

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**

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July 29, 2016

H5141

Ms. Wendy Richey  
Medicare Compliance Officer  
Clover Insurance Company  
Harborside Financial Center  
Plaza 10 Suite 803  
Jersey City, NY 07311

VIA EMAIL: [wendy.richey@cloverhealth.com](mailto:wendy.richey@cloverhealth.com)

RE: CORRECTIVE ACTION PLAN (CAP)

Dear Ms. Richey:

The Centers for Medicare & Medicaid Services (CMS) is issuing this request for a Corrective Action Plan (CAP) to Clover Insurance Company (Clover) (H5141) for failure to comply with Medicare Part C and D change of ownership requirements. Specifically, Clover failed to notify CMS of a novation 60 days prior to the intended effective date. As a result, CMS directs that Clover take corrective action to address the identified areas of non-compliance.

Pursuant to Federal regulations at 42 C.F.R. §422.550(b) and 42 C.F.R. §423.551(c), MA and Part D sponsors considering or negotiating a change in ownership must notify CMS at least 60 days prior to the effective date of the change. The organization must also provide CMS updated financial information and information concerning the financial and solvency impact of the change of ownership on the remaining organization. CMS' Medicare Managed Care Manual, Chapter 12, Sections 20.1 and 20.2, reiterates the notification timeframes and provides an extensive list of information that must be submitted with the notification. In addition, Section 10.1 and 10.2 of Chapter 12 defines change of ownership and provides examples of what constitutes a change requiring advance notification and what types of transactions are not change of ownership, thus requiring subsequent notification. Failure to obtain CMS approval prior to an effective change of ownership results in the current contract becoming invalid.

On June 1, 2016, Clover notified CMS of a merger, effective April 20, 2016, between Clover Insurance Company and Ullico Life Insurance Company (Ullico). Clover's notification characterized this as a transaction that did not require advance notification. However, on June

14, 2016 Clover notified CMS that the merger may indeed be a change of ownership and not just a stock purchase.

CMS' review of the transaction confirmed that a change of ownership occurred. The transaction involved Clover purchasing 100% of Ullico's stock. Per Chapter 12 of CMS' manual, a stock purchase would not normally be considered a change of ownership. However, following the stock purchase, Ullico became the surviving entity. In a Chapter 12 example, if one organization (Clover) acquires another entity (Ullico) and the other entity (Ullico) is the surviving entity, then the original organization (Clover) has had a change of ownership. Per the June 1, 2016 notification, Clover notified CMS that Ullico would be the surviving entity, using Ullico's NAIC number 86371. Subsequent to the merger, Ullico's name was changed to Clover Insurance Company.

Following the June 10, 2016 email, Clover provided CMS with the required documents for review to ensure legislative and regulatory requirements were met. However, this occurred after the actual change of ownership, contrary to CMS regulations. To ensure continuity of care, CMS agreed to review these documents and the novation even though the transaction had already occurred. In return, Clover has agreed to adhere to all requirements applicable to MA and Part D sponsors.

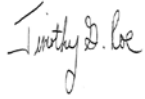
CMS is issuing this compliance notice pursuant to 42 C.F.R. §422.510(c) and 42 C.F.R. §423.509(c), which requires CMS to afford a sponsor at least 30 days to develop and implement a corrective action plan to correct deficiencies before taking steps to terminate a sponsor's Medicare contract. Since Clover has already submitted documentation for the novation, no further action is required for processing the change of ownership at this time. However, if for some reason, the change of ownership is not approved by CMS, further actions, including contract termination, will be considered. In addition, CMS is requesting that Clover implement a detailed Corrective Action Plan (CAP) to ensure timely and appropriate notification is provided to CMS for future change of ownership transactions. 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, Clover must 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 423 Subpart O. Should your organization fail to develop, implement or complete its CAP, CMS may consider the imposition of intermediate sanctions (e.g., suspension of marketing and enrollment activities) or civil money penalties.

Please be aware that this letter will be included in the record of your organization's past Medicare contract performance, which CMS will consider as part of our review of any application for new or expanded Medicare contracts your organization may submit. This letter is considered a Part C issue without beneficiary impact for past performance purposes. In determining the severity of this notice, CMS has considered as a mitigating factor your organization's efforts in self-reporting information concerning the non-compliant activity.

If you have any questions about this letter, please contact Kelley Ordonio (kelley.ordonio@cms.hhs.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Timothy G. Roe".

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

cc via email:

Christine Reinhard, CMS  
Kelley Ordonio, CMS  
Erika Davis, CMS