

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

November 30, 2009

VIA FEDERAL EXPRESS DELIVERY
EMAIL (jrodriguez@prosaludpr.com)
AND FACSIMILE (787) 200-1108

Joaquin Rodriguez
CEO
ProSalud HMO, Corp.
Suite 235
85 Villas De San Francisco III
De Diego Avenue
San Juan, PR 00927
Phone Number: (787) 200-1101

Re: Notice of Immediate Imposition of Intermediate Sanctions (Suspension of Enrollment and Marketing) for: Medicare Advantage-Prescription Drug Plan Sponsor Contract Number H4382

Dear Mr. Rodriguez:

Pursuant to 42 C.F.R. §422.756 and 42 C.F.R. §423.756, the Centers for Medicare & Medicaid Services (CMS) is hereby providing notice to ProSalud HMO, Corp. ("ProSalud"), of the immediate imposition of intermediate sanctions for contract number H4382. These intermediate sanctions will consist of suspension of enrollment of Medicare beneficiaries (42 C.F.R. §422.750(a)(1), 42 C.F.R. §423.750(a)(1)) and suspension of all marketing activities to Medicare beneficiaries (42 C.F.R. §422.750(a)(3), 42 C.F.R. §423.750(a)(3)). CMS is imposing these intermediate sanctions immediately because it has determined that ProSalud's conduct poses a serious threat to the health and safety of Medicare beneficiaries. Based on this determination, the intermediate sanctions will be effective immediately, November 30, 2009, pursuant to 42 C.F.R. §422.756 (d)(2) and 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 ProSalud's Non-Compliance

On or about November 12, 2009, the Division of Banking and Insurance of the Government of the United States Virgin Islands (the Division) became aware that ProSalud maintained a combined negative capital and surplus of \$3,426,695. The U.S. Virgin Islands (U.S.V.I.) requires that a \$7 million capital and surplus be maintained in order to have a valid Certificate of Authority to operate in the U.S. Virgin Islands.

On November 13, 2009, the Division issued an Order of Suspension which advised ProSalud that failure to comply with minimum capital and surplus requirements within 10 days would result in suspension of their Certificate of Authority. ProSalud failed to comply with these requirements and their Certificate of Authority was therefore suspended effective, November 23, 2009, in the U.S. Virgin Islands.

42 C.F.R. §422.400 states that a Medicare Advantage (MA) Organization must be "licensed under State law, or otherwise authorized to operate under State law, as a risk-bearing entity (as defined in §422.2) eligible to offer health insurance benefits coverage in each State in which it offers one or more MA plans" and states that the MA organization must "if not commercially licensed, obtain certification from the State that the organization meets a level of financial solvency and such other standards as the State may require for it to operate as an MA organization." As a result of the above-referenced suspension order, ProSalud is not currently authorized to operate under State law or to offer its Medicare Advantage product in the U.S. Virgin Islands. The order also prohibits ProSalud from soliciting or issuing any new policies of insurance or assuming any risk in the U.S. Virgin Islands.

Additionally, CMS has determined that ProSalud's failure to maintain its Certificate of Authority to operate in the U.S. Virgin Islands is conduct that poses a serious threat to the health and safety of enrollees. ProSalud's failure to meet the U.S. Virgin Island's financial solvency standards for authorization to operate poses a serious threat to an enrollee's health and safety because its ability to make necessary health and prescription drug services available may be impaired. This threat to enrollees is particularly heightened because effective November 15, 2009, CMS' annual coordinated election period began and Medicare beneficiaries are allowed to make elections to enroll in Medicare Advantage plans. This sanction action is necessary to protect beneficiaries who may attempt to enroll in ProSalud's plan and do not know that ProSalud is unable to process their enrollments or otherwise make services available to enrollees in the U.S. Virgin Islands based on the current suspension of ProSalud's Certificate of Authority.

Basis of Proposed Intermediate Sanctions

CMS has determined that ProSalud's failure to be authorized to operate under State law provides a sufficient basis for the imposition of intermediate sanctions (42 C.F.R.

§422.752(b) and 42 C.F.R. §423.752(b)). CMS' determination to impose intermediate sanctions is based on the following regulatory violation:

- ***ProSalud no longer meets the requirements of Parts 422 and 423 for being a contracting organization (42 C.F.R. §422.510(a)(3) and 42 C.F.R. §509(a)(3)).***

Opportunity to Respond to Notice

Pursuant to 42 C.F.R. §422.756(a)(2), 42 C.F.R. §423.756(a)(2), ProSalud has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by Thursday, December 10, 2009.¹ Please note that for purposes of responding to this notice or requesting a hearing, CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail, in this case, December 1, 2009. If you choose to submit a rebuttal, please send it to the attention of Brenda J. Tranchida at the address listed below.

Right to Request a Hearing

ProSalud 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 and 42 C.F.R. §§423.650 through 662. Pursuant to 42 C.F.R. §422.756(2)(b) and 42 C.F.R. §423.756(2)(b), your written request for a hearing must be received by CMS within 15 calendar days of your receipt of this notice, or by Tuesday, December 15, 2009. Please note, however, a request for a hearing will not delay the date specified by CMS when the sanctions become effective.² Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

ProSalud 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

¹ If the 10th day falls on a weekend or federal holiday, you have until the next regular business day to provide a written rebuttal.

² If the 15th day falls on a weekend or federal holiday, you have until the next regular business day to submit your request.

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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 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 ProSalud may also be subject to other applicable remedies available under law, including the imposition of additional sanctions, penalties, or other contract and/or enforcement actions as described in 42 C.F.R. Part 422, Subparts K and O and 42 C.F.R. Part 423, Subparts K and O.

If you have any questions about this determination, please contact Jennifer Smith at (410) 786-1404 or by email at jennifer.smith2@cms.hhs.gov.

Sincerely,



Brenda J. Tranchida
Director
Program Compliance and Oversight Group

cc: Mr. Jonathan Blum, CMS/CPC
Mr. Tim Hill, CMS/CPC
Ms. Danielle Moon, CMS/CPC/MCAG
Mr. Jeremy Willard, CMS/CPC/MCAG
Ms. Cynthia Tudor, CMS/CPC/MDBG
Ms. Jennifer Shapiro, CMS/CPC/MDBG

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Mr. Thomas Hutchinson, CMS/CPC/MPPG

Mr. Randy Brauer, CMS/CPC/MPPG

Mr. Anthony Culotta, CMS/CPC/MEAG

Ms. Teresa DeCaro, CMS/CPC

Ms. Mary A. Laurenno, CMS/OBIS

Mr. Peter Ashkenaz, CMS/OEA

Ms. Laurie McWright, CMS/OL

Mr. Greg Jones, CMS/OL

Ms. Kimberly Brandt, CMS/OFM/PI

Mr. James Kerr, CMS/OA/CMHPO

Mr. Reggie Slaten, CMS/CMHPO/Region II

Ms. Teresita Caban, CMS/CMHPO/Region II

Ms. Carol Bennett, DHHS/OGC

Ms. Leslie Stafford, DHHS/OGC

Ms. Jill Abrams, DHHS/OGC

Ms. Nancy Brown, DHHS/OIG/OCIG

Mr. Paul Collura, CMS/CMHPO

Ms. Iris Bermudez, CMS/CMHPO

Mr. John McDonald, Gov. of U.S. Virgin Islands/Div. of Banking and Ins.