

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C1-26-16
Baltimore, Maryland 21244-1850



Center for Medicare

February 27, 2020

VIA EMAIL: pthompson@avadel.com; kforshee@avadel.com;

FSC Laboratories, Inc.
16640 Chesterfield Grove, Suite 200
Chesterfield, MO 63005

RE: Notice of Determination to Impose a Civil Money Penalty for Pharmaceutical Manufacturer Contract Number P1201

Dear FSC Laboratories, Inc.:

Pursuant to 42 CFR §423.2340 the Centers for Medicare & Medicaid Services (CMS) is providing notice to FSC Laboratories, Inc. of a civil money penalty (CMP) assessment in the amount of \$44,707.84.

Basis for Civil Money Penalty

CMS is imposing a CMP of \$44,707.84 on FSC Laboratories, Inc., P1201, based on a report provided by the Third Party Administrator (TPA) for the Coverage Gap Discount Program. The information which the TPA provided indicates that your organization failed to pay specified Part D sponsors for applicable discounts within 38 calendar days from receipt of the third quarter 2019 invoice. This is a violation of 42 CFR §423.2315(b)(3) and Section II(b) of the Medicare Coverage Gap Discount Program Agreement (Discount Agreement).

Specifically, the following Part D sponsors did not receive payments within the requisite 38-day time period:

- 21 Part D Sponsors: \$35,766.27 (See Attachment 3)

The CMP that your company owes is equal to:

- Any invoiced amounts your company has failed to pay to Part D sponsors; \$35,766.27
- Plus the 25% late payment penalty; \$8,941.57

You must contact the TPA, 1-877-534-2772, to pay any invoiced amounts your company has failed to pay to Part D sponsors. You must pay the 25% late payment penalty via Pay.gov. Please see the required payment method below under Method to Submit CMP Payments.

The determination by CMS to impose a CMP will become final and due no later than April 27, 2020 if you do not request a hearing to appeal in the manner and timeframe described below under Right to Request a Hearing.

Please note that any further failures by FSC Laboratories, Inc. to comply with these or any other CMS requirements may subject your organization to termination as described in 42 CFR §423.2345 and section VIII of the Discount Agreement.

Method to Submit CMP Payments

CMP payments must be made using Pay.gov (Instructions on Attachment 1). Pay.gov provides a free service to entities that make online payments to a Federal government agency. The Pay.gov Collection Service collects and processes the Internet-authorized deductions from a checking or savings account via Automated Clearing House (ACH) debit entries processed at the Federal Reserve Bank of Cleveland (FRB-C). Your Pay.gov payment transaction will not require a Username and Password.

Companies sometimes have blocks on their bank accounts that will only allow designating transactions to be processed. It may be necessary to provide your banking institute with the following two pieces of information to unblock the bank account:

- **Originating Depository Financial Institution (ODFI):** FRB-C is the payment processor for ACH payments made through Pay.gov and will appear as the ACH ODFI. FRB-C processes Pay.gov ACH transactions under the American Bankers Association (ABA) routing numbers 041036046 and 042736141.
- **Company ID:** Every ACH batch contains a company ID number in accordance with the National Automated Clearing House Association (NACHA) requirements. CMS' company ID number for Pay.gov payments is 7505008012.

For Pay.gov technical issues contact Pay.gov Customer Service at (800) 624-1373 *or* (216) 579-2112, Monday–Friday from 6:00 A.M. to 7:00 P.M. Eastern Time.

You will find it helpful to have the following information available when you complete your payment:

- P# (P#####)
- CMP payment demand letter from CMS
- Bank account and routing numbers
- Point of contact regarding the payment
- Business mailing address

Right to Request a Hearing

Your organization may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board (DAB) to appeal CMS' determination to impose a civil money penalty in accordance with Section IV(b) of the Discount Agreement. Procedures governing this process are set out in 42 C.F.R. § 423.2340.

