

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 27, 2023

Mr. Andrew Clifton
Chief Executive Officer
Zing Health, Inc.
225 West Washington Street, Suite 450
Chicago, IL 60606

Re: Notice of Termination and Intermediate Sanctions (Suspension of Enrollment and Marketing) for Medicare Advantage-Prescription Drug Contract Number: H7330

Dear Mr. Clifton:

The Centers for Medicare & Medicaid Services (CMS) hereby notifies you of its decision to terminate (effective 11:59:59 P.M. Eastern Standard Time (EST) December 31, 2024) Zing Health, Inc. (Zing Health) Medicare Advantage-Prescription Drug (MA-PD)¹ contract H7330 pursuant to Sections 1860D-12(b)(3)(B) and 1857(c)(2) of the Social Security Act and 42 C.F.R. §§ 422.510(a)(4)(ix) and 423.509(a)(4)(x).

In addition to the termination and in accordance with 42 C.F.R. §§ 422.752(b), 422.756(a), 423.752(b) and 423.756(a), CMS is also providing notice to Zing Health that CMS has made a determination to impose intermediate sanctions on MA-PD contract H7330. The intermediate sanctions will consist of the suspension of enrollment of Medicare beneficiaries into Zing Health's contract (42 C.F.R. §§ 422.750(a)(1) and 423.750(a)(1)), and the suspension of all marketing activities to Medicare beneficiaries (42 C.F.R. §§ 422.750(a)(3) and 423.750(a)(3)). The intermediate sanctions will be effective 15 calendar days from the date of receipt of this notice, or January 12, 2024. CMS will provide Zing Health with detailed instructions regarding the enrollment and marketing suspensions in a separate communication.

The basis for this action is that CMS has determined that Zing Health has substantially failed to carry out its contract with CMS by failing to achieve a Part D summary Star Rating of at least three stars in three consecutive Star Rating periods for contract H7330.

¹ MA-PD refers to a Medicare Advantage organization that offers a qualified prescription drug plan. The MA-PD is subject to the same Part D requirements at 42 C.F.R. Part 423 as a stand-alone Part D plan sponsor. 42 C.F.R. § 423.458(a).

Summary of Noncompliance

H7330 is an MA-PD contract that has been in operation since January 1, 2020. Medicare regulations at 42 CFR §§ 422.504(a)(17) and 423.505(b)(26) require MA-PD contracts to maintain Part C and Part D summary plan rating scores of at least three stars. H7330 has had three consecutive years of low Part D summary Star Ratings as of the 2024 Star Ratings released in October 2023, in violation of 423.505(b)(26) and Art. II.D.3 of the Prescription Drug Plan Contract. Therefore, Zing Health has failed substantially to carry out the terms of its contract and CMS has made the determination to impose intermediate sanctions and to terminate contract H7330 at the end of 2024.

Parts C and D Star Rating Requirements

Since 2007, CMS has developed and published annual performance ratings for stand-alone Medicare prescription drug plan (PDP) contracts. In 2008, CMS began issuing ratings for Medicare Advantage (MA) contracts as well. The ratings are based on measures that address a range of health and drug plan performance categories, including access to care, access to prescription medications, and communication with members. The scores in each performance category are based on data reported by MA-PDs, member satisfaction, and monitoring conducted by CMS and its contractors. MA-PD contracts receive a score for each performance measure, a summary score each for Part C and Part D, as well as overall ratings. These overall scores are called Star Ratings.²

The performance measures used to calculate a contract's Part C and Part D summary Star Ratings reflect an MA-PD's contract performance across multiple Medicare program requirements. A contracting organization's administrative and management arrangements necessarily have a direct impact on its performance of a similarly broad range of program requirements.³ Therefore, CMS considers a low Part C or Part D summary Star Rating to be evidence that the MA-PD has insufficient administrative and management arrangements to meet its obligations as an MA-PD plan sponsor.

Based on that determination, CMS established the Medicare requirement that all contracts maintain Part C and Part D summary plan rating scores of at least three stars. *See* 42 C.F.R. §§ 422.504(a)(17) and 423.505(b)(26). In addition, CMS may terminate an MA-PD contract if it achieves a Part C summary plan rating of less than three stars for three consecutive contract years (*see* 42 C.F.R. § 422.510(a)(4)(xi)), or a Part D summary plan rating of less than three stars for three consecutive contract years (*see* 42 C.F.R. § 423.509(a)(4)(x)).

CMS has also promulgated regulations that state that CMS may terminate an MA-PD if the organization has substantially failed to comply with the regulatory requirements contained in

² *See* 42 C.F.R. §§ 422.160-166 and 423.180-186 for details on the calculation of Star Rating measures.

