

Medicare Contracting Administration Group

Corrective Action Plan

March 2, 2022

Contract Numbers: H8280 and H8364

Marcy Olney
Bright Health Insurance Companies
10333 E. Dry Creek Road
Suite 150
Englewood, CO 80112

VIA EMAIL: molney@brighthouseplan.com

RE: Failure to Adhere to Change of Ownership Requirements

Dear Ms. Olney:

The Centers for Medicare & Medicaid Services (CMS) issued a request for a Corrective Action Plan (CAP) to Bright Health Insurance Company (BHIC) on July 20, 2021, regarding your organization's failure to adhere to CMS' change of ownership (CHOW) requirements. CMS is rescinding the request for a CAP issued on July 20, 2021 and is re-issuing a new request for a CAP to BHIC, (contract numbers H8280 and H8364) for failure to comply with Medicare Advantage (MA) requirements regarding CHOWs. This re-issued request for a CAP includes BHIC's failure to ensure that BHIC was approved to operate in all service areas. Based on the failures identified below, CMS is requiring that Bright Health Insurance Company of Alabama (BHIC AL) and BHIC take corrective action to correct future deficiencies.

Requirements regarding Medicare Advantage CHOW actions are provided at 42 C.F.R. Subpart L. Specifically, 42 CFR §422.550(b) requires MA organizations to notify CMS at least 60 days prior to the effective date of the CHOW. CMS requires a novation agreement be submitted whenever a CHOW occurs. This novation agreement must be approved per 42 C.F.R. §422.552. Failure to have an approved novation agreement in place results in the existing contracts becoming invalid (42 C.F.R. §422.550(d)). In addition, in accordance with 42 C.F.R. §422.552(a)(3)(iii), the successor organization must meet the requirements to qualify as an MA organization under Subpart K, specifically 42 C.F.R. 422.501. To qualify, an MA organization must be approved through the application process to operate in specific counties. If an MA organization is not approved to operate in a specific service area, it must submit a Service Area Expansion (SAE) application.

On May 3, 2021, CMS learned that BHIC AL, the legal entity for H8280 and H8364, entered into an unauthorized CHOW that involved BHIC, the legal entity for H7853 and H5841. Until this time, BHIC only operated in certain counties in Colorado whereas BHIC AL operated in certain counties in Alabama. The effective date of this novation was December 31, 2020. As a result of the novation, all contracts began operating under BHIC, with BHIC becoming the legal owner of BHIC AL's contracts.

However, BHIC failed to comply with CMS' novation requirements. First, BHIC failed to notify CMS of the CHOW in accordance with 42 C.F.R. § 422.550(b). This resulted in BHIC not having a CMS approved novation agreement in place, a requirement under 42 C.F.R. § 422.552. In addition, BHIC's contract did not include BHIC AL's service area. BHIC failed to submit an SAE, that, in accordance with 42 CFR §§ 422.552(a)(iii), 42 CFR 422.552(b)(1), and 42 CFR 422.501(c)(i)(ii), as well as Chapter 12 of the Medicare Managed Care Manual, Section 10. would have permitted them, if approved, to operate in the Alabama counties. These failures resulted in BHIC operating two contracts that were not compliant with the MA organization contract requirements, as noted in our regulations.

BHIC submitted a non-renewal for contracts H8280 and H8364, effective December 31, 2021. However, CMS is still requesting that BHIC submit and implement a detailed CAP. Specifically, BHIC will need to provide CMS with a plan regarding how BHIC will ensure:

- proper notification is provided to CMS,
- proper approval is obtained from CMS prior to CHOWs (42 C.F.R. §422.500), and
- BHIC's contract is qualified as an MAO in the appropriate service area, as required under 42 C.F.R. 422.552(a)(3)(iii).

CMS is issuing this compliance notice pursuant to 42 C.F.R. § 422.510(c), which requires CMS to afford a plan at least 30 days to develop and implement a CAP to correct deficiencies before taking steps to terminate a plan's Medicare contract. While CMS is not obligated to grant a greater than 30-day cure period, we acknowledge that an extended period may be appropriate, depending on the nature of the correction required. CMS advises that, for any part of its timeline scheduled to be completed in more than 30 days, Bright Health provide a justification of the need for that additional time. CMS expects that the correction timeline will be no longer than absolutely necessary and will reflect an appropriate level of urgency in resolving this matter.

CMS has the authority to impose sanctions, penalties and other enforcement actions as described in Federal regulations at 42 CFR 422 Subpart O. Should your organization fail to develop, implement or complete its CAP, CMS may impose intermediate sanctions (e.g., suspension of marketing and enrollment activities) or civil money penalties.

If you have any questions about this letter, please contact Erica Sontag (Erica.sontag@cms.hhs.gov) and copy your account manager.

Sincerely,

A handwritten signature in black ink that reads "Timothy G. Roe". The signature is written in a cursive style with a large initial 'T' and a distinct 'R'.

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

cc via email:

Gregory Ryan, Account Manager
Christine Reinhard, Part C Compliance Lead
Erica Sontag, Division Director