You must:

- file your hearing request electronically by using the Departmental Appeals Board's Electronic Filing System (DAB E-File) at <https://dab.efile.hhs.gov> no later than sixty (60) days after receiving this letter (Instructions on Attachment 2); and
- email a copy of your hearing request to CMS:

FSC Laboratories, Inc.
February 27, 2020
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Centers for Medicare & Medicaid Services, Craig Miner, Deputy Director, Division of Part D Policy at CGDPandManufacturers@cms.hhs.gov

Acknowledgement of this letter is required, please reply to CGDPandManufacturers@cms.hhs.gov. If you have any questions about this notice, please contact Sonia Eaddy at Sonia.eaddy@cms.hhs.gov.

Sincerely,

/s/

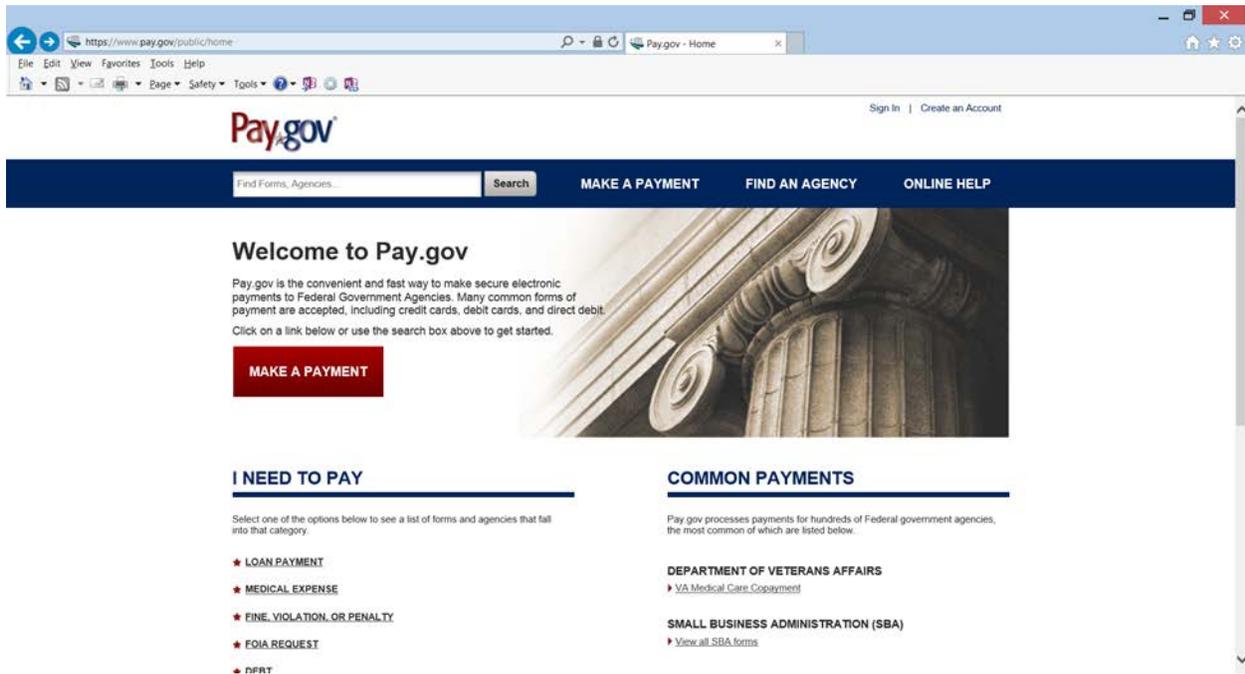
Amy K. Larrick Chavez-Valdez
Director, Medicare Drug Benefit and C & D Data Group

cc: Mr. Craig Miner, CMS/CM/MDBG
Ms. Christine Machon, CMS/CM/MPPG
Mr. Ray Thorn, CMS/OC
Ms. Jill Abrams, DHHS/OGC
Ms. Jennifer Garver, DHHS/OGC

