

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

November 10, 2009

VIA FEDERAL EXPRESS DELIVERY
E-MAIL (bbirch@touchstoneh.com)
AND FACSIMILE (212-294-1691)

Mr. Bryan Birch
CEO
Touchstone Health, Inc.
14 Wall Street
New York, NY 10005
Phone: (212) 294-6942

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for:
Touchstone Health, Inc. - Medicare Advantage Organization Contract Number
H3327

Dear Mr. Birch:

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 Touchstone Health, Inc. (“Touchstone”) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of \$2,800 for Medicare Advantage Organization (MAO) contract number H3327.

Basis for Civil Money Penalty

This action is based on your organization’s failure to ensure receipt of the combined 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, 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 867 members in Touchstone contract H3327 were not provided the combined ANOC/EOC that was due by October 31, 2008 in a timely manner. According to your responses to CMS, this information was not mailed to these members until January 13, 2009, more than two months after the applicable deadline of October 31, 2008. 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 adversely affected or had the substantial likelihood of adversely affecting these enrollees. Touchstone 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 2009 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' 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
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
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 Touchstone 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.

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/CMHPO/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

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Ms. Lillian Moore, 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