DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Drug and Health Plan Choice
7500 Security Boulevard, Mail Stop C4-23-07
Baltimore, Maryland 21244-1850

January 12, 2009

VIA:
FEDERAL EXPRESS DELIVERY
EMAIL (krista.bowers@wellpoint.com)
AND FACSIMILE (805-557-6823)

Ms. Krista Bowers
SVP and President, Senior Business & Consumer Marketing
WellPoint, Inc.
1 WellPoint Way
Maildrop: CAT202-B002
Thousand Oaks, CA 91362-3893
Phone: (805) 557-6026

Re: Notice of Immediate Imposition of Intermediate Sanctions (Suspension of Enrollment and Marketing) For: Medicare Advantage Organization Contract Numbers H0540, H0564, H1511, H1517, H1607, H1689, H1849, H2613, H2997, H3342, H3370, H3655, H4036, H4909, H5304, H5419, H5422, H5529, H5530, H5679, H5854, H6184, H9452, H9466, R5941, R9943 and Prescription Drug Plan Contract Numbers S5596, S5960

Dear Ms. Bowers:

Pursuant to 42 C.F.R. §422.756 and 42 C.F.R. §423.756, the Centers for Medicare & Medicaid Service (CMS) is hereby providing notice to WellPoint, Inc. (WellPoint) of the imposition of intermediate sanctions for contract numbers: H0540, H0564, H1511, H1517, H1607, H1689, H1849, H2613, H2997, H3342, H3370, H3655, H4036, H4909, H5304, H5419, H5422, H5529, H5530, H5679, H5854, H6184, H9452, H9466, R5941, R9943, S5596, and S5960. 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 WellPoint'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, January 12, 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 WellPoint Noncompliance

WellPoint has demonstrated a longstanding and persistent failure to comply with CMS' requirements for the proper administration of its Medicare Advantage Prescription Drug Plans (MA-PD) and Prescription Drug Plans (PDP). This noncompliance has resulted in significant problems in serving its enrollees in the following areas, including, but not limited to: enrollment, administration of the Low Income Subsidy (LIS) benefit, charging of enrollee premiums, marketing, appeals and grievances, and prompt payment of claims. For the reasons set forth below, CMS is imposing intermediate marketing and enrollment sanctions, and since WellPoint's conduct poses a serious threat to the health and safety of both its prospective and current Medicare beneficiaries, these intermediate sanctions are effective immediately.

Due to a sharp increase in the past 12 days in beneficiary complaints about WellPoint and WellPoint's self-disclosures regarding beneficiaries being denied prescription drugs, CMS is taking this immediate action to ensure that WellPoint focuses its efforts on correcting its significant compliance problems before further expanding the number of enrollees in its Medicare plans. The recent failures in WellPoint's information systems have resulted in beneficiaries not receiving necessary medications at their pharmacies for the new benefit year, due to incorrect enrollment information, including the inaccurate reporting of enrollees' LIS status, improper disenrollments of beneficiaries from WellPoint plans, and overcharging beneficiaries for their cost-sharing obligations. Based on disclosures WellPoint made to CMS during the first 9 days in January 2009, CMS determined that thousands of Medicare beneficiaries were denied access to critical medications including, but not limited to, cardiac drugs, anti-seizure drugs, anti-clotting drugs, and drugs for asthma and Chronic Obstructive Pulmonary Disease (COPD), posing a serious threat to the health and safety of the beneficiaries. Furthermore, WellPoint failed to follow through on its assurances to CMS that the problem was immediately and fully corrected.

CMS has determined that these continuing system failures, including those in January 2009, are indicative of a serious, pervasive problem affecting all of WellPoint's MA-PD and PDP contracts. Under CMS requirements, MA-PD and PDP plans are required to maintain accurate and up-to-date information regarding enrollment, billing, and medical claims for all of their enrollees. This is a critical part of delivering the Medicare Advantage benefit to ensure enrollees have access to medical care, and a necessary part of delivering the prescription drug benefit because information about an enrollee's drug benefit must be communicated in real-time to a pharmacy in order for a pharmacy to

process each prescription for each enrollee. CMS understands that WellPoint delivers MA-PD and PDP benefits to Medicare beneficiaries off of three computer system platforms which are fed by multiple information systems. Based upon WellPoint's self-disclosures to CMS, ongoing CMS monitoring and oversight of WellPoint, CMS' August 2008 audit of WellPoint, and a review of complaints in CMS' complaint tracking module system (CTMS), CMS has determined that there are serious performance issues in each of WellPoint's information systems. Moreover, because WellPoint's information systems are interrelated and all of its MA-PD and PDP plans share the same Pharmacy Benefit Manager (PBM), CMS has determined that these system problems affect all of WellPoint's MA-PD and PDP contracts. As detailed below, these system problems have significantly contributed to WellPoint's failure to comply with CMS MA-PD and PDP requirements, posing a serious threat to the health and safety of Medicare beneficiaries.