Attachment 1

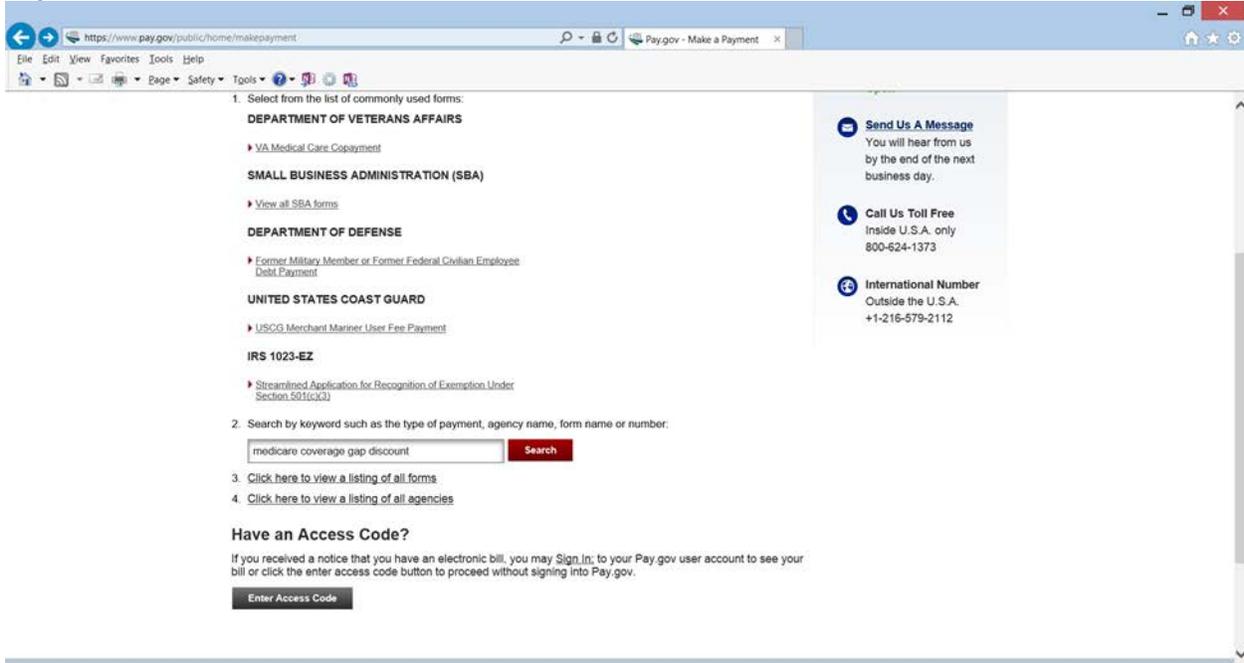
Step 1

Access Pay.gov at <https://www.pay.gov>



Step 2

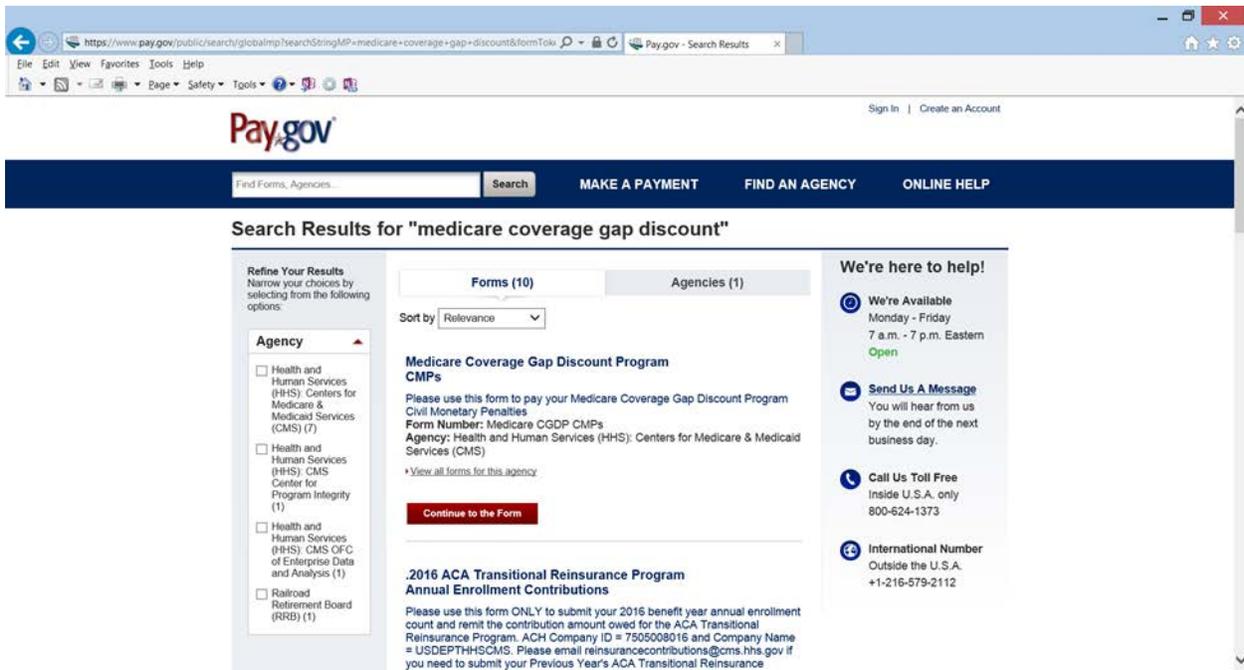
- In the **Search by keyword...** box (under number 2), Type: *Medicare Coverage Gap Discount (not case sensitive)*
- then click on Search



