

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



MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP

September 20, 2022

Mr. Timothy Spilker
Chief Executive Officer
UnitedHealthcare Plan of the River Valley, Inc.
P.O. Box 9472
Minnetonka, MN 55440-9472

Re: Notice of Enrollment Suspension for Medicare Advantage-Prescription Drug Contract
Number H0251

Dear Mr. Spilker:

Pursuant to 42 C.F.R. §§ 422.2410(c) and 423.2410(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to UnitedHealthcare Plan of the River Valley, Inc. ("UHC River Valley") that CMS has made a determination to prohibit the enrollment of new beneficiaries under the Medicare Advantage-Prescription Drug (MA-PD) contract H0251 for contract year (CY) 2023.

Medical Loss Ratio (MLR) Relevant Requirements

Section 1857(e)(4) of the Social Security Act ("the Act") requires Medicare Advantage organizations to maintain a medical loss ratio (MLR) of at least 85%, a requirement made applicable to Medicare Part D contracts through section 1860D-12(b)(3)(D) of the Act. The statute further provides, at section 1857(e)(4)(B) of the Act, that when an organization fails for three consecutive years to meet the 85% threshold, CMS must suspend that organization's ability to accept new enrollments in the plans it offers under the non-compliant contract for the contract year following submission of the report (i.e., the second contract year after the third consecutive year in which the organization failed to meet the minimum MLR).

CMS administers the MLR review process for MA-PD organizations through the application of regulations at 42 C.F.R. Parts 422 and 423, Subpart X. In particular, MA-PD organizations are required, per 42 C.F.R. §§ 422.2410(a) and 423.2410(a), to report an MLR each year for each of their contracts, and 42 C.F.R. §§ 422.2460 and 423.2460 obligates sponsors to make such reports in a form and manner specified by CMS. The rules for calculating the MLR are codified in 42 C.F.R. §§ 422.2420 and 423.2420. CMS has published MLR instructions and workbooks on June 19, 2020 (for CY 2019 data), June 11, 2021 (for CY 2020 data), and May 31, 2022 (for CY 2021 data).

Violation Related to MLR Requirements

UHC River Valley has reported to CMS the following MLRs for MA-PD contract H0251: 84.5% for CY 2019, 81.9% for CY 2020, and 84.8% for CY 2021. Based on this plan sponsor-reported information, CMS has determined that UHC River Valley has failed to meet the 85% MLR threshold for three consecutive years.

As a result of this determination, UHC River Valley will be prohibited from accepting any MA-PD plan enrollments for 2023; this prohibition is effective for any enrollments beginning January 1, 2023 through December 1, 2023. This action will include the removal of H0251 from the list of MA-PD plans from which beneficiaries may make an election during the CY 2023 Annual Election Period (AEP), which runs between October 15, 2022, and December 7, 2022. However, UHC River Valley may continue to accept and process enrollments that become effective on or before December 1, 2022.

During CY 2023, all individual market plans offered under H0251 will be precluded from accepting any new enrollees, including those beneficiaries already enrolled in a UHC River Valley MA-PD plan who may want to elect a different plan offered under the same contract. Pursuant to sections 1857(i) and 1860D-22(b) of the Act, if UHC River Valley has employer group plans, it may apply for an employer group waiver in order to continue to enroll members into their existing employer group plans, although CMS will not permit UHC River Valley to add new employer group plans to contract H0251 for CY 2023.

UHC River Valley must ensure that its marketing and communications materials and activities are not misleading to beneficiaries, and therefore must accurately reflect the fact that the plans under H0251 are not available for enrollment during 2023. Enforcement actions, as described in 42 C.F.R. Parts 422 and 423 Subparts K and O, may be imposed if CMS finds that UHC River Valley has engaged in activities that could mislead or confuse Medicare beneficiaries or misrepresent the plan. See 42 C.F.R. §§ 422.2262 and 423.2262.

If UHC River Valley submits a CY 2022 report in 2023 for H0251 that demonstrates it has achieved an MLR of at least 85%, CMS will allow the sponsor to resume accepting enrollments that become effective on or after January 1, 2024. In such an instance, CMS would allow UHC River Valley to offer plans under H0251 to beneficiaries during the CY 2024 AEP, which will be held between October 15, 2023 and December 7, 2023. In the event that the CY 2022 MLR report for H0251 again shows an MLR below 85%, enrollment under that contract will remain closed during CY 2024. Furthermore, CMS reminds UHC River Valley that if it fails to report an MLR of at least 85% for five consecutive years for H0251, CMS must terminate that contract, pursuant to sections 1860D-12(b)(3)(D) and 1857(e)(4)(C) of the Act.

Opportunity to Respond and Right to Request a Hearing

In accordance with our statement in the May 23, 2013, final rule (78 FR 31287-88), through which CMS adopted the MA organization and Part D sponsor MLR regulations, CMS is affording UHC River Valley the opportunity to contest this determination through the processes that currently apply to suspensions of enrollment imposed as an intermediate sanction.

Therefore, UHC River Valley may provide a response to this notice, pursuant to 42 C.F.R. §§ 422.756(a) and 423.756(a), and/or request a hearing, pursuant to 42 C.F.R. §§ 422.756(b) and 423.756(b).

Consistent with 42 C.F.R. §§ 422.756(a) and 423.756(a), UHC River Valley has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by October 3¹, 2022. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case, September 21, 2022. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the address noted below. Note that the enrollment closure will not be stayed pending a rebuttal submission.

Consistent with 42 C.F.R. §§ 422.756(b) and 423.756(b), UHC River Valley may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. §§ 422.660-696 and 423.650-668. A written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by October 6, 2022. Please note, however, a request for a hearing will not delay CMS' implementation of the enrollment suspension. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

CMS notes that the statute does not provide any discretion in the imposition of the enrollment sanction described in this notice. Further, the information underlying the MLR determination for the three relevant years has been provided by UHC River Valley. Therefore, we anticipate that any response to this notice or request for a hearing would be limited to mistakes or errors made by CMS in accepting the reports from UHC River Valley or arguments that we are misapplying the law.

The request for hearing must be sent electronically, and may also be sent via hard copy to the CMS Hearing Officer:

Benjamin R. Cohen, Esq.
CMS Office of Hearings
Attn: Benjamin R. Cohen, Director
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: B1-01-31
Phone: 410-786-3169
Email: benjamin.cohen@cms.hhs.gov

A copy of the hearing request should also be sent to CMS at the following address:

Kevin Stansbury
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard

¹ October 1st falls on a weekend or holiday, therefore the date reflected in the notice is the next regular business day for you to submit your request.

Baltimore, MD 21244
Mail Stop: C1-22-26
Email: kevin.stansbury@cms.hhs.gov

If you have any questions about this notice, please call or email the enforcement contact provided in your email notification.

Sincerely,

/s/

John A. Scott
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Jennifer Shapiro, CMS/CM/MPPG
Kevin Stansbury, CMS/CM/MOEG/DCE
Brenda Suiter, CMS/OPOLE
Deanna Gee, CMS/OPOLE
Gilbert Lara, CMS/OPOLE
Nicole Edwards, CMS/OPOLE