

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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October 8, 2010

**VIA FEDERAL EXPRESS DELIVERY**  
**E-MAIL ([j.artau@firstmedicalpr.com](mailto:j.artau@firstmedicalpr.com))**  
**AND FACSIMILE (787-474-3998)**

Mr. Francisco Artau  
First Medical Health Plan, Inc.  
Chief Executive Officer  
Ext. Villa Caparra Marginal Buchanan 530  
Guaynabo, PR 00966  
Phone: 787-474-3995

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for:  
First Medical Health Plan, Inc. - Medicare Advantage Organization Contract  
Number H5887 and Medicare Prescription Drug Plan Contract Number S5840

Dear Mr. Artau:

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 First Medical Health Plan, Inc. (First Medical) that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of \$57,240. CMS is imposing a CMP of \$51,480 for Medicare Advantage Organization (MAO) Contract Number H5887 and a CMP of \$5,760 for Medicare Prescription Drug Plan Contract Number S5840.

**Basis for Civil Money Penalty**

This action is based on your organization's failure to ensure receipt of the combined Contract Year 2010 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents to your 2009 enrollees for receipt no later than October 31, 2009, 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).

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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) model letters. In a notice dated October 20, 2009, CMS reminded each organization of its obligation to ensure receipt of the 2009 combined ANOC/EOC to current enrollees no later than October 31, 2009.

On February 3, 2010, CMS issued a notice requesting information from all Part C and Part D sponsors and organizations concerning adherence to these deadlines for issuing the ANOC/EOC documents. Based on the information provided by your organization, CMS concluded that 1,287 members in First Medical's contract H5887 and 144 members in First Medical's contract S5840 were not provided the combined ANOC/EOC that was due by October 31, 2009, in a timely manner. According to your responses to CMS, this information was not mailed to these members until December 10, 2009, more than five weeks after the applicable deadline of October 31, 2009. In making the penalty determination, CMS considered the number of your enrollees who did not receive these documents in a timely manner and the number of weeks in which these materials were delayed.

CMS has determined that the failure by your organization to mail the combined ANOC/EOC documents in a timely manner to Medicare enrollees is a deficiency which directly and adversely affected or had the substantial likelihood of adversely affecting these enrollees. First Medical 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 Medicare health care and prescription drug options during the 2010 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, §422.1020, §423.1006, 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 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

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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

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 First Medical 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 Trish Axt at (410) 786-0095 or by email at [trish.axt@cms.hhs.gov](mailto: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

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Mr. James T. Kerr, CMS/CMHPO

Mr. Paul Collura, CMS/CMHPO

Ms. Yolanda Burge Clark, CMS/CMHPO/Region V

Ms. Candace Arnold, CMS/CMHPO/Region V

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