³ Medicare regulations at 42 C.F.R. §§ 422.503(b)(4)(ii) and 423.504(b)(4)(ii) require MA-PD organizations to have administrative and management arrangements satisfactory to CMS, including personnel and systems sufficient for the organization to market and administer benefit plans and conduct utilization management and quality assurance activities consistent with Medicare requirements.

Part 422 or Part 423 or both (*see* 42 C.F.R. § 422.510(a)(4)(ix)). CMS has stated that “organizations that offer both Part C and Part D benefits must fully meet the requirements of each program independently”. 77 FR 22109. CMS reiterated this position in the 2015 Call Letter, stating that “CMS will terminate MA-PD contracts that scored a Part D summary rating of less than three stars in each of the most recent consecutive rating periods, regardless of their Part C summary ratings during the same period.”

Violations Related to Part D Summary Star Ratings

CMS has determined that Zing Health’s contract H7330 failed to comply with Part D Star Ratings requirements by failing to achieve a Part D summary Star Rating of at least three stars for three consecutive years in violation of 42 C.F.R. § 423.505(b)(26) and Art. II.D.3 of the Prescription Drug Plan Contract, and so CMS may terminate the contract. 42 C.F.R. § 423.509(a)(4)(x). Specifically, the three consecutive annual Part D Star Ratings for contract H7330 are as follows:

- 2022 Part D Summary Star Rating of 2.5
- 2023 Part D Summary Star Rating of 2.5
- 2024 Part D Summary Star Rating of 2.5

Zing Health was informed of its Part D summary Star Ratings for 2022, 2023, and 2024 on October 6, 2021, October 4, 2022, and October 13, 2023, respectively.⁴

Basis for Termination and Intermediate Sanctions

Pursuant to 42 C.F.R. § 423.509(a)(4)(x), CMS may terminate a Part D plan sponsor’s contract if it “achieves a Part D summary plan rating of less than 3 stars for 3 consecutive contract years.”⁵ In addition, pursuant to 42 C.F.R. § 422.510(a)(4)(ix), CMS may terminate an MA-PD’s contract if it substantially “failed to comply with the regulatory requirements contained in [Part 422] or Part 423 or both.” CMS has determined that Zing Health’s contract H7330 substantially failed to comply with the Part D Star Ratings requirements by failing to achieve a Part D summary Star Rating of at least three stars for three consecutive years. This is in violation of 42 C.F.R. § 423.505(b)(26) and Art. II.D.3 of the Prescription Drug Plan Contract, and CMS will terminate the contract. *Id.*, 42 C.F.R. §§ 422.510(a)(4)(ix), 423.509(a)(4)(x).

Pursuant to 42 C.F.R. §§ 422.752(b) and 423.752(b), if CMS makes a determination that could lead to a contract termination under §§ 422.510(a) and 423.509(a), CMS may impose intermediate sanctions at §§ 422.750(a)(1) and (3) and 423.750(a)(1) and (3). Therefore, since CMS has determined that Zing Health’s contract H7330 has achieved a Part D summary plan

⁴ Part D summary Star Ratings data for 2022, 2023, and 2024 is publicly available at <https://www.cms.gov/medicare/health-drug-plans/part-c-d-performance-data> by navigating to “2022 Star Ratings Data Table”, “2023 Star Ratings Data Table”, and “2024 Star Ratings Data Table.”

⁵ Pursuant to 42 C.F.R. § 423.4, the definition of “Part D sponsor” includes “a PDP sponsor, MA organization offering a MA-PD plan, a PACE organization offering a PACE plan including qualifying prescription drug coverage, and a cost plan offering qualified prescription drug coverage.”

rating of less than 3 stars for 3 consecutive contract years (*see* § 423.509(a)(4)(x)), CMS is imposing intermediate sanctions specified at §§ 422.750(a)(1) and (3) and 423.750(a)(1) and (3) in addition to terminating contract H7330.⁶

Procedural Requirements for Termination and Intermediate Sanctions

Under 42 C.F.R. §§ 422.510(c)(1)(i) and 423.509(c)(1)(i), before providing a notice of termination of the contract, CMS provides the MA-PD plan sponsor with notice specifying the MA-PD plan sponsor's deficiencies and a reasonable opportunity of at least 30 calendar days to develop and implement a corrective action plan to correct the deficiencies.