Step 3

Medicare Coverage Gap Discount Program CMPs

- Click on **Continue to the Form.**



Step 4

- You may Preview Form, cancel, or Continue to Form.
- Click on Continue to the Form. Have available your payment demand letter from CMS.

The screenshot shows a web browser window displaying the Pay.gov website. The address bar shows the URL: https://www.pay.gov/public/Form/start/38616929. The page title is "Pay.gov - Medicare Coverage...". The main content area is titled "Medicare Coverage Gap Discount Program CMPs". It features a progress bar with steps: "Before You Begin", "1 Complete Agency Form", "2 Enter Payment Info", "3 Review & Submit", and "4 Confirmation". Below the progress bar, there is a "Need Help?" section with contact information for Shelly Winston. The "Accepted Payment Methods:" section lists "Bank account (ACH)" and includes buttons for "Preview Form", "Cancel", and "Continue to the Form". A disclaimer at the bottom states: "This is a secure service provided by United States Department of the Treasury. The information you will enter will remain private. Please review our privacy policy for more information." The footer contains links for "Contact Us", "Notices & Agreements", "Accessibility Policy", "Privacy & Security Policy", and "For Agencies". A "WARNING WARNING WARNING" section is also present, stating: "You have accessed a United States Government computer. Unauthorized use of this computer is a violation of federal law and may subject you to civil and criminal penalties. This computer and the automated systems which run on it are monitored. Individuals are not guaranteed privacy while using government computers and should, therefore, not expect it. Communications made using this system may be disclosed as allowed by federal law. Note: This system may contain Sensitive But Unclassified (SBU) data that requires specific data privacy handling."

Step 5

- Complete the required fields
 - **Manufacturer P Number:** (P#####) must be a P followed by 4-digits
 - **Manufacturer Name:** manufacturer's complete name
 - **Point of Contact:** person authorized to make the payment
 - **Point of Contact Phone:** (***_***) telephone number must include dashes
 - **Point of Contact Email:** email address
 - **Mailing address:** Street, city, state, and zip code
 - **Date of Demand Letter:** (MM/DD/YEAR) typed date on the demand letter received from CMS
 - **Quarter:** (Q1, Q2, Q3, Q4) use the drop arrow to select the calendar year quarter in which the invoice payment was late or unpaid
 - **Year:** use the drop down arrow to select the calendar year in which the invoice payment was late or unpaid
 - **Payment Amount:** the total amount indicated on the demand letter from CMS

The screenshot shows a web browser window with the URL <https://www.pay.gov/public/form/entry/103/>. The page title is "Civil Money Penalty Payment". The form contains the following fields:

- *Required Fields
- *Manufacturer P Number:
- *Manufacturer Name:
- *Address:
- *City:
- *State:
- *Zip Code:
- *Point of Contact Name:
- *Point of Contact Phone:
- *Point of Contact Email:
- *Date of Demand Letter:
- Invoice Quarter for which Penalties are due:
 - *Quarter:
 - *Year:
- *Payment Amount: \$

(Note: This must be the total amount due)

Buttons: PDF Preview, Continue

- Review
- Click on Submit Data

NOTE: You will immediately receive a message if **any** of the required information is missing on the payment form. Click OK, complete the missing information, and click on Submit Data.



