

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

September 2, 2021

Mr. Timothy Spilker
Chief Executive Officer
UnitedHealthcare of the Midwest, Inc.
PO Box 9472
Minneapolis, MN 55440-9472

Re: Notice of Enrollment Suspension for Medicare Advantage-Prescription Drug Contract
Number H0169

Dear Mr. Spilker:

Pursuant to 42 C.F.R. §§ 422.2410(c) and 423.2410(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to UnitedHealthcare of the Midwest, Inc. (“United of the Midwest”) that CMS has made a determination to prohibit the enrollment of new beneficiaries under the Medicare Advantage-Prescription Drug (MA-PD) contract H0169 for contract year (CY) 2022.

Medical Loss Ratio (MLR) Relevant Requirements

Section 1857(e)(4) of the Social Security Act (“the Act”) requires Medicare Advantage organizations to maintain a medical loss ratio (MLR) of at least 85%, a requirement made applicable to Medicare Part D contracts through section 1860D-12(b)(3)(D) of the Act. The statute further provides, at section 1857(e)(4)(B) of the Act, that when an organization fails for three consecutive years to meet the 85% threshold, CMS must suspend that organization’s ability to accept new enrollments in the plans it offers under the non-compliant contract for the contract year following submission of the report (i.e., the second contract year after the third consecutive year in which the organization failed to meet the minimum MLR).

CMS administers the MLR review process for MA-PD organizations through the application of regulations at 42 C.F.R. Parts 422 and 423, Subpart X. In particular, MA-PD organizations are required, per 42 C.F.R. §§ 422.2410(a) and 423.2410(a), to report an MLR each year for each of their contracts, and 42 C.F.R. §§ 422.2460 and 423.2460 obligates sponsors to make such reports in a form and manner specified by CMS. The rules for calculating the MLR are codified in 42 C.F.R. §§ 422.2420 and 423.2420. CMS has published MLR instructions and workbooks on June 6, 2019 (for CY 2018 data), June 19, 2020 (for CY 2019 data), and June 11, 2021 (for CY 2020 data).

Violation Related to MLR Requirements

United of the Midwest has reported to CMS the following MLRs for MA-PD contract H0169: 82.2% for CY 2018, 84.5% for CY 2019, and 84.5% for CY 2020. Based on this plan sponsor-reported information, CMS has determined that United of the Midwest has failed to meet the 85% MLR threshold for three consecutive years.

As a result of this determination, United of the Midwest will be prohibited from accepting any MA-PD plan enrollments for 2022; this prohibition is effective for any enrollments beginning January 1, 2022, through December 1, 2022. This action will include the removal of H0169 from the list of MA-PD plans from which beneficiaries may make an election during the CY 2022 Annual Election Period (AEP), which runs between October 15, 2021, and December 7, 2021. However, United of the Midwest may continue to accept and process enrollments that become effective on or before December 1, 2021.

During CY 2022, all individual market plans offered under H0169 will be precluded from accepting any new enrollees, including those beneficiaries already enrolled in a United of the Midwest MA-PD plan who may want to elect a different plan offered under the same contract. Pursuant to sections 1857(i) and 1860D-22(b) of the Act, if United of the Midwest has employer group plans, it may apply for an employer group waiver in order to continue to enroll members into their existing employer group plans, although CMS will not permit United of the Midwest to add new employer group plans to contract H0169 for CY 2022.

United of the Midwest must ensure that its marketing and communications materials and activities are not misleading to beneficiaries, and therefore must accurately reflect the fact that the plans under H0169 are not available for enrollment during 2022. Enforcement actions, as described in 42 C.F.R. Parts 422 and 423 Subparts K and O, may be imposed if CMS finds that United of the Midwest has engaged in activities that could mislead or confuse Medicare beneficiaries or misrepresent the plan. See 42 C.F.R. §§ 422.2262 and 423.2262.

If United of the Midwest submits a CY 2021 report in 2022 for H0169 that demonstrates it has achieved an MLR of at least 85%, CMS will allow the sponsor to resume accepting enrollments that become effective on or after January 1, 2023. In such an instance, CMS would allow United of the Midwest to offer plans under H0169 to beneficiaries during the CY 2023 AEP, which will be held between October 15, 2022, and December 7, 2022. In the event that the CY 2021 MLR report for H0169 again shows an MLR below 85%, enrollment under that contract will remain closed during CY 2023. Furthermore, CMS reminds United of the Midwest that if it fails to report an MLR of at least 85% for five consecutive years for H0169, CMS must terminate that contract, pursuant to sections 1860D-12(b)(3)(D) and 1857(e)(4)(C) of the Act.

Opportunity to Respond and Right to Request a Hearing

In accordance with our statement in the May 23, 2013, final rule (78 FR 31287-88), through which CMS adopted the MA organization and Part D sponsor MLR regulations, CMS is affording United of the Midwest the opportunity to contest this determination through the

processes that currently apply to suspensions of enrollment imposed as an intermediate sanction. Therefore, United of the Midwest may provide a response to this notice, pursuant to 42 C.F.R. §§ 422.756(a) and 423.756(a), and/or request a hearing, pursuant to 42 C.F.R. §§ 422.756(b) and 423.756(b).

Consistent with 42 C.F.R. §§ 422.756(a) and 423.756(a), United of the Midwest has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by September 13, 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, September 3, 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 enrollment closure will not be stayed pending a rebuttal submission.

Consistent with 42 C.F.R. §§ 422.756(b) and 423.756(b), United of the Midwest may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. §§ 422.660-696 and 423.650-668. A written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by September 20, 2021¹. Please note, however, a request for a hearing will not delay CMS' implementation of the enrollment suspension. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

CMS notes that the statute does not provide any discretion in the imposition of the enrollment sanction described in this notice. Further, the information underlying the MLR determination for the three relevant years has been provided by United of the Midwest. Therefore, we anticipate that any response to this notice or request for a hearing would be limited to mistakes or errors made by CMS in accepting the reports from United of the Midwest or arguments that we are misapplying the law.

The request for hearing must be sent electronically, and may also be sent via hard copy to the CMS Hearing Officer:

Benjamin R. Cohen, Esq.
CMS Office of Hearings
Attn: Benjamin R. Cohen, Director
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: N2 19-25
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

¹ September 18th falls on a weekend or holiday, therefore the date reflected in the notice is the next regular business day for you to submit your request.

7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-26
Email: kevin.stansbury@cms.hhs.gov

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: Jennifer Shapiro, CMS/CM/MPPG
Kevin Stansbury, CMS/CM/MOEG/DCE
Brenda Suiter, CMS/OPOLE
Deanna Gee, CMS/OPOLE
Nicole Edwards, CMS/OPOLE