

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**

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December 3, 2010

**VIA FEDERAL EXPRESS DELIVERY**  
**E-MAIL ([tcarpenter@universalamerican.com](mailto:tcarpenter@universalamerican.com))**  
**AND FACSIMILE (713-961-0113)**

Mr. Theodore M Carpenter, Jr.  
President and CEO  
Universal American Corp.  
4888 Loop Central Drive  
Suite 800  
Houston, TX 77081  
Phone: 713-770-1131

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for:  
American Progressive Life & Health Insurance of NY - Medicare Advantage Organization  
Contract Number H2775 and Pyramid Life Insurance Company -  
Medicare Advantage Organization Contract Numbers H5378 and H5421  
**(CORRECTION AND RE-ISSUANCE – CORRECT CMP AMOUNT OF \$17,800)**

Dear Mr. Carpenter:

On October 8, 2010, Universal American Corp. (Universal) received notice 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) that the Centers for Medicare & Medicaid Services (CMS) has made a determination to impose a civil money penalty (CMP) in the total amount of \$17,830 for Medicare Advantage Organization (MAO) contract numbers H2775, H5378, and H5421 (see attachment). The purpose of this letter is to notify you that CMS has discovered a discrepancy in the notice dated October 8, 2010. For contract number H2775, CMS listed an inaccuracy as reported in your Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) which should not have been included. Therefore, we have removed this as one of the inaccuracies. Additionally, for contract number H5378, the total number of members that were provided inaccurate ANOC/EOC materials should have been listed as 1,432 instead of 1,435 (a difference of 3 members). Due to this change, the previously determined CMP of \$17,830 has been reduced by \$30. Pursuant to 42 C.F.R. §422.1018(b)(2)

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and §423.1018(b)(2), this letter corrects and re-issues CMS's determination to impose a CMP for MAO contract numbers H2775, H5378, and H5421 in the amount of \$17,800.

### **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).

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 21 members in American Progressive Life & Health Insurance of NY's contract number H2775 were not provided accurate ANOC/EOC materials. Specifically, CMS determined that the following incorrect statements were made in the ANOC/EOC documents:

- The co-payment for Medicare-covered specialty care for in-network and out-of-network physicians was stated as \$35. The correct co-payment is \$45.

CMS also concluded that a total of 1,432 members in Pyramid Life Insurance Company's contract number H5378 were not provided accurate ANOC/EOC materials in a timely manner. Specifically, CMS determined that the following incorrect statement was made in the ANOC/EOC documents:

- The co-payment for Medicare-covered specialty care for in-network and out-of-network physicians was listed as \$35. The correct co-payment is \$45.

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Finally, CMS concluded that a total of 327 members in Pyramid Life Insurance Company's contract number H5421 were not provided accurate ANOC/EOC materials in a timely manner. Specifically, CMS determined that the following incorrect statement was made in the ANOC/EOC documents:

- The ANOC failed to include cost sharing for out of network services.

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. Universal 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's 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 to CMS at the address listed below, within 60 calendar days from receipt of the notice of our initial determination, or by February 2, 2011. 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](mailto:brenda.tranchida@cms.hhs.gov)  
FAX: 410-786-6301

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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 February 3, 2011. 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 Universal American Corp. 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.

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

Sincerely,

Brenda J. Tranchida  
Director  
Program Compliance and Oversight Group

Attachment: October 8, 2010 Notice of Initial Determination to Impose a Civil Money Penalty

cc: Ms. Jennifer Shapiro, CMS/CM/MCAG  
Ms. Helaine Fingold, CMS/CM/MCAG  
Mr. Paul Collura, CMS/CMHPO  
Ms. Sue Bradshaw, CMS/CMHPO/Region VI  
Ms. Susan McLaughlin, CMS/CMHPO/Region VI  
Ms. Julie Kennedy, CMS/CMHPO/Region VI  
Ms. Jill Abrams, DHHS/OGC  
Ms. Trish Axt, CMS/CM/PCOG  
Mr. Oliver Potts, DHHS/DAB