Step 6

Have your banking information available to enter the payment information. Enter bank information, review, and print your payment confirmation to complete your Pay.gov payment.

Medicare Coverage Gap Discount Program CMPs

Before You Begin 1. Complete Agency Form Enter Payment Info 3. Review & Submit 4. Confirmation

Please provide the payment information below. Required fields are marked with an *.

* Payment Amount: \$1,000.00

* Payment Date (mm/dd/yyyy): 02/01/2018

* Account Holder Name

* Select Account Type

Select Account Type

* Routing Number

Routing Number

* Account Number

Account Number

* Confirm Account Number

Confirm Account Number

Manufacturer P Number
P0001

Previous Return to Form Cancel Review and Submit Payment

Need Help?
Contact: Shelly Winston
Email: [Click to email](#)
Website: [Click to visit site](#)

Notice the payment amount you entered on the previous screen has populated. Click on Return to Form at the bottom of the screen to correct the payment amount.

Enter,

- **Payment Amount**
- **Payment Date:** automatically populates the next available date in which the financial institutes can initiate the payment transaction
- **Account Holder Name:** name as it appears on the actual banking account
- **Select Account Type:** (Personal Checking, Personal Savings, Business Checking, or Business Savings) use the drop down arrow to select account type
- **Routing Number:** bank routing number
- **Account Number:** bank account number
- **Confirm Account Number:** re-type your bank account number

Click on Review and Submit Payment when you are ready

- Review the payment summary,

Pay.gov - Online Payment - Windows Internet Explorer
https://qa.pay.gov/paygov/payments/enterACHDebitPaymentInformation.html

File Edit View Favorites Tools Help

Pay.gov - Online Payment

Step 2: Authorize Payment

Payment Summary [Edit this information](#)

Account Holder Name: manufacturer Inc
Payment Amount: \$1,000.00
Account Type: Business Checking
Routing Number: 041000124
Account Number: *****0424
Check Number: 0002
Payment Date: 01/27/2012

Email Confirmation Receipt

To have a confirmation sent to you upon completion of this transaction, provide an email address and confirmation below.

Email Address:
Confirm Email Address:
CC: Separate multiple email addresses with a comma

Authorization and Disclosure

Required fields are indicated with a red asterisk *

I agree to the authorization and disclosure language. *

The U.S. Treasury Department's Financial Management Service. As used in this document, "we" or "us" refers to the Financial Management Service and its agents and contractors operating Pay.gov. "You" refers to the end-user reading this document and agreeing to it prior to engaging in a debit transaction.

I. Consumers

A. Authorization

You acknowledge that you have read and understand the consumer disclosure language and authorize the Federal Reserve financial institution of Cleveland to debit the named financial institution account. This authorization is to remain in full force and effect until we have received notification of its termination in such time and in such manner as to afford Pay.gov a reasonable opportunity to act on it, or unless otherwise terminated for any reason by Pay.gov.

B. Disclosure

In case of errors or questions about a transaction, immediately contact the Federal agency using the Pay.gov service or contact Pay.gov directly.

- Enter email address(es) to receive the payment confirmation
- Please add to the CC box: cgdp_manufacturers@cms.hhs.gov
- Read and/or print the Authorization and Disclosure. If you agree, Click, *I agree to the authorization and disclosure language*

Submit Payment- will submit your payment and move you to the final step of your payment

Cancel- will cancel all information entered during this session

Return To Your Form- will take you back to the Civil Money Penalty form

- Print the payment confirmation.

The screenshot shows a Windows Internet Explorer browser window with the address bar displaying <https://qa.pay.gov/paygov/payments/authorizeACHPayment.html>. The page title is "Pay.gov - Online Payment". The main content area features the Pay.gov logo and a navigation menu on the left. The central message reads: "Thank you. Your transaction has been successfully completed. It is recommended you [print a copy](#) for your records." Below this, there is a "Pay.gov Tracking Information" section with the following details: Application Name: Medicare Coverage Gap Discount Program CMPs; Pay.gov Tracking ID: 3FOHC800; Agency Tracking ID: 120008876801; Transaction Date and Time: 01/26/2012 12:36 EST. The "Payment Summary" section lists: Account Holder Name: manufacturer Inc; Payment Amount: \$1,000.00; Account Type: Business Checking; Routing Number: 041000124; Account Number: *****0424; Check Number: 0002; Payment Date: 01/27/2012. At the bottom of the page, there are links for "Return to your form search results" and "Return to Home". The browser's status bar at the bottom shows "Done" and "Internet" with a 100% zoom level.

