F.R. §422.756(b), your written request for a hearing must be received by CMS within 15 calendar days of your receipt of this notice, or by October 1, 2008. Please note, however, a request for a hearing will not delay the date specified by CMS when the sanction becomes effective (October 1, 2008).²

MDMC must submit a request for hearing to the following CMS official:

Brenda J. Tranchida
Director, Program Compliance and Oversight Group
Centers for Medicare & Medicaid Services
7500 Security Boulevard
MAIL STOP: C1-22-06
Baltimore, MD 21244
Email: 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

² If the 15th 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.

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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 courtesy copy of 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 and 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

Please note that we are closely monitoring your organization and MD Medicare Choice 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. Part 422, Subparts K and O.

Also, MD Medicare Choice will continue to be required to submit a corrective action plan (CAP) by September 25, 2008 addressing the deficiencies identified in the August 11, 2008 attached report of findings.

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

Sincerely,



Brenda J. Tranchida
Director
Program Compliance and Oversight Group

Attachment: Report of Findings for Audit of H5729, 8/11/08

cc: Ms. Carol Bennett, DHHS/OS/OGC
Mr. Jim Kerr, CMS/OA/CMHPO
Ms. Nancy Brown DHHS/OIG/OCIG
Mr. Peter Ashkenaz, CMS/OEA
Mr. Mark Hamelburg, CMS/OL
Ms. Kimberly Brandt, CMS/OFM/Program Integrity

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Ms. Teresa, DeCaro, CMS/CPC/MCAG

Ms. Cynthia Tudor, CMS/CPC/MDBG

Ms. Gloria Parker, CMS/CMHPO/Region IV

Mr. Al Willis, Florida Office of Insurance Regulation

(Note: Copies of this notice were also sent to MDMC via FAX and Email)