

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services 7500  
Security Boulevard, Mail Stop C1-22-06  
Baltimore, Maryland 21244-1850



**MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP**

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July 2, 2020

Mr. Brian Barry  
President and Chief Executive Officer  
Vitality Health Plan of California, Inc.  
18000 Studebaker, Suite 960  
Cerritos, CA 90703

Re: Notice of Immediate Imposition of Intermediate Sanction (Suspension of Enrollment) for  
Medicare Advantage-Prescription Drug Plan Contract Number: H1426.

Dear Mr. Barry,

Pursuant to 42 C.F.R. §§ 422.756 and 423.756, the Centers for Medicare & Medicaid Services (CMS) hereby informs Vitality Health Plan of California, Inc. ("Vitality") of its determination to immediately impose an intermediate sanction on the following Medicare Advantage-Prescription Drug Plan (MA-PD) Contract: H1426.

This intermediate sanction will suspend Vitality's ability to enroll Medicare beneficiaries (42 C.F.R. §§ 422.750(a)(1) and 423.750(a)(1)). CMS is imposing the intermediate sanction immediately, effective at 11:59 p.m. EDT, July 2, 2020, pursuant to 42 C.F.R. §§ 422.756(c)(2) and 423.756(c)(2).

**Summary of Noncompliance**

On June 30, 2020, the Department of Managed Health Care of the State of California (DMHC) filed an "Order to Cease and Desist Accepting New Enrollees", which states that Vitality has failed to comply with certain financial requirements of the state of California pursuant to the Knox-Keene Act. As a result, DMHC stated that "effective July 2, 2020, [Vitality] shall immediately cease and desist from offering contracts or accepting new applications from any new enrollees or subscribers who are not currently in contract with Vitality."

Pursuant to 42 C.F.R. §§ 422.504(a)(1) and 423.505(b)(2), organizations that contract with CMS to offer MA-PD contracts must agree to accept new enrollments as provided in 42 C.F.R. Parts 422 and 423, Subpart B. Because Vitality is not permitted to accept new enrollments under its license with the state of California, it is non-compliant with CMS' contract requirements.

**Legal Basis for the Immediate Imposition of Intermediate Sanction**

As a result of DMHC's order, Vitality no longer substantially meets the applicable conditions to

carry out its contract with CMS (42 C.F.R. §§ 422.510(a)(3) and 423.509(a)(3)). Vitality's non-compliance provides a sufficient basis for the immediate imposition of an intermediate sanction (42 C.F.R. §§ 422.752(b) and 423.752(b)).

### **Corrective Action Steps**

Pursuant to 42 C.F.R. §§ 422.756(c)(3) