

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



MEDICARE DRUG BENEFIT AND C & D DATA GROUP

REQUEST FOR CORRECTIVE ACTION PLAN

August 31, 2016

Contract IDs: H0028, *H0108*, H0336, *H1019*, *H1036*, H1291, *H1406*, H1418, H1468, H1510, H1716, H1906, *H1951*, *H2012*, H2029, H2486, *H2649*, H2944, H2949, H3480, *H3533*, *H4007*, *H4141*, H4145, *H4461*, *H4510*, H5216, H5415, H5525, *H5619*, H5970, H6609, H6622, H6859, H8145, H8908, *H8953*, R5826, S2874, S5552, S5884¹

Ms. Susan Crowe
Medicare Compliance Officer
500 West Main Street
Floor 22
Louisville, KY 40202

Delivered via email to: HumanaMCO@humana.com

Dear Ms. Crowe:

The Centers for Medicare & Medicaid Services (CMS) is issuing this request for the development and implementation of a corrective action plan (CAP) to Humana, which operates through its subsidiaries the Medicare Advantage-Prescription Drug (MA-PD) and Medicare Prescription Drug Plan (PDP) Sponsor contracts listed above, in response to its failure to comply with Part D requirements concerning the representation of its contracted pharmacy network on its website. Additionally, Humana failed to maintain websites, as required, for all but one special needs plan (SNP). CMS made these determinations as the result of its review of Part D plan sponsors' websites and pharmacy network information beginning on July 1, 2015.

During the 2015 plan year, Humana maintained for all of its Part D contracts three online sources of information concerning its network pharmacies: the pharmacy search tool (PST), the pharmacy directory search tool (PDST), and the annual price estimate tool (PET). With the PST, beneficiaries could search for pharmacies in a particular portion of Humana's service area, while they could use the PDST to obtain PDF versions of network pharmacy lists

¹ Italicized Contract IDs include at least one SNP for which no website was maintained by Humana during contract year 2015.

for each of the states in Humana's service area. The PET offered beneficiaries the opportunity to select a pharmacy from among those listed in Humana's contracted Part D network and to receive information about the plan's negotiated prices for prescription drugs identified by the beneficiary. Each of these web-based pharmacy network information resources was out of compliance with Part D requirements during 2015.

PST and PDST Non-Compliance

On July 10, 2015, CMS informed Humana that the searches conducted on the PST produced listings of only preferred network pharmacies in response to search queries. Humana staff stated that they corrected this error later on the same day CMS alerted them to the issue.

On July 14, 2015, CMS determined that the PDST was missing Humana network pharmacy information for 18 states and the District of Columbia for its national stand-alone PDP contracts. Humana confirmed on July 15 that, in response to CMS' notice, it had added pharmacy network information for the 18 states and the District to its website.

The errors in the PST and PDST displays constitute non-compliance with the regulations at 42 C.F.R. §423.128(b)(5) and (d)(2) which require Part D sponsors to maintain an online pharmacy directory that provides the number, mix, and distribution (addresses) of network pharmacies from which enrollees may reasonably be expected to obtain covered Part D drugs. This requirement is discussed further in the Medicare Marketing Guidelines (MMG-June 2014) in Section 100.4 (Online Provider Directory Requirements) where CMS instructs Part D sponsors that if they elect to use a search engine to provide network pharmacy information, the information produced by the search engine must contain the same elements as those required of printed directories. Also, Section 60.4 of the MMG makes clear that pharmacy directories, online and printed, must include information about all of a plan's network pharmacies across all geographic areas in which the plan is available. The failure of Humana's PST to provide information about all Humana network pharmacies, both preferred and non-preferred, and of the PDST to provide pharmacy information for all of the states in its service area placed Humana out of compliance with Part D regulations and CMS guidance concerning sponsors' online display of network pharmacy information.

PET Non-Compliance

CMS determined on July 1, 2015, that the PET did not provide an accurate annual drug cost to a current or potential enrollee based on his/her selection of pharmacies. It appeared that the pricing information for Walmart pharmacies, which had a preferred status in the Humana network, was being provided regardless of the particular pharmacy selected by a beneficiary.