Attachment 2

Department of Health and Human Services, Departmental Appeals Board (DAB)

Registering to Use DAB E-File

To file a new appeal using DAB E-File, you first need to register a new account by:

- clicking “Register” on the DAB E-File home page;
- entering the information requested on the “Register New Account” form; and
- clicking “Register Account” at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB-File on your behalf.

Filing an Appeal through DAB E-File

The e-mail address and password provided during registration must be entered on the login screen at http://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user’s access to DAB E-File is restricted to the appeals for which he is a party or authorized representative. Once registered, you may file your appeal by:

- clicking the “File New Appeal” link on the “Manage Existing Appeals” screen, then clicking “Civil Remedies Division” on the “File New Appeal” screen; and
- entering and uploading the requested information and documents on the “File New Appeal – Civil Remedies Division” form.

At a minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party’s appeal rights. All documents must be submitted in Portable Document Format (“PDF”). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions on DAB E-File for CRD cases can be found by clicking the CRD E-File Procedures link on the File New Appeal Screen for CRD appeals.

The DAB no longer accepts requests for a hearing submitted by U.S. mail or commercial carrier, unless you do not have access to a computer or internet services. In those circumstances you may contact the Civil Remedies Division to request a waiver from e-filing and provide an explanation as to why you cannot file electronically or you may mail a written request for a waiver along with your written request for a hearing. A written request for a hearing must be filed no later than sixty (60) days after receiving this letter, by mailing to the following address:

Department of Health and Human Services
Departmental Appeals Board, MS 6132
Director, Civil Remedies Division
330 Independence Avenue, S.W.
Cohen Building – Room G-644
Washington, D.C. 20201
(202) 565-9462

The request for a hearing will contain a statement as to the specific issues or findings of fact and conclusions of law in the notice letter with which the petitioner or respondent disagrees, and the basis for his or her contention that the specific issues or findings and conclusions were incorrect. 42 C.F.R. § 423.1020(b).

Attachment 3

	Contract Number	Contract Name	Invoiced Amount
1	E3014	PSERS HOP PROGRAM	\$314.16
2	H0630	KAISER FOUNDATION HP OF CO	\$949.75
3	H1608	COVENTRY HEALTH AND LIFE INSURANCE COMPANY	\$303.45
4	H2001	SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC.	\$5,279.57
5	H2228	UNITEDHEALTHCARE INSURANCE COMPANY	\$947.93
6	H3307	OXFORD HEALTH PLANS (NY), INC.	\$317.73
7	H5521	AETNA LIFE INSURANCE COMPANY	\$1,213.80
8	H5938	CAPITAL HEALTH PLAN	\$300.78
9	H9572	BCBS OF MICHIGAN MUTUAL INSURANCE COMPANY	\$316.84
10	R4487	ANTHEM INSURANCE COMPANIES, INC.	\$293.06
11	S5593	HM HEALTH INSURANCE COMPANY	\$875.01
12	S5601	SILVERSCRIPT INSURANCE COMPANY	\$3,491.31
13	S5660	MEDCO CONTAINMENT LIFE AND MEDCO CONTAINMENT NY	\$6,944.19
14	S5715	HCSC INSURANCE SERVICES COMPANY	\$630.39
15	S5768	FIRST HEALTH LIFE & HEALTH INSURANCE COMPANY	\$621.72
16	S5810	AETNA LIFE INSURANCE COMPANY	\$649.62
17	S5820	UNITEDHEALTHCARE INSURANCE COMPANY	\$3,681.58
18	S5884	HUMANA INSURANCE COMPANY	\$41.55
19	S5921	UNITEDHEALTHCARE INS. CO. & UHC INS. CO. OF NY	\$635.64
20	S5966	GROUP HEALTH INCORPORATED	\$274.89
21	S8841	OPTUM INSURANCE OF OHIO, INC.	\$7,683.30
		Invoice Amount	\$35,766.27