

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**

---

**CORRECTION: THE ORIGINAL NOTICED ISSUED ON JULY 13, 2015 HAS BEEN RESCINDED AND IS REPLACED BY THIS NOTICE**

August 3, 2015

Mr. Arthur Kummer  
Medicare Programs & Consumer Operations Officer  
Health Net of Arizona  
21281 Burbank Blvd.  
Mail Stop: CA-900-03-01  
Woodland Hills, CA 91367

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Number: H0351

Dear Mr. Kummer:

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 Health Net of Arizona (Health Net AZ), that CMS has made a determination to impose a civil money penalty (CMP) in the total amount of **\$227,450** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H0351.

CMS has determined that Health Net AZ failed to provide clear and accurate benefit information to its enrollees in the combined Contract Year (CY) 2015 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents.

**Summary of Noncompliance**

Health Net AZ reported to CMS that 9,098 of its enrollees received inaccurate information about their 2015 benefits in Health Net AZ's CY 2015 ANOC documents. For contract H0351-040, 9,098 enrollees received an ANOC that incorrectly stated its network included pharmacies with preferred cost sharing, when the plan does not offer preferred cost sharing.

Health Net AZ mailed errata sheets correcting the inaccurate information on 11/24/2014. This was over a month after the open enrollment period had started, and therefore, affected the time in which enrollees could use the information to make a fully informed decision about their Medicare health care and prescription drug options for the 2015 plan benefit year.

In addition, this is not the first year Health Net AZ has been cited for mailing inaccurate ANOC/EOC documents to its enrollees. In 2014, Health Net AZ received a notice of non-compliance for failing to accurately describe benefits and/or cost sharing information to its enrollees in its CY 2014 ANOC/EOC documents.

### **Relevant Disclosure and Information Dissemination Requirements**

Pursuant to 42 C.F.R. § 422.111(a) and § 423.128(a), MA-PD Sponsors are required to ensure that members receive clear and accurate ANOC/EOC documents by September 30<sup>th</sup> of each year. The ANOC and EOC provide vital information to Medicare beneficiaries about their plan and permit beneficiaries to make informed choices concerning Medicare health care and prescription drug options for the upcoming plan year. Organizations are required to ensure their ANOC/EOCs are accurate and mail errata sheets if inaccuracies are identified. Since 2009, CMS has clearly informed plans about the importance of providing beneficiaries with accurate ANOC/EOC documents and noted that plans would be subject to penalties for inaccuracies.

### **Violations Related to Disclosure and Information Dissemination Requirements**

CMS identified a violation of the disclosure and information dissemination requirements that had the substantial likelihood of adversely affecting Health Net AZ's enrollees. Health Net AZ's violation includes:

1. Failure to provide clear and accurate benefit information to its enrollees for the 2015 Medicare Open Enrollment Period. As a result, enrollees did not receive accurate benefit information to make fully informed choices concerning their Medicare coverage for the 2015 plan benefit year. This is in violation of 42 C.F.R. § 422.111(a) and 42 C.F.R. § 423.128(a).

### **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 Health Net AZ's violations of Parts C and D requirements had the substantial likelihood of adversely affecting enrollees and warrants the imposition of a CMP. Health Net AZ is carrying out its contract in a manner that is "inconsistent with the effective and efficient implementation of this part." *See* 42 C.F.R. §422.510(a)(2) and §423.509(a)(2).

### **Right to Request a Hearing**

Health Net AZ 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. Health Net AZ must send a written request for a hearing to the Departmental Appeals Board office listed below within 60 calendar days from receipt of this notice or by October 5, 2015. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Health Net AZ disagrees. Health Net AZ must also specify the basis for each contention that the finding or conclusion of law is incorrect. The request should be sent to:

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 the hearing request should also be sent to CMS at the following address:

Michael DiBella  
Director, Division of Compliance Enforcement  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail Stop: C1-22-06  
Email: Michael.Dibella@cms.hhs.gov

If Health Net AZ does 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 on October 6, 2015. Health Net AZ may choose to have the penalty deducted from its 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.

Please note that further failures by Health Net AZ may result in additional applicable remedies available under law, up to and including contract termination, the imposition of intermediate sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

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

Sincerely,

/s/

Gerard J. Mulcahy  
Director  
Medicare Parts C and D Oversight and Enforcement Group

cc: Brenda Suiter, CMS/ CMHPO/Region X  
Roya Rezai, CMS/ CMHPO/Region X  
Bella Roytberg, CMS/ CMHPO/Region X