

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 16, 2009

VIA FEDERAL EXPRESS DELIVERY
E-MAIL (jorge.mendez@sdmpr.com)
AND FACSIMILE (787-999-6563)

Jorge Mendez
President & CEO
SDM HealthCare Management, Inc.
Urb. Jardines de Caparra
Shopping Center Jardines de Caparra
Ave. Ruiz Soler #200
Bayamón, PR 00959
Phone Number: (787) 217-6050

Re: Notice of Immediate Imposition of Intermediate Sanctions (Suspension of Enrollment and Marketing) For: Medicare Advantage-Prescription Drug Plan Sponsor Contract Number H4009

Dear Mr. Mendez:

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 SDM HealthCare Management, Inc. ("SDM"), of the imposition of intermediate sanctions for contract number H4009. 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 SDM'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 16, 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 SDM Non-Compliance

On November 6, 2009, SDM and the Office of the Commissioner of Insurance of Puerto Rico (OCS) entered into an order prohibiting SDM from enrolling persons into their health plans, because of SDM's current financial position. SDM currently has a deficit of \$6,693,415. Puerto Rico's Code of Insurance permits OCS to suspend or revoke an entity's certificate of authority when the organization cannot respond financially and it is suspected that the organization will not be able to fulfill its obligations to subscribers or prospective subscribers. (Article 19.190(1)(e) Code of Puerto Rico, 26 L.P.R.A. sec. 1919(1)(e)).

SDM's financial difficulties are affecting their ability to provide adequate access to enrollees. CMS has been made aware of numerous beneficiary complaints stating that access by providers is being denied because of SDM's failure to pay providers. CMS has also received complaints directly from providers stating that SDM is failing to pay. In addition, SDM has recently lost two hospital contracts, severely decreasing the number of available hospitals in which enrollees can obtain services.

In the event that SDM is deemed to be insolvent and OCS begins liquidation proceedings, CMS, pursuant to 42 C.F.R. §422.510(a), 42 C.F.R. §423.509(a), will begin termination proceedings.

Basis of Proposed Intermediate Sanctions

CMS has determined that SDM's financial condition, as admitted to and demonstrated by the order between SDM and OCS, provides sufficient evidence and provides sufficient basis for 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 violations, each of which provides an independent basis for the imposition of an intermediate sanction:

- ***SDM is carrying out its contract 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)).***
- ***SDM is experiencing financial difficulties so severe that its ability to make necessary health services available is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or otherwise fails to make services available to the extent that such a risk to health exists (42 C.F.R. §422.510(a)(5), 42 C.F.R. §423.509(a)(5)).***

Opportunity to Respond to Notice

Pursuant to 42 C.F.R. §422.756(a)(2) and 42 C.F.R. §423.756(a)(2), SDM has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or on November 26, 2009. Because the 10th day falls on a federal holiday, you have until the next regular business day (November 27, 2009) to provide a written rebuttal. Please note that CMS considers receipt as the day after the notice is sent by fax, e-mail, or overnight mail, in this case, November 17, 2009. If you choose to submit a rebuttal, please send it to the attention of Brenda J. Tranchida at the address noted below.

Right to Request a Hearing

SDM 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 December 1, 2009. Please note, however, a request for a hearing will not delay the date specified by CMS when the sanctions become 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.

SDM 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 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

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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 SDM 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. 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
Mr. Thomas Hutchinson, CMS/CPC/MPPG
Mr. Anthony Culotta, CMS/CPC/MEAG
Ms. Teresa DeCaro, CMS/CPC
Ms. Mary A. Laureno, 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. Joaquin A. Clinton-Clemens, CMS/CMHPO/Region II
Ms. Carol Bennett, DHHS/OGC

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Ms. Leslie Stafford, DHHS/OGC
Ms. Jill Abrams, DHHS/OGC
Ms. Nancy Brown, DHHS/OIG/OCIG
Mr. Paul Collura, CMS/CMHPO