

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP

October 26, 2021

Pooja Ika
Chief Executive Officer
Eternal Health of Delaware, Inc.
376 Boylston Street
Suite 501
Boston, MA 02116

Re: Notice of Immediate Imposition of Intermediate Sanction (Suspension of Enrollment) for Medicare Advantage-Prescription Drug Plan Contract Numbers: H1280 and H2694

Dear Ms. Pooja:

Pursuant to 42 C.F.R. §§ 422.756 and 423.756, the Centers for Medicare & Medicaid Services (CMS) hereby informs Eternal Health of Delaware, Inc. (“eternalHealth”) of its determination to immediately impose an intermediate sanction on the following Medicare Advantage-Prescription Drug Plans (MA-PD) Contracts: H1280 and H2694.

This intermediate sanction will consist of the suspension of enrollment of Medicare beneficiaries into eternalHealth’s contracts (42 C.F.R. §§ 422.750(a)(1) and 423.750(a)(1)). CMS is imposing an intermediate sanction immediately, effective at 11:59 p.m. EDT, October 26, 2021, pursuant to 42 C.F.R. §§ 422.756(c)(2) and 423.756(c)(2).

Summary of Noncompliance

On October 18, 2021, the Massachusetts Office of Consumer Affairs and Business Regulation, Division of Insurance (MA DOI) and eternalHealth entered into a consent order which stated that eternalHealth shall not commence writing any new business without prior approval from the state. Massachusetts took this action after determining that eternalHealth failed to meet state financial solvency and operational requirements.

Pursuant to 42 C.F.R. §§ 422.504(a)(1) and 423.505(b)(2), organizations that contract with CMS to offer MA-PD contracts must agree to accept new enrollments as provided in 42 C.F.R. Parts 422 and 423, Subpart B. Because eternalHealth is not permitted to accept new enrollments under its license with the state of Massachusetts, it is non-compliant with CMS’ contract requirements.

Legal Basis for the Immediate Imposition of Intermediate Sanction

As a result of MA DOI's order, eternalHealth no longer substantially meets the applicable conditions to carry out its contract with CMS (42 C.F.R. §§ 422.510(a)(3) and 423.509(a)(3)). eternalHealth's non-compliance provides a sufficient basis for the immediate imposition of an intermediate sanction (42 C.F.R. §§ 422.752(b) and 423.752(b)).

Corrective Action Steps

Pursuant to 42 C.F.R. §§ 422.756(c)(3) and 423.756(c)(3), the sanction will remain in effect until CMS receives notification from the MA DOI that eternalHealth can successfully operate under good standing and that the order has been removed, thereby, allowing eternalHealth to accept new enrollments.

Opportunity to Respond to Notice

Pursuant to 42 C.F.R. §§ 422.756(a)(2) and 423.756(a)(2), eternalHealth has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by November 6, 2021. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case October 27, 2021. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the address noted below. Note that the sanction imposed pursuant to this letter are not stayed pending a rebuttal submission.

Right to Request a Hearing

eternalHealth may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. §§ 422.641-696 and 423.650-668. Pursuant to 42 C.F.R. §§ 422.756(b) and 423.756(b), a written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by November 11, 2021. Please note, however, a request for a hearing will not delay the date specified by CMS when the sanction becomes effective. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

The request for a hearing must be sent electronically, and may also be sent via hard copy, to the CMS Hearing Office at the following address:

CMS Office of Hearings
Attn: Benjamin R. Cohen, Director
7500 Security Boulevard
Mail Stop: B1-01-31
Baltimore, MD 21207-2671
Phone: 410-786-3169
Email: benjamin.cohen@cms.hhs.gov

A copy of the hearing request should also be sent to CMS at the following address:

Kevin Stansbury
Director, Division of Compliance Enforcement

Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-27
Email: kevin.stansbury@cms.hhs.gov

CMS will consider the date the Office of Hearings receives the email or the date it receives the fax or traceable mail document, whichever is earlier, as the date of receipt of the request. The request for a hearing must include the name, fax number, and e-mail address of the contact within eternalHealth (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request.

Please note that we are closely monitoring your organization and eternalHealth 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. CMS will consider taking action to immediately terminate your contract if issues that pose a serious threat to the health and safety of Medicare beneficiaries are identified or left uncorrected.

If you have any questions about this notice, please call or email the enforcement contact provided in your email notification.

Sincerely,

/s/

John A. Scott
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Kevin Stansbury, CMS/CM/MOEG/DCE
Heather Lang, CMS/OPOLE
Adele Pietrantonio, CMS/OPOLE
Rachel Walker, CMS/OPOLE
Edgardo Reyes, CMS/OPOLE