On July 7, 2015, CMS determined, after further discussions with Humana, that the PET would produce different pricing results between two different searches conducted during the same browsing session using the same plan, pharmacy, and medication information being provided by the searcher. For example, during a web browsing session that began with a search of non-preferred pharmacies, the PET would continue to generate only non-preferred pricing for additional searches even if a preferred pharmacy was later selected. Similarly, a session that

began with a preferred pharmacy would continue to produce preferred results, even if a non-preferred pharmacy was later selected during the same search session. On July 8, 2015, CMS directed Humana to take down the PET, and Humana complied. Humana has stated that the PET had been operational and on display at least since October 2014. The only changes made from that date were updates to the pharmacy network and pricing information, not the tool's mechanics. The tool itself remained the same throughout the time it was on display.

While Part D sponsors are not required to post negotiated prices on their own websites, they are responsible for the accuracy of such displays should they elect to make them available. The inaccuracy of Humana's PET constitutes non-compliance with the requirement, per 42 C.F.R. §423.2268(e), that sponsors refrain from engaging in activities that could mislead or confuse beneficiaries, or misrepresent the sponsor or its Part D plan. While any inaccurate information provided by sponsors is potentially harmful to beneficiaries, Humana's display of incorrect drug pricing information during the fall 2014 annual election period is particularly significant as beneficiaries may have relied to their detriment on that information in making a drug plan selection for 2015.

Maintenance of SNP Websites

In the Spring of 2015, CMS conducted its annual monitoring review of Medicare Part C and Part D sponsors' websites to determine compliance to regulatory and guidance standards. On March 13, 2015, CMS attempted to review the website for the Humana SNP under H1036, however CMS was unable to find information specific to the SNP, and notified Humana of the deficiency. In response to CMS's notice concerning the missing information, Humana's staff responded on June 17, 2015 with their assertion that Special Needs Plans (SNPs) are not required to maintain websites. CMS informed Humana on the same day via email that the Part D regulations do not provide any kind of exception for SNPs to the pharmacy website information display requirements applicable to all Part D sponsors. As of August 18, 2016, CMS has reviewed the Part D website information for a significant portion of Humana's SNPs and has found no pharmacy information displayed for these products, with the exception of Humana Kidney Care H2949_018.

CMS will continue to monitor Humana's compliance with the Medicare Part D pharmacy network website display requirements. CMS notes that, since the performance period described in this letter, Humana staff have been keeping CMS personnel apprised of the steps it has taken to correct the network pharmacy information it provides on its own website and that its 2016 information, with the exception of its SNP information, has been compliant.

CMS expects that Humana's compliance with Part D program requirements in its operation of the PST and the PDST will continue. However, should your organization fail to remain in compliance with the Part D website display requirements, CMS may consider taking enforcement actions in the form of intermediate sanctions (e.g., the suspension of marketing and enrollment activities) or civil money penalties pursuant to our authority under 42 C.F.R. 423, Subpart O or the issuance of a contract termination notice pursuant to 42 C.F.R. 423, Subpart K. Furthermore, CMS expects Humana to bring the display of its SNP-related pharmacy information into compliance with Part D requirements by the start of the CY 2017 annual

election period on October 1, 2016. Should Humana fail to take such action, CMS may consider the imposition of intermediate sanctions after that date.

Please be aware that this CAP request will be included in the record of Humana's past Medicare contract performance, which CMS will consider as part of your review of any application for new or expanded Medicare contracts your organization may submit. For past performance analysis purposes, this is considered a Part D issue with beneficiary impact. CMS notes that we are issuing this compliance notice based exclusively on information that we obtained from sources other than Humana's own self-disclosure.

If you have any questions about this matter, please contact your CMS account manager, Uvonda Meinholdt at Uvonda.Meinholdt@cms.hhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy L. Chavez-Valdez', with a long horizontal flourish extending to the right.

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