Zing Health has been on notice of the need to improve its Part D summary Star Ratings performance since the issuance of the 2022 Star Ratings on October 6, 2021. Each year CMS provides MA-PDs with two preview periods before Star Ratings become public (*see* 42 C.F.R. §§ 422.166(h)(2) and 423.186(h)(2)). During the preview periods, Zing Health had the opportunity to review preliminary calculations and seek corrections, if necessary, to the underlying data and calculations before the Star Ratings became public. In addition, Zing Health received a corrective action notice on February 25, 2022, for its 2022 Star Ratings, and on February 24, 2023, for its 2023 Star Ratings. The corrective action notices informed Zing Health of its Star Rating, requested that Zing Health develop and implement a corrective action plan to improve its operations for the areas that resulted in a low Star Rating, and put Zing Health on notice that its contract would be eligible for termination if it received a Part D Summary Star Rating of below three stars for three (3) consecutive years.

Therefore, in accordance with 42 C.F.R. §§ 422.510(c) and 423.509(c), Zing Health was provided notice of its insufficient Part D summary Star Ratings and was afforded reasonable opportunities to correct this deficiency by improving its Star Rating performance, which it failed to do.

With respect to the intermediate sanctions CMS is imposing, 42 C.F.R. § 423.756(c)(3) provides that the intermediate sanctions will remain in effect until CMS is satisfied that the deficiencies that are the basis for the sanction determination have been corrected and are not likely to recur. However, in light of CMS's decision to terminate contract H7330 and its imposition of intermediate sanctions pursuant to 42 C.F.R. § 423.752(b), the intermediate sanctions at § 423.750(a)(1) and (3) will remain in effect until the contract is terminated.

Opportunity to Respond to Intermediate Sanctions Notice

Pursuant to 42 C.F.R. §§ 422.756(a)(2) and 423.756(a)(2), Zing Health has (10) calendar days from the date of receipt of this notice to provide a written rebuttal to the intermediate sanctions determination, or by January 7, 2024. Please note that CMS considers receipt as the day after the notice is sent by fax, e-mail, or overnight mail, which in this case would be December 28, 2023. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the

⁶ 42 C.F.R. §§ 422.756(d) and 423.756(d) authorize CMS to terminate a contract in addition to imposing sanctions described at §§ 422.750 and 423.750.

address noted below. Note that the sanctions imposed pursuant to this letter are not stayed pending a rebuttal submission. 42 C.F.R. §§ 422.756(b)(3) and 423.756(b)(3).

Right to Request Hearings for Termination and Intermediate Sanctions

Zing Health may request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. Subpart N of Parts 422 and 423. If Zing Health wishes to appeal both the contract termination determination and intermediate sanctions determination, Zing Health **must send separate written requests for a hearing for each determination** according to the procedures in 42 C.F.R. Subpart N of Parts 422 and 423.

Pursuant to 42 C.F.R. §§ 422.662, 422.756(b), 423.651(b), and 423.756(b), a written request(s) for a hearing must be received by CMS within fifteen (15) calendar days after receipt of this notice, or by January 12, 2024. If Zing Health appeals the intermediate sanctions determination, a request for a hearing will not delay the date specified by CMS when the intermediate sanctions become effective. *See* 42 C.F.R. §§ 422.756(b)(3) and 423.756(b)(3).

The request for a hearing must be sent to CMS electronically to the CMS Office of Hearings (OH). OH utilizes an electronic filing and case management system, the Office of Hearings Case and Document Management System (“OH CDMS”).

Zing Health should complete the one-time OH CDMS registration process as soon as possible after receiving this Notice, even if Zing Health is unsure whether it will appeal its determination. After the registration process is complete, Zing Health must then file its request for a hearing within the time frame set forth above.

Registration information (including how to add an outside representative/law firm to participate in the appeal), filing instructions and general information may be found on the OH webpage at <https://www.cms.gov/regulations-guidance/cms-hearing-officer/electronic-filing>. Follow the OH CDMS External Registration Manual for step-by-step instructions regarding registration and the OH CDMS Hearing Officer User Manual for appeal filing instructions.⁷

A copy of the hearing request(s) should also be emailed 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: C1-22-06
Email: kevin.stansbury@cms.hhs.gov

⁷ If technical assistance is required, please contact the OH CDMS Help Desk at 1-833-783-8255 or by email at helpdesk_ohcdms@cms.hhs.gov. The hours of operation are Monday–Friday (excluding federal holidays) from 7:00 a.m. to 8:00 p.m. Eastern Time.

CMS will consider the date the Office of Hearings receives the request via the CDMS as the date of receipt of the request(s). The request(s) for a hearing must include the name, fax number, and e-mail address of the contact within Zing Health (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request(s).

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

Sincerely,

/s/

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

cc: Kevin Stansbury, CMS/MOEG/DCE
Vanessa Duran, CMS/MDBG
Mark Newsom, CMS/MDBG
Linda Anders, CMS/MDBG
Michael Neuman, CMS/MDBG
Arianne Spaccarelli, CMS/MDBG
Elizabeth Goldstein, CMS/ MDBG
Kathryn Coleman, CMS/MCAG
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