CMS has afforded WellPoint ample opportunity to bring their MA-PD and PDP contracts into compliance with CMS requirements. While the January 2009 system failures are the most egregious examples of WellPoint's noncompliance, WellPoint has consistently failed to meet CMS requirements for the past year resulting in multiple requests for corrective action plans (CAPs) from WellPoint. In the last four months, despite CMS' substantial focused efforts in working closely with WellPoint to identify and correct its compliance issues, including requiring WellPoint to hire an independent systems and program operations auditor and meeting weekly with CMS management and oversight staff, WellPoint's plans continue to be deficient. In 2008, WellPoint acknowledged to CMS that, at least in part as a result of WellPoint's computer systems integration issues, it had many problems supporting its Medicare Advantage and Part D lines of business. In a letter dated August 28, 2008, CMS identified for WellPoint three main areas of compliance weaknesses in WellPoint's organization that needed to be immediately addressed: information technology systems, effective implementation of program policies, procedures and operations, and effective management oversight from the highest levels of the organization. CMS further recommended that WellPoint take certain steps to provide reasonable assurance that it was prepared to continue to accept enrollments in its Medicare plans without posing threats to the beneficiaries' health and their access to their health and prescription drug coverage. In a letter dated September 22, 2008, CMS again notified WellPoint that it had serious concerns about its ongoing failure to operate its Medicare Advantage and prescription drug benefit plans in compliance with Medicare Parts C and D program requirements. Consequently, CMS decided that WellPoint was not eligible to receive the annual randomly reassigned low-income subsidy eligible enrollments and monthly auto-enrollments of low-income subsidy beneficiaries in its two stand-alone prescription drug plan contracts.

To date, WellPoint continually has failed to meet CMS requirements and prevent new compliance issues from occurring. In accordance with CMS regulations at 42 C.F.R. §422.756(d)(3) and 42 C.F.R. §423.756(d)(3), the intermediate sanctions will remain in place until WellPoint demonstrates to CMS that the compliance problems described below have been corrected and are not likely to reoccur.

Basis of Intermediate Sanctions

CMS has determined that WellPoint's compliance deficiencies, as described below, provide sufficient basis for intermediate sanctions (42 C.F.R. §422.752(b) and 42 C.F.R. §423.752(b**)**. Furthermore, CMS has determined that a number of these deficiencies pose a serious threat to enrollees' health and safety, warranting these sanctions to be effective immediately (42 C.F.R. §422.756(d)(2) and 42 C.F.R. §423.756(d)(2)).

CMS' determination to impose intermediate sanctions is based on the following regulatory violations, each of which provides an independent basis for the imposition of an intermediate sanction, and which are supported by examples of WellPoint's noncompliance, as described below:

WellPoint substantially failed to provide medically necessary services that the organization is required to provide to a Part D plan enrollee, and that failure adversely affects (or is substantially likely to adversely affect) the enrollee. (42. C.F.R. §423.752(a)(1)).

- WellPoint had numerous systems failures associated with the benefit year beginning January 1, 2009 that resulted in beneficiaries being unable to receive their Part D covered drugs. These system failures pose a serious threat to the health and safety of Medicare beneficiaries by limiting their access to drugs to treat a number of serious conditions or diseases including, but not limited to: diabetes, cardiac disease, respiratory distress, seizures, and chronic heart failure.

WellPoint imposed on plan enrollees' premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under the Social Security Act and Federal Regulations. (42 C.F.R. §422.752(a)(2) and 42 C.F.R. §423.752(a)(2)).

- WellPoint inappropriately charged beneficiaries premiums in excess of the permitted monthly premium.

WellPoint substantially failed to carry out the terms of its Medicare Advantage contracts and its Prescription Drug Plan contracts with CMS (42 C.F.R. §422.510(a)(1) and 42 C.F.R. §423.509(a)(1)) and is carrying out its contracts with CMS in a manner that is inconsistent with the effective and efficient implementation of the program (42 C.F.R. §422.510(a)(2), 42 C.F.R. §423.509(a)(2)).

- WellPoint failed to process timely and accurately beneficiary enrollment and disenrollment requests as required.

