

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C1-22-06
Baltimore, Maryland 21244-1850



PROGRAM COMPLIANCE AND OVERSIGHT GROUP

January 14, 2011

VIA:
FEDERAL EXPRESS DELIVERY (1-860-273-1188)
EMAIL (BertoliniM@aetna.com)
AND FACSIMILE (1-860-754-1078)

Mr. Mark T. Bertolini
Chief Executive Officer and President
Aetna, Inc.
151 Farmington Avenue, A-801
Hartford, CT 06156
Phone: 860-273-1188

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for:
Aetna Life Insurance Company - Medicare Advantage Organization
Contract Numbers H4524, H5521, H8684

Dear Mr. Bertolini:

Pursuant to 42 C.F.R. §422.752(c)(1), §422.756(f), §422.760(b), §423.752(c)(1), §423.756(f), and §423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Aetna Life Insurance Company (Aetna) that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of \$171,240 for violations occurring within Medicare Advantage Organization (MAO) contract numbers H4524, H5521, and H8684.

Basis for Civil Money Penalty

Aetna violated 42 C.F.R. §§ 422.64, 422.111, 423.48, and 423.128 when it failed to provide accurate information to beneficiaries in its Contract Year 2010 Evidence of Coverage (EOC) documents. As a result, CMS has determined that this violation demonstrates that your organization is carrying out its contract in a manner “inconsistent with the effective and efficient implementation of this part.” See 42 C.F.R. §422.510(a)(2) and §423.509(a)(2).

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The EOC provides vital information to Medicare beneficiaries about the plan, permitting beneficiaries to make informed choices concerning Medicare health care and prescription drug options. On July 31, 2009, CMS released standardized EOC templates for organizations' use in developing their 2010 EOCs. In a notice dated October 20, 2009, CMS reminded organizations of their obligation to provide timely and accurate EOC documents to current enrollees by no later than October 31, 2009. CMS stated that organizations and sponsors should clearly communicate the timeliness and accuracy requirements to the contractors and staff responsible for producing the documents. CMS reiterated that organizations and sponsors bear the full responsibility of compliance with EOC requirements and that the failure to provide accurate documents in a timely manner may result in the imposition of civil money penalties.

On October 8, 2010, after reviewing appeal claims data from CMS contractor reports, CMS notified Aetna of a problem with Aetna's 2010 EOC documents. CMS informed Aetna that documents provided to members of Aetna PPO plans omitted the necessary disclosure of the Part C (Medicare Advantage) out-of-network deductibles. On October 13, 2010, Aetna confirmed that several of its PPO plans include a Part C out-of-network deductible of \$250, \$500, \$750, or \$1000 which was omitted from the CY 2010 EOC for contracts H4524, H5521 and H8684. Aetna confirmed that inaccurate EOCs were issued to 3,678 enrollees in contract H4524, 13,213 enrollees in contract H5521 and 233 enrollees in contract H8684, for a combined total of 17,124 enrollees.

CMS has determined that the failure by your organization to mail accurate EOC documents to Medicare enrollees is a deficiency which directly adversely affected or had the substantial likelihood of adversely affecting these enrollees. Aetna failed to provide Medicare enrollees with essential information about changes to the benefits and cost-sharing obligations which would have allowed them to make fully informed choices concerning their 2010 Medicare health care and prescription drug options during the Medicare Annual Open Enrollment Period.

Right to Request a Hearing

Your organization may request a hearing to appeal CMS's determination in accordance with the procedures outlined in Subpart T of 42 C.F.R. §422 and 42 C.F.R. §423. In accordance with the requirements of 42 C.F.R. §422.1006, §423.1006, §422.1020, and §423.1020, you must file your written request for a hearing to the Departmental Appeals Board office listed below, with a copy to CMS at the address listed below, within 60 calendar days from receipt of the notice of our initial determination, or by March 15, 2011. The request for hearing must identify the specific issues, the findings of fact and conclusions of law with which you disagree, and specify the basis for each contention that the finding or conclusion of law is incorrect.

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Your request should be sent to:

Oliver Potts
Chief, 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

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

Brenda J. Tranchida
Director, Program Compliance and Oversight Group
Centers for Medicare & Medicaid Services
7500 Security Boulevard
MAIL STOP: C1-22-06
Baltimore, MD 21244
Email: brenda.tranchida@cms.hhs.gov
FAX: 410-786-6301

If you do not request an appeal in the manner and timeframe described above, the initial determination by CMS to impose a CMP will become final and due following the expiration of the appeal timeframe (March 15, 2011). CMS may use the Agency's debt collection procedures to collect the amount owed, including offsetting the penalty amount against your monthly Medicare payment.

Please note that any further failures by Aetna Life Insurance Company to comply with these or any other CMS requirements may subject your organization to other applicable remedies available under law, including the imposition of sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If you have any questions about this notice, please contact Trish Axt at (410) 786-0095 or by email at trish.axt@cms.hhs.gov.

Sincerely,

/s/
Brenda J. Tranchida
Director
Program Compliance and Oversight Group

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cc: Mr. Jonathan Blum, CMS/CM
Mr. Timothy Hill, CMS/CM
Ms. Danielle Moon, CMS/CM/MCAG
Ms. Helaine Fingold, CMS/CM/MCAG
Ms. Christine Reinhard, CMS/CM/MCAG
Ms. Cynthia Tudor, CMS/CM/MDBG
Ms. Jennifer Shapiro, CMS/CM/MDBG
Mr. Scott Nelson, CMS/CM/MDBG
Mr. Cheri Rice, CMS/CM/MPPG
Mr. Randy Brauer, CMS/CM/MPPG
Ms. Marla Kilbourne, CMS/CM/MPPG
Mr. Anthony Culotta, CMS/CM/MEAG
Mr. Jon Booth, CMS/OC/OEABS
Ms. Anita Panicker, CMS/OC/OEABS
Mr. Peter Ashkenaz, CMS/OEABS
Mr. Greg Jones, CMS/OL
Mr. James T. Kerr, CMS/CMHPO
Mr. Paul Collura, CMS/CMHPO
Ms. Patricia Farris, CMS/CMHPO/Region I
Mr. Thomas Devins, CMS/CMHPO/Region I
Ms. Carol Bennett, DHHS/OGC
Ms. Jill Abrams, DHHS/OGC
Ms. Trish Axt, CMS/CM/PCOG
Ms. Oliver Potts, DHHS/DAB
Ms. Nancy Brown, DHHS/OIG/OCIG
Mr. Gerald T. Walters, CMS/OFM
Ms. Maria Montilla, CMS/OFM