

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**

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September 19, 2023

Mr. Timothy Noel  
Chief Executive Officer  
Care Improvement Plus South Central Co.  
9800 Health Care Lane  
Minnetonka, MN 55343

Re: Notice of Enrollment Suspension for Medicare Advantage-Prescription Drug Contract  
Number H1537

Dear Mr. Noel:

Pursuant to 42 C.F.R. §§ 422.2410(c) and 423.2410(c),<sup>1</sup> the Centers for Medicare & Medicaid Services (CMS) is providing notice to Care Improvement Plus South Central Insurance Co. (“Care Improvement Plus”) that CMS has made a determination to prohibit the enrollment of new beneficiaries under the Medicare Advantage-Prescription Drug (MA-PD) contract H1537 for contract year (CY) 2024.

### **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 established in Subpart X of Parts 422 and 423. In particular, MA-PD organizations are required, per §§ 422.2410(a) and 423.2410(a), to report an MLR each year for each of their contracts, and §§ 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 §§ 422.2420 and 423.2420. CMS has published MLR instructions and workbooks on June 11, 2021 (for CY 2020 data), May 31, 2022 (for CY 2021 data), and June 2, 2023 (for CY 2022 data).

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<sup>1</sup> All regulatory citations in this notice are to Title 42 of the Code of Federal Regulations.

## **Violation Related to MLR Requirements**

Care Improvement Plus has reported to CMS the following MLRs for MA-PD contract H1537: 80.3% for CY 2020, 80.3% for CY 2021, and 83.7% for CY 2022. Based on this plan sponsor-reported information, CMS has determined that Care Improvement Plus has failed to meet the 85% MLR threshold for three consecutive years.

As a result of this determination, Care Improvement Plus will be prohibited from accepting any MA-PD plan enrollments for 2024; this prohibition is effective for any enrollments for coverage that begins between January 1, 2024, through December 31, 2024. This action will include the removal of H1537 from the list of MA-PD plans from which beneficiaries may make an election during the CY 2024 Annual Election Period (AEP), which runs between October 15, 2023, and December 7, 2023. However, Care Improvement Plus may continue to accept and process enrollments that become effective on or before December 31, 2023 (i.e., for enrollments beginning in CY 2023).

During CY 2024, all individual market plans offered under H1537 will be precluded from accepting any new enrollees, including beneficiaries already enrolled in a Care Improvement Plus 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 Care Improvement Plus 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 Care Improvement Plus to add new employer group plans to contract H1537 during CY 2024.

Care Improvement Plus 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 H1537 are not available for enrollment during 2024. Enforcement actions, as described in Subparts K and O of Parts 422 and 423, may be imposed if CMS finds that Care Improvement Plus has engaged in activities that could mislead or confuse Medicare beneficiaries or misrepresent the plan(s). See §§ 422.2262 and 423.2262.

If Care Improvement Plus submits a CY 2023 report in 2024 for H1537 consistent with the reporting requirements at §§ 422.2460 and 423.2460 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, 2025. In such an instance, CMS would allow Care Improvement Plus to offer plans under H1537 to beneficiaries during the CY 2025 AEP, which will be held between October 15, 2024, and December 7, 2024. In the event that the CY 2023 MLR report for H1537 again shows an MLR below 85%, enrollment under that contract will remain closed during CY 2025. CMS will provide the timeframe and instructions for submitting its CY 2023 MLR report in a separate communication. Furthermore, CMS reminds Care Improvement Plus that if it fails to report an MLR of at least 85% for five consecutive years for H1537, CMS must terminate that contract, pursuant to sections 1857(e)(4)(C) and 1860D-12(b)(3)(D) 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 Care Improvement Plus the opportunity to contest this determination through the processes that currently apply to suspensions of enrollment imposed as an intermediate sanction. Therefore, Care Improvement Plus may provide a response to this notice, pursuant to §§ 422.756(a) and 423.756(a), and/or request a hearing, pursuant to §§ 422.756(b) and 423.756(b).

Consistent with §§ 422.756(a) and 423.756(a), Care Improvement Plus has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by October 2, 2023<sup>2</sup>. 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 20, 2023. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the email address noted below.

Consistent with §§ 422.756(b) and 423.756(b), Care Improvement Plus may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in §§ 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 October 5, 2023. Your hearing request will be considered officially filed on the date that it is emailed. Please note, that the suspension of enrollment that begins January 1, 2024, through December 31, 2024 will not be stayed pending a rebuttal submission or a request for a hearing.

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 Care Improvement Plus. 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 Care Improvement Plus 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 at the following address:

Benjamin R. Cohen, Esq.  
CMS Office of Hearings  
Attn: Benjamin R. Cohen, Director  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail Stop: B1-01-31  
Phone: 410-786-3169  
Email: [benjamin.cohen@cms.hhs.gov](mailto:benjamin.cohen@cms.hhs.gov)

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

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<sup>2</sup> September 30<sup>th</sup> 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.

Kevin Stansbury  
Director, Division of Compliance Enforcement  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail Stop: C1-22-26  
Email: [kevin.stansbury@cms.hhs.gov](mailto: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  
Adrienne Carter, CMS/OPOLE  
Nyetta Patton, CMS/OPOLE  
Deanna Gee, CMS/OPOLE  
Gilbert Lara, CMS/OPOLE