- WellPoint failed to properly administer the low income subsidy benefit.

- WellPoint failed to properly administer Part B coinsurance requirements.

- WellPoint failed to ensure its membership information matched CMS' membership information to ensure accurate administration of the benefit, within the required timeframes.

- WellPoint failed to properly charge enrollees the cost sharing, included premiums, copayment, and coinsurance.

- WellPoint failed to allow beneficiaries to pay full monthly premiums through the Social Security Administration (SSA) premium withhold process.

- WellPoint failed to properly conduct CMS required enrollment and payment reconciliation.

- WellPoint erroneously assigned inaccurate disenrollment dates to enrollees.

WellPoint substantially failed to comply with the coordination with plans and programs that provide prescription drug coverage (42 C.F.R. §423.509(a)(10)).

- WellPoint failed to appropriately perform coordination of benefits for WellPoint's enrollees.

WellPoint substantially failed to comply with the requirements in subpart M of Part 422 and Part 423 related to appeals and grievances. (42 C.F.R. §422.510(a)(6) and 42 C.F.R. §423.509(a)(6)).

- WellPoint substantially failed to properly process appeals and grievances.

- WellPoint failed to utilize a statutorily required compendium (DrugDex) when making coverage determinations based on medical necessity. By failing to use the proper compendium, WellPoint denied payment for beneficiary drugs for medically accepted indications listed in the compendium, contrary to statutory requirements.

- WellPoint inappropriately rejected claims for a Part B covered drug (e.g. Zostavax vaccine).

WellPoint substantially failed to comply with the marketing requirements in 42 C.F.R. §422.80 and 42 C.F.R. §423.128. (42 C.F.R. §422.510(a)(12) and 42 C.F.R. §423.509(a)(9)).

- WellPoint failed to either distribute or timely distribute Explanation of Benefits to enrollees.

- WellPoint failed to timely or accurately provide enrollee information, including post enrollment materials, Annual Notice of Change documents, Member ID cards, and low income subsidy rider.

- WellPoint failed to issue a comprehensive formulary when specifically requested by members.

- WellPoint distributed marketing materials that were not approved by CMS, as required.

- WellPoint failed to meet CMS required call center performance requirements.

WellPoint substantially failed to comply with the prompt payment requirements in 42 C.F.R. §422.520 . (42. C.F.R. §422.510(a)(9)).

- WellPoint failed to adhere to CMS requirements for paying clean claims for non-contracted providers within CMS timeframes.

Opportunity to Respond to Notice

Pursuant to 42 C.F.R. §422.756(a)(2) and 42 C.F.R. §423.756(a)(2), WellPoint has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by January 23, 2009. Please note that CMS considers receipt of notice as the day after notice is sent by fax, e-mail, or overnight mail, or in this case, January 13, 2009**.**

Right to Request a Hearing

WellPoint 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(b) and 42 C.F.R. §423.756(b), your written request for a hearing must be received by CMS within 15 calendar days of your receipt of this notice, or by January 28, 2009. Please note, however, a request for a hearing will not delay the date specified by CMS when the sanction becomes effective. 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.

WellPoint 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

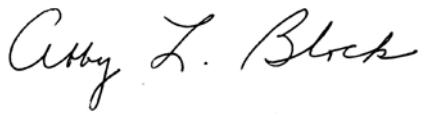
You must also send a courtesy copy of your request by e-mail to the CMS Hearing Officer on the date you mail your request. CMS will consider the date the Office of Hearings receives your e-mail or the date it receives the fax or traceable mail document, whichever is earlier, as the date of receipt of your request. Your request for a hearing must include the name, fax number and e-mail address of the contact within your 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 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 & 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 WellPoint 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. Parts 422 and 423, Subparts K and O.

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

Sincerely,



Abby L. Block
Director, Center for Drug and Health Plan Choice

cc: Ms. Brenda J. Tranchida, CMS/CPC/PCOG
Ms. Carol Bennett, DHHS/OS/OGC
Mr. James Kerr, CMS/OA/CMHPO
Ms. Nancy Brown DHHS/OIG/OCIG

Mr. Peter Ashkenaz, CMS/OEA
Ms. Laurie McWright, CMS/OL
Ms. Kimberly Brandt, CMS/OFM/Program Integrity
Mr. Louis Polise, CMS/CPC/MCAG
Ms. Cynthia Tudor, CMS/CPC/MDBG
Ms. Candace Arnold, CMS/CMHPO/Region V
Mr. Randy Brauer, CMS/CPC/MPPG