

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

December 4, 2019

Mr. Daniel Hernandez
Chief Executive Officer
Solis Health Plans, Inc.
9250 NW 36th Street, Suite 400
Miami, FL 33178

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Number: H0982

Dear Mr. Hernandez:

Pursuant to 42 C.F.R. § 422.752(c)(1), § 422.760(b), § 423.752(c)(1), and § 423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Solis Health Plans, Inc. (Solis), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$41,552** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H0982.

CMS has determined that Solis failed to oversee and manage its marketing process to ensure its agents and brokers did not engage in inappropriate marketing practices. This failure resulted in agents misleading Medicare beneficiaries who unknowingly enrolled into Solis health plans.

Summary of Noncompliance

Agents employed by Solis engaged in an aggressive marketing campaign that was conducted by a contracted provider clinic. The clinic marketed to potential patients at various facilities with the promise of transportation, snacks, a clinic tour, and activities. The clinic would then pick up interested patients and transport them to the clinic where Solis agents would conduct a marketing presentation in a secluded area and enroll patients upon conclusion of the presentation. Solis reported that 196 members were enrolled through this marketing approach and ultimately over 84 percent requested an enrollment cancellation or disenrollment after realizing they had signed up for Solis.

During the 2019 annual election period (AEP), Solis lacked sufficient methods to validate enrollee identity as well as an enrollment verification process both of which contributed to this failure. In addition, Solis ultimately terminated its contract with the provider group forcing a small group of beneficiaries that maintained their enrollment with Solis to switch to another contracted primary care provider (PCP).

Communications and Marketing Requirements

(42 C.F.R. §§ 422.2268(a) and 423.2268(a))

Oversight of marketing and beneficiary communications is an essential function of the program. While some sales activities are permitted in common areas of a healthcare setting, sponsors must maintain appropriate safeguards in order to protect beneficiaries from confusion. Generally, in conducting communication activities sponsors may not engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the organization.

Violations Related to Communication and Marketing Requirements

CMS has determined that Solis violated the communication and marketing requirements, which had the substantial likelihood of adversely affecting its enrollees. Solis' violation includes:

1. Failure to oversee and manage the marketing process to ensure its agents and brokers did not engage in inappropriate marketing practices including misleading beneficiaries. As a result, affected enrollees were not aware that they had enrolled in Solis and had to take measures to ensure that they were in the correct plan or had to find another PCP. This failure violates 42 C.F.R. §§ 422.2268(a)(2) and 423.2268(a)(2).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 422.752(c)(1), § 422.760(b), § 423.752(c)(1), and § 423.760(b), CMS has determined that Solis' violation had the substantial likelihood of adversely affecting enrollees and warrants the imposition of a CMP. Consequently, CMS has concluded that Solis has failed substantially:

- To carry out the terms of its contract with CMS (42 C.F.R. § 422.510(a)(1) and § 423.509(a)(1)); and
- To comply with communication requirements (42 C.F.R. § 422.510(a)(4)(viii) and §423.509(a)(4)(v)(A).

Right to Request a Hearing

Solis may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. Parts 422 and 423, Subpart T. Solis must send a written request for a hearing to the Departmental Appeals Board (DAB) office listed below by **February 3, 2020**. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Solis disagrees. Solis must also specify the basis for each contention that the finding or conclusion of law is incorrect.

The request should be filed through the DAB E-File System (<https://dab.efile.hhs.gov>) unless the party is not able to file the documents electronically. If a party is unable to use DAB E-File, it must send appeal-related documents to the Civil Remedies Division using a postal or commercial delivery service at the following address:

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

Please see https://dab.efile.hhs.gov/appeals/to_crd_instructions for additional guidance on filing the appeal.

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

If Solis does not request an appeal in the manner and timeframe described above, the determination by CMS to impose a CMP will become final and the CMP will be due to CMS on **February 4, 2020**. Solis may choose to have the CMP deducted from a monthly payment, transfer the funds electronically, or mail a check to CMS. To notify CMS of your intent to make payment and for instructions on how to make payment, please call or email the enforcement contact provided in the email notification.

Impact of CMP

Please note, this action may factor into Solis' Past Performance calculation. Further failures by Solis to oversee and manage its marketing procedures in accordance with Medicare requirements may result in CMS imposing additional remedies available under law, including contract termination, intermediate sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If Solis has any questions about this notice, please call or email the enforcement contact provided in the email notification.

Sincerely,

/s/

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

cc: Tamara McCloy, CMS/OPOLE
Mortez Williams, CMS/OPOLE
Michael Taylor, CMS/OPOLE
Hugo Huapaya, CMS/OPOLE
Kevin Stansbury, CMS/CMS/MOEG/DCE