

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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November 10, 2009

**VIA FEDERAL EXPRESS DELIVERY**  
**E-MAIL ([jdriscoll@ahmpr.com](mailto:jdriscoll@ahmpr.com))**  
**AND FACSIMILE (787-620-0939)**

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Mr. Joseph R. Driscoll  
Chief Executive Officer  
American Health, Inc.  
Microsoft Building Metro Office Park  
Suite 3000, Lot 18  
Guaynabo, PR 00922  
Phone Number: (787) 620-1919, Ext. 4010

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for:  
American Health, Inc. - Medicare Advantage Organization Contract Number H5774

Dear Mr. Driscoll:

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 Service (CMS) is providing notice to American Health, Inc. (“AH”) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of \$25,000 for Medicare Advantage Organization (MAO) contract number H5774.

**Basis for Civil Money Penalty**

This action is based on your organization’s failure to ensure receipt of the Contract Year 2009 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents to your 2008 enrollees for receipt no later than October 31, 2008, (or in the case of fully integrated dual eligible SNPs the EOC by December 31, 2008) in violation of 42 C.F.R. §422.64, 42 C.F.R. §422.111, 42 C.F.R. §423.48, and 42 C.F.R. §423.128. As a result, CMS has determined that your organization is carrying out its contract in a manner “inconsistent with the efficient and effective implementation of this part.” See 42 C.F.R. §422.510(a)(2) and 42 C.F.R. §423.509(a)(2).

The ANOC and EOC provide vital information to Medicare beneficiaries about the plan and permit beneficiaries to make informed choices concerning Medicare health care and

prescription drug options. On March 17, 2008, CMS released the standardized Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) model letters. In a notice dated October 16, 2008, CMS reminded each organization of its obligation to ensure receipt of the 2009 combined ANOC/EOC to current enrollees no later than October 31, 2008 with the exception of fully integrated Dual Eligible SNP beneficiaries, who were required to receive the ANOC by October 31, 2008 and the EOC by December 31, 2008.

On February 17, 2009, CMS issued a notice requesting information from all Part C and Part D sponsors and organizations concerning adherence to these deadlines. Based on the information provided by your organization, CMS concluded that 14,002 enrollees were not provided the EOC document in a timely manner. According to your responses to CMS, this information was not mailed to these members until February 20, 2009, nearly two months after the applicable deadline of December 31, 2008 for fully integrated Dual Eligible SNPs that applied to these enrollees. In making the penalty determination, CMS considered the number of 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 EOC documents in a timely manner to Medicare enrollees is a deficiency which directly adversely affected or had the substantial likelihood of adversely affecting these enrollees.

### **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 to CMS at the address listed below, within 60 calendar days from receipt of the notice of our initial determination, or by January 11, 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:

Mr. Oliver Potts  
Chief, Civil Remedies Division  
Department of Health and Human Services  
Departmental Appeals Board  
Mail Stop 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

Mr. Joseph R. Driscoll  
November 10, 2009  
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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 January 12, 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 AH 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 Jennifer Smith at (410) 786-1404 or by email at [jennifer.smith2@cms.hhs.gov](mailto: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  
Mr. Thomas Hutchinson, CMS/CPC/MPPG  
Ms. Marla Kilbourne, CMS/CPC/MPPG  
Mr. Anthony Culotta, CMS/CPC/MEAG  
Ms. Mary A. Laurenno, CMS/OBIS  
Mr. Peter Ashkenaz, CMS/OEA  
Ms. Laurie McWright, CMS/OL  
Mr. Greg Jones, CMS/OL  
Mr. James T. Kerr, CMS/CMHPO  
Ms. Martha Hennessy, CMS/CMHPO/Region II  
Mr. Reginald Slaten, CMS/CMHPO/Region II  
Ms. Carol Bennett, DHHS/OGC  
Ms. Jill Abrams, DHHS/OGC  
Ms. Jennifer M. Smith, CMS/CPC/PCOG  
Mr. Oliver Potts, DHHS/DAB  
Mr. Lewis Morris, DHHS/OIG/OCIG