DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services 7500 Security Boulevard Baltmore, Maryland 21244-1830



CENTER FOR MEDICARE

August 22, 2022

Warning Letter- Notice of Determination to Impose a Civil Money Penalty for Pharmaceutical Manufacturer

Contract ID: P1645

Manufacturer Name: Athenex Pharmaceutical Division, LLC

Douglas Neely Primary Contact 10 Martingale Rd., Ste. 230 Schaumburg, Illinois 60173

VIA EMAIL: dougneely@athenex.com

RE: Notice of Determination to Impose a Civil Money Penalty for Pharmaceutical Manufacturer Contract Number Contract ID: P1645

Dear Douglas Neely:

The Centers for Medicare & Medicaid Services (CMS) is issuing this notice of determination to impose a civil money penalty to Athenex Pharmaceutical Division, LLC, P1645. Pursuant to 42 CFR §423.2340, CMS is providing notice of a civil money penalty (CMP) assessment in the amount of \$1,874.75.

Basis for Civil Money Penalty

CMS is imposing a CMP of \$1,874.75 on Athenex Pharmaceutical Division, LLC, P1645 based on a report provided by the Third Party Administrator (TPA) for the Coverage Gap Discount Program. The information which the TPA provided indicates that your organization failed to pay specified Part D sponsors for applicable discounts within 38 calendar days from receipt of the 2022 first quarter invoice. This is a violation of 42 CFR §423.2315(b)(3) and Section II(b) of the Medicare Coverage Gap Discount Program Agreement (Discount Agreement).

Specifically, the following Part D sponsors did not receive payments within the requisite 38-day time period:

• 1 Part D Sponsors: \$1,499.80

S5601 Silverscript Insurance Company \$1,499.80

The CMP that your company owes is equal to:

- Any invoiced amounts your company has failed to pay to Part D sponsors; \$1,499.80
- Plus the 25% late payment penalty; \$374.95

You **must** contact the TPA, 1-877-534-2772, to pay any invoiced amounts your company has failed to pay to Part D sponsors. You **must** pay the 25% late payment penalty via Pay.gov. Please see the required payment method below under Method to Submit CMP Payments.

The determination by CMS to impose a CMP will become final and due no later than October 21, 2022 if you do not request a hearing to appeal in the manner and time frame described below under Right to Request a Hearing.

Please note that any further failures by Athenex Pharmaceutical Division, LLC to comply with these or any other CMS requirements may subject your organization to termination as described in 42 CFR §423.2345 and section VIII of the Discount Agreement.

Method to Submit CMP Payments

CMP payments must be made using Pay.gov (Instructions on Attachment 1). Pay.gov provides a free service to entities that make online payments to a Federal government agency. The Pay.gov Collection Service collects and processes the Internet-authorized deductions from a checking or savings account via Automated Clearing House (ACH) debit entries processed at the Federal Reserve Bank of Cleveland (FRB-C). Your Pay.gov payment transaction will not require a Username and Password.

Companies sometimes have blocks on their bank accounts that will only allow designating transactions to be processed. It may be necessary to provide your banking institute with the following two pieces of information to unblock the bank account:

- Originating Depository Financial Institution (ODFI): FRB-C is the payment processor for ACH payments made through Pay.gov and will appear as the ACH ODFI. FRB-C processes Pay.gov ACH transactions under the American Bankers Association (ABA) routing numbers 041036046 and 042736141.
- **Company ID:** Every ACH batch contains a company ID number in accordance with the National Automated Clearing House Association (NACHA) requirements. CMS' company ID number for Pay.gov payments is 7505008012.

For Pay.gov technical issues contact Pay.gov Customer Service at (800) 624-1373 or (216) 579-2112, Monday-Friday from 6:00 A.M. to 7:00 P.M. Eastern Time.

You will find it helpful to have the following information available when you complete your payment:

- P# (P####)
- CMP payment demand letter from CMS
- Bank account and routing numbers
- · Point of contact regarding the payment
- Business mailing address

Right to Request a Hearing

Your organization may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board (DAB) to appeal CMS' determination to impose a civil money penalty in accordance with Section IV(b) of the Discount Agreement. Procedures governing this process are set out in 42 C.F.R. § 423.2340.

You must:

- file your hearing request electronically by using the Departmental Appeals Board's Electronic Filing System (DAB E-File) at https://dab.efile.hhs.gov no later than sixty (60) days after receiving this letter; October 21, 2022 (Instructions on Attachment 2); and
- email a copy of your hearing request to CMS:

Centers for Medicare & Medicaid Services, Craig Miner, Deputy Director, Division of Part D Policy at CGDPandManufacturers@cms.hhs.gov.

Acknowledgement of this letter is required, please reply to <u>CGDPandManufacturers@cms.hhs.gov</u>. If you have any questions about this notice, please contact [SME], [SME Email Address].

Sincerely,

Amy Larrick Chavez-Valdez, Director

Medicare Drug Benefit and C&D Data Group

CC via email:

 $\underline{CGDPandManufacturers@cms.hhs.gov}$

MDBG, MPPG, OC, OGC

Attachment 1

Step 1

Access Pay.gov at https://www.pay.gov



Step 2

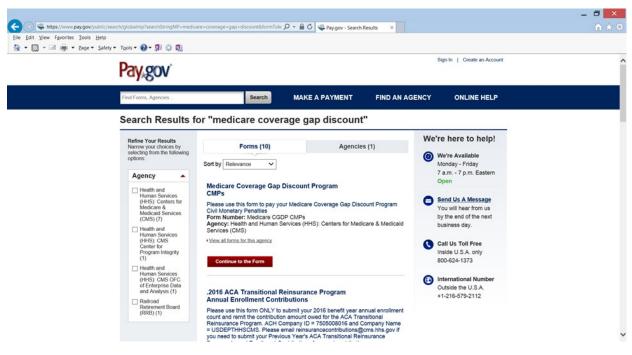
- In the Search by keyword... box (under number 2), Type: Medicare Coverage Gap Discount (not case sensitive)
- · then click on Search

https://www.pay.gov/public			ń
View Favorites Iools Help			
201 • 🖂 🎬 • Fade • 291	ety • Tools • 🔞 • 🕅 🥥 🕅		
	 Select from the list of commonly used forms: 		
	DEPARTMENT OF VETERANS AFFAIRS	Send Us A Message	
	VA Medical Care Copayment	You will hear from us	
		by the end of the next	
	SMALL BUSINESS ADMINISTRATION (SBA)	business day.	
	View all SBA forms		
		Call Us Toll Free	
	DEPARTMENT OF DEFENSE	Inside U.S.A. only 800-624-1373	
	Former Military Member or Former Federal Civilian Employee	800-624-1575	
	Debt Payment	(a) International Number	
	UNITED STATES COAST GUARD	International Number Outside the U.S.A. +1-216-579-2112	
	USCG Merchant Mariner User Fee Payment		
	IRS 1023-EZ		
	 Streamlined Application for Recognition of Exemption Under Section 501(c)(3) 		
	Search by keyword such as the type of payment, agency name, form name or number.		
	medicare coverage gap discount Search		
	3. Click here to view a listing of all forms		
	4. Click here to view a listing of all agencies		
	 Glick liele to view a listing of all agencies 		
	Have an Access Code?		
	If you received a notice that you have an electronic bill, you may <u>Sign In</u> ; to your Pay.gov user account to see your bill or click the enter access code button to proceed without signing into Pay.gov.		
	Enter Access Code		

Step 3

Medicare Coverage Gap Discount Program CMPs

• Click on Continue to the Form.



Step 4

- · You may Preview Form, cancel, or Continue to Form.
- Click on Continue to the Form. Have available your payment demand letter from CMS.

		_ 0
	jov/public/form/start/38616929 🔎 🕈 🖄 🖉 🌳 Pay.gov - Medicare Covera ×	n :
Edit View Favorites Ioc	ols Help per Satety = Tgols = 🔞 = 🗐 🍈 🕅	
• 🖾 • Eað	le + Zeich + 100 + M + 210 → M + 21	
	PSV 80V	
	Find Forms, Agencies Search MAKE A PAYMENT FIND AN AGENCY ONLINE HELP	
	Medicare Coverage Gap Discount Program CMPs	
	Before You Begin 1 Complete Agency Form 2 Enter Payment Info 3 Review & Submit 4 Confirmation Need Help?	
	Please use this form to pay your Medicare Coverage Gap Discount Program Civil Monetary Penalties Contact: Shelly Winston	
	Paying online with Pay.gov is safe, secure, and the preferred method to make a payment. To make a Email: Click to email	
	payment using one of the below accepted payment methods, please click the Continue to the Form button. Website: Click to visit site	
	Accepted Payment Methods:	
	▶ Bank account (ACH)	
	Preview Form Continue to the Form	
	This is a secure service provided by United States Department of the Treasury. The information you will enter will remain private. Please review our privacy policy for more information.	
	remain private. <u>Hease review our privacy poincy</u> for more information.	
	Contact Us Notices & Agreements Accessibility Policy Privacy & Security Policy For Agencies * 👾 Rizal Service	
	WARNING WARNING	
	You have accessed a United States Government computer. Unauthorized use of this computer is a violation of federal law and may subject you to civil and criminal penalties. This computer	
	and the automated systems which run on it are monitored. Individuals are not guaranteed privacy while using government computers and should, therefore, not expect it. Communications made using this system may be disclosed as allowed by federal law.	

Step 5

- Complete the required fields
 - Manufacturer P Number: (P####) must be a P followed by 4-digits
 - Manufacturer Name: manufacturer's complete name
 - Point of Contact: person authorized to make the payment

- **Point of Contact Phone:** (***_***) telephone number must include dashes
- Point of Contact Email: email address
- Mailing address: Street, city, state, and zip code
- Date of Demand Letter: (MM/DD/YEAR) typed date on the demand letter received from CMS
- Quarter: (Q1, Q2, Q3, Q4) use the drop arrow to select the calendar year quarter in which the invoice payment was late or unpaid
- Year: use the drop down arrow to select the calendar year in which the invoice payment was late or unpaid
- Payment Amount: the total amount indicated on the demand letter from CMS

https://www.pay.gov/public/form	/entry/103/ 🔎 👻 🛱 🖒 🐙 Pay.gov - Medicare Covera ×	A 🛧 🙃
ile Edit View Favorites Tools Help		
🔓 🔹 🔝 👻 📾 🖷 🔹 Page 🔹 Safety 🔹	Tools = 🚱 = 🗊 🖏 🖏	
	Civil Money Penalty Payment	^
	"Required Fields	
	'Manufacturer P Number:	
	*Manufacturer Name: * Address:	
	* City:	
	* State:	
	* Zip Code:	
	*Point of Contact Name:	
	*Point of Contact Phone:	
	*Point of Contact Email:	
	*Date of Demand Letter:	
	Invoice Quarter for which Penalties are due:	
	"Quarter: "Year:	
	income the second se	
	*Payment Amount: \$ (Note: This must be the total amount due)	
	PDF Preview Continue	
		~

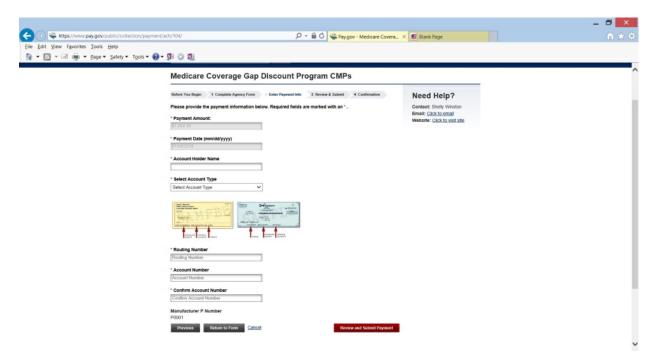
- Review
- · Click on Submit Data

NOTE: You will immediately receive a message if **any** of the required information is missing on the payment form. Click OK, complete the missing information, and click on Submit Data.



Step 6

Have your banking information available to enter the payment information. Enter bank information, review, and print your payment confirmation to complete your Pay.gov payment.



Notice the payment amount you entered on the previous screen has populated. Click on Return to Form at the bottom of the screen to correct the payment amount.

Enter,

- Payment Amount
- Payment Date: automatically populates the next available date in which the financial institutes can initiate the payment transaction
- Account Holder Name: name as it appears on the actual banking account
- Select Account Type: (Personal Checking, Personal Savings, Business Checking, or Business Savings) use the drop down arrow to select account type
- Routing Number: bank routing number
- Account Number: bank account number
- Confirm Account Number: re-type your bank account number

Click on Review and Submit Payment when you are ready

• Review the payment summary,

🔕 Pay.gov - Online Payment - Windows Int	lernet Explorer		X		
🚱 🗢 🧭 https://qa.pay.gov/paygov/paym	ents/enterACHDebitPaymentInforma	nation.html 💌 🔒 🔯 🍫 🗙 💐 Live Search 🖉	•		
<u>Eile Edit ⊻iew Favorites Tools H</u> elp					
🚖 Favorites 🛛 👍					
Pay.gov - Online Payment	1	🚡 🔹 🖂 🔹 🖃 👘 🔹 Bage 🔹 Safety 🔹 Tools 🔹 🕢	>>		
Step 2: Authorize Payment		1 2 3	-		
Payment Summary Edit this information					
Account Holder	Name: manufacturer Inc				
Payment Ar	mount: \$1,000.00				
	t Type: Business Checking	Payment Date: 01/27/2012			
	umber: 041000124	And a set to			
	umber: *********0424 umber: 0002				
Email Confirmation Receipt	inder. 0002				
To have a confirmation sent to you upon completion of	f this transaction, provide an email addres	ass and confirmation below	1		
Email Address:					
Confirm Email Address:					
Confirm Email Address:					
CC:	× v	Separate multiple email addreases with a comma			
Authorization and Disclosure					
Required fields are indicated with a red asterisk *					
lagree to the authorization and disclosure language.	*				
		used in this document, "we" or "us" refers to the Financial Management Service and Analysis and this document and agreeing to it prior to engaging in a debit			
transaction.					
I. Consumers					
A. Authorization					
A. Authorization					
		disclosure language and authorize the Federal Reserve financial institution of			
Cleveland to debit the named financial institution account. This authorization is to remain in full force and effect until we have received notification of its termination in such time and in such manner as to afford Pay.gov a reasonable opportunity to act on it, or unless otherwise					
terminated for any reason by Pay.gov		ab to arrera rayigov a reasonable opportantel to act on rey or antess contraine			
B. Disclosure					
In case of errors or questions about	a transaction. immediately	contact the Federal agency using the Pay.gov service or contact Pay.gov directly.	-		
		😡 Internet 🖓 🔻 📩 100%	- /		
			_		

- Enter email address(es) to receive the payment confirmation
- Please add to the CC box: cgdp_manufacturers@cms.hhs.gov
 Read and/or print the Authorization and Disclosure. If you agree, Click, *I agree to the authorization and disclosure* language

Submit Payment- will submit your payment and move you to the final step of your payment Cancel- will cancel all information entered during this session Return To Your Form- will take you back to the Civil Money Penalty form

• Print the payment confirmation.

🖉 Pay.gov - Online Pa	ayment - Windows Internet Explorer	<u>_ 문 ×</u>
🕒 🗢 🙋 https://d	qa. pay. gov/paygov/payments/authorizeACHPayment.html	🔹 🔒 💀 🋠 灯 Live Search 🖉 🔎 🔹
Eile Edit View Favorit	tes Iools Help	
🔶 Favorites 🛛 🍰		
🙆 Pay.gov - Online Payr	ment	🏠 🔹 📉 👻 👘 👻 Bage 🔹 Safety 🔹 Tools 🔹 🕢 👻
Pay gov°	Provided by the US Department of the Treesury	<u> </u>
Login	Online Payment	
Username:	Step 3: Confirm Payment	1 2 3
Password:	Thank you. Your transaction has been successfully completed. It is recommended you <u>print a copy</u> for your records.	Print this window.
Trouble Logging In?	Pay.gov Tracking Information	
Find Public Forms by Form Name by Agency Name Search Public Forms Search Public Forms Go Search Public Forms	Application Name: Medicare Coverage Gap Discount Program CMPs Pay gov Tracking ID: 3F0HC800 Agency Tracking ID: 120008876801 Transaction Date and Time: 01/26/2012 12:36 EST Payment Summary	
Public Resources Resources Accessibility Statement Notices & Acreements Privacy & Security Policy Sitemaa Help	Account Holder Name: manufacturer Inc Payment Amount: \$1,000.00 Account Type: Business Checking Routing Number: 041000124 Account Number: 0424 Check Number: 0002	Payment Date: 01/27/2012
Contact Us Frequently Asked Questions	Return to your form search res Return to Home	ults
Information Agency Information Overview Implementing Documentation Press / Articles		
<i>fmg</i>		<u>م</u> ر.
		● Internet
Done		Winternet 100% *

Attachment 2

Department of Health and Human Services, Departmental Appeals Board (DAB)

Registering to Use DAB E-File

To file a new appeal using DAB E-File, you first need to register a new account by:

- clicking "Register" on the DAB E-File home page;
- entering the information requested on the "Register New Account" form; and
- clicking "Register Account" at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB-File on your behalf.

Filing an Appeal through DAB E-File

The e-mail address and password provided during registration must be entered on the login screen at http://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB E-File is restricted to the appeals for which he is a party or authorized representative. Once registered, you may file your appeal by:

- clicking the "File New Appeal" link on the "Manage Existing Appeals" screen, then clicking "Civil Remedies Division" on the "File New Appeal" screen; and
- entering and uploading the requested information and documents on the "File New Appeal Civil Remedies Division" form.

At a minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party's appeal rights. All documents must be submitted in Portable Document Format ('PDF'). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions on DAB E-File for CRD cases can be found by clicking the CRD E-File Procedures link on the File New Appeal Screen for CRD appeals.

The DAB no longer accepts requests for a hearing submitted by U.S. mail or commercial carrier, unless you do not have access to a

computer or internet services. In those circumstances you may contact the Civil Remedies Division to request a waiver from e-filing and provide an explanation as to why you cannot file electronically or you may mail a written request for a waiver along with your written request for a hearing. A written request for a hearing must be filed no later than sixty (60) days after receiving this letter, by mailing to the following address:

Department of Health and Human Services Departmental Appeals Board, MS 6132 Director, Civil Remedies Division 330 Independence Avenue, S.W. Cohen Building - Room G-644 Washington, D.C. 20201 (202) 565-9462

The request for a hearing will contain a statement as to the specific issues or findings of fact and conclusions of law in the notice letter with which the petitioner or respondent disagrees, and the basis for his or her contention that the specific issues or findings and conclusions were incorrect. 42 C.F.R. § 423.1020(b).