

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



PROGRAM COMPLIANCE AND OVERSIGHT GROUP

October 8, 2010

VIA FEDERAL EXPRESS DELIVERY
E-MAIL (hdemovick@cvty.com)
AND FACSIMILE (301-581-5700)

Mr. Harvey DeMovick
Executive Vice President
Mercy Health Plans
6705 Rockledge Drive
Suite 900
Bethesda, MD 20817
Phone: 301-581-5642

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for: Mercy Health Plans - Medicare Advantage Organization Contract Number H2611

Dear Mr. DeMovick :

Pursuant to 42 C.F.R. §422.752(c)(1), §422.756(f), §422.760(b), §423.752(c)(1), §423.756(f), and §423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Mercy Health Plans (“Mercy”) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of \$16,970 for Medicare Advantage Organization Contract Number H2611.

Basis for Civil Money Penalty

This action is based on your organization’s failure to provide accurate beneficiary information in Contract Year 2010 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents, in violation of 42 C.F.R. §422.64, §422.111, §423.48, and §423.128. As a result, CMS has determined that your organization is carrying out its contract in a manner “inconsistent with the effective and efficient implementation of this part.” *See* 42 C.F.R. §422.510(a)(2) and §423.509(a)(2).

Dear Mr. DeMovick :

October 8, 2010

Page 2 of 4

The ANOC and EOC provide vital information to Medicare beneficiaries about their plan and permit beneficiaries to make informed choices concerning Medicare health care and prescription drug options. On July 31, 2009, CMS released the standardized Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) templates. In a notice dated October 20, 2009, CMS reminded each organization of its obligation to ensure timely and accurate ANOC/EOC documents to current enrollees no later than October 31, 2009. CMS stated that organizations and sponsors should clearly communicate the requirements of timeliness and accuracy to contractors and staff responsible for producing the documents. In addition, CMS reiterated that organizations and sponsors bear the full responsibility of compliance with ANOC/EOC requirements. In addition, the notice clearly stated that the failure to provide accurate documents in a timely manner may result in the imposition of civil money penalties.

On February 3, 2010, CMS issued a notice requesting information from all Medicare Advantage and Prescription Drug Plan Sponsors (except Cost Contracts, PACE organizations, SNP and Employer Plans, and Contracts with Zero Enrollment in 2009) concerning adherence to these deadlines for issuing the ANOC/EOC documents. Based on the information provided by your organization, CMS concluded that 1,697 members in Mercy's contract number H2611 were not provided accurate ANOC/EOC materials. Specifically, CMS determined that the following incorrect statements were made in the ANOC/EOC documents:

- There was a \$25 co-payment listed for in-network partial hospitalization and 20% co-insurance for out-of-network partial hospitalization. The correct costs are a \$35 co-payment for in-network providers and 25% co-insurance for out-of-network providers.
- Medical supplies and blood were listed with a 20% co-insurance cost. The correct cost is 25% co-insurance.
- Diagnostic radiology services were listed as 20% co-insurance: the correct co-insurance amount is 25%.
- In-network hearing services were listed with a \$0 co-payment. The correct co-payment amount is \$35.

CMS has determined that the failure by your organization to mail accurate ANOC/EOC documents to Medicare enrollees is a deficiency which directly adversely affected or had the substantial likelihood of adversely affecting these enrollees. Mercy failed to provide Medicare enrollees with vital information about changes to the benefits and cost-sharing that would have allowed them to make fully informed choices concerning their 2010 Medicare health care and prescription drug options during the Medicare Annual Open Enrollment Period.

Right to Request a Hearing

Your organization may request a hearing to appeal CMS' determination in accordance with the procedures outlined in Subpart T of 42 C.F.R. §422 and 42 C.F.R. §423. In accordance with the requirements of 42 C.F.R. §422.1006, §423.1006, §422.1020, and §423.1020, you must file your written request for a hearing to the Departmental Appeals Board office listed below, with a copy

Dear Mr. DeMovick :

October 8, 2010

Page 3 of 4

to CMS at the address listed below, within 60 calendar days from receipt of the notice of our initial determination, or by December 8, 2010. The request for hearing must identify the specific issues, the findings of fact and conclusions of law with which you disagree, and specify the basis for each contention that the finding or conclusion of law is incorrect. Your request should be sent to:

Oliver Potts
Chief, Civil Remedies Division
Department of Health and Human Services
Departmental Appeals Board
Medicare Appeals Council, MS 6132
330 Independence Ave., S.W.
Cohen Building Room G-644
Washington, D.C. 20201

A copy of your hearing request should also be sent to CMS at the following address:

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

If you do not request an appeal in the manner and timeframe described above, the initial determination by CMS to impose a CMP will become final and due on December 9, 2010. CMS may use the Agency's debt collection procedures to collect the amount owed, including offsetting the penalty amount against your monthly Medicare payment.

Please note that any further failures by Mercy Health Plans to comply with these or any other CMS requirements may subject your organization to other applicable remedies available under law, including the imposition of sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

Dear Mr. DeMovick :

October 8, 2010

Page 4 of 4

If you have any questions about this notice, please contact Trish Axt at (410) 786-0095 or by email at trish.axt@cms.hhs.gov.

Sincerely,

/s/

Brenda J. Tranchida
Director
Program Compliance and Oversight Group

cc: Mr. Jonathan Blum, CMS/CM
Mr. Tim Hill, CMS/CM
Ms. Danielle Moon, CMS/CM/MCAG
Ms. Marsha Davenport, CMS/CM/MCAG
Mr. Michael Kavouras, CMS/CM/MCAG
Ms. Cynthia Tudor, CMS/CM/MDBG
Ms. Jennifer Shapiro, CMS/CM/MDBG
Mr. Scott Nelson, CMS/CM/MDBG
Mr. Cheri Rice, CMS/CM/MPPG
Mr. Randy Brauer, CMS/CPC/MPPG
Ms. Marla Kilbourne, CMS/CPC/MPPG
Mr. Mike Crochunis, CMS/CPC/MEAG
Mr. Jon Booth, CMS/OC/WPMG
Ms. Anita Panicker, CMS/OC/WPMG
Mr. Peter Ashkenaz, CMS/OEA
Mr. Greg Jones, CMS/OL
Mr. James T. Kerr, CMS/CMHPO
Mr. Paul Collura, CMS/CMHPO
Ms. Natalie Duy, CMS/CMHPO/Region VII
Ms. Kathryn Coleman, CMS/CMHPO/Region VII
Ms. Carol Bennett, DHHS/OGC
Ms. Jill Abrams, DHHS/OGC
Ms. Trish Axt, CMS/CM/PCOG
Ms. Oliver Potts, DHHS/DAB
Ms. Nancy Brown, DHHS/OIG/OCIG
Mr. Gerald T. Walters, CMS/OFM