

Department of Health & Human Services
Centers for Medicare & Medicaid Services
Center for Medicare
7500 Security Boulevard
Baltimore, Maryland 21244-1850



MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

Corrective Action Plan

November 13, 2020

Contract: H1426

Mark Andes, Medicare Compliance Officer
Vitality Health Plan of California
18000 Studebaker, Suite 960
Cerritos, CA 90703

VIA EMAIL: mandes@vitalityhp.net

Dear Mr. Andes:

The Centers for Medicare & Medicaid Services (CMS) is issuing this determination for a Corrective Action Plan (CAP) to Vitality Health Plan of California (Vitality) (Contract H1426) for failure to maintain an adequate network.

Federal regulations at 42 C.F.R. § 422.116 require Medicare Advantage (MA) organizations to have an adequate contracted provider network that is sufficient to provide access to covered services. 42 C.F.R. § 422.116(a) details the standards of what constitutes an adequate contracted provider network. MA organizations must meet both maximum time and distance standards and contract with a specified minimum number of each provider and facility specialty type.

CMS entered into a contract with Vitality on January 1, 2019 for Santa Clara and San Joaquin counties in California. As part of the application process, Vitality attested to having an adequate provider network and agreed to maintain an adequate provider network throughout the course of their contract. A sufficient network is necessary to enable all members of Vitality Health Plan to obtain Medicare covered services.

In July and August 2020, CMS was made aware of five significant provider terminations that affected all of Vitality's enrollees. In San Joaquin County, Medcore Medical Group, which provided all inpatient and outpatient covered services, terminated its entire contract with Vitality. This resulted in an extensive loss, including five (5) hospitals and thirteen (13) skilled nursing facilities. In Santa Clara County, Regional Medical Center, Good Samaritan Hospital, El Camino Hospital and El Camino Hospital Los Gatos terminated their contracts with Vitality.

The terminations of these four hospitals resulted in Vitality having only two remaining contracted hospitals in the county. In addition, Los Gatos Surgery Center, Bascom Surgery Center, Silicon Valley Surgery Center, and Montpelier Surgery Center terminated their contracts with Vitality. Because of the loss of providers and inpatient services, CMS requested Vitality to upload new Health Service Delivery (HSD) tables, excluding the terminated or soon-to-be-terminated providers.

On September 4, 2020, Vitality uploaded HSD tables for both providers and facilities for San Joaquin and Santa Clara counties (the entire Contract H1246 service area). CMS reviewed the data to determine if Vitality was meeting CMS' network requirements. Since San Joaquin and Santa Clara are metro and large metro counties, respectively, they both had to meet the minimum number of providers and 90% of Medicare beneficiaries had to live within the time and distance identified in 42 C.F.R. §422.116(d)(2). Following the review, CMS concluded that Vitality failed to meet network adequacy for two provider types and eight facility types. The specific failures, requirements, and reasons for failure are identified in the chart below.

Provider/Facility Type	County	County Type	Reason for Failure	Requirement
Neurosurgery	San Joaquin	Metro	Only 1.3% of beneficiaries within time/distance	Access within 60 minutes and less than 40 miles
Acute Inpatient Hospitals	San Joaquin	Metro	No hospitals are available in county	Access within 45 minutes and less than 30 miles
Cardiac Catheterization Services	San Joaquin	Metro	No facilities are available in county	Access within 60 minutes and less than 40 miles
Cardiac Surgery Program	San Joaquin	Metro	No facilities are available in county	Access within 60 minutes and less than 40 miles
Critical Care Services/Intensive Care Units	San Joaquin	Metro	No facilities are available in county	Access within 45 minutes and less than 30 miles
Inpatient Psychiatric Facility Services	San Joaquin	Metro	Only 7.2% of beneficiaries within time/distance	Access within 70 minutes and less than 45 miles
Outpatient Infusion/Chemotherapy	San Joaquin	Metro	No facilities are available in county	Access within 45 minutes and less than 30 miles
Surgical Services (Outpatient or ASC)	San Joaquin	Metro	No facilities are available in county	Access within 45 minutes and less than 30 miles
Cardiothoracic Surgery	Santa Clara	Large Metro	Only 88.1% of beneficiaries within time/distance	Access within 30 minutes and less than 15 miles

Acute Inpatient Hospitals	Santa Clara	Large Metro	Only 83.5% of beneficiaries live within time and only 74.6% of beneficiaries live within distance	Access within 20 minutes and less than 10 miles
Cardiac Surgery Program	Santa Clara	Large Metro	Only 88% of beneficiaries live within time and only 87.3% of beneficiaries live within distance	Access within 30 minutes and less than 15 miles
Cardiac Catherization Services	Santa Clara	Large Metro	Only 88% of beneficiaries live within time and only 74.6% of beneficiaries live within distance	Access within 30 minutes and less than 15 miles
Critical Care Services/Intensive Care Unit	Santa Clara	Large Metro	Only 83.5% of beneficiaries live within time and only 74.6% of beneficiaries live within distance	Access within 20 minutes and less than 10 miles
Occupational Therapy	Santa Clara	Large Metro	Only 84.5% of beneficiaries live within time and only 80.1% of beneficiaries live within distance	Access within 20 minutes and less than 10 miles
Inpatient Psychiatric Facility Services	Santa Clara	Large Metro	Only 87.7% of beneficiaries live within time and only 58.3% of beneficiaries live within distance	Access within 30 minutes and less than 15 miles
Outpatient Infusion/Chemotherapy	Santa Clara	Large Metro	Only 76.5% of beneficiaries live within time and only 69.6% of beneficiaries live within distance	Access within 20 minutes and less than 10 miles

As demonstrated by the data above, Vitality does not have an adequate network. Furthermore, Vitality's failures are actually more egregious than identified above. Vitality's tables included Santa Clara Valley Medical Center Hospital & Clinics (O'Connor Hospital and St. Louise Regional Medical Center) with a *pending* termination effective date of November 12, 2020. By including these providers in the HSD tables, Vitality overstated the number of providers available. Had Vitality excluded these providers, the data above would reflect additional failures and thus posed an even greater threat to those Medicare Beneficiaries enrolled in Vitality.

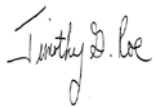
Vitality's failure to have an adequate network puts the health of Vitality's beneficiaries at risk. By not having enough network providers, beneficiaries may not be able to receive necessary services timely, or at all. Based on the data identified above, Vitality is out of compliance with 42 C.F.R. §422.116. Vitality's existing network fails to meet CMS' network adequacy requirements.

To avoid further actions by CMS, Vitality must correct the deficiencies. To demonstrate compliance with CMS network adequacy requirements, Vitality will need to resubmit up-to-date, correct HSD tables as stated in 42 C.F.R. §422.116.

This notice serves as Vitality Health Plan of California's reasonable opportunity to correct these contract deficiencies in accordance with 42 C.F.R. §§ 422.510(c)(1)(i) and 423.509(c)(1)(i). Failure to correct these deficiencies may result in additional enforcement actions, up to and including contract termination.

If you have any questions about this letter, please contact Keith Penn-Jones at Keith.Penn-Jones@cms.hhs.gov.

Sincerely,

A handwritten signature in black ink that reads "Timothy G. Roe". The signature is written in a cursive, slightly slanted style.

Timothy G. Roe
Director, Division of Compliance, Surveillance, and Marketing

cc via email:

Erica Sontag
Christine Reinhard
Grace Materon
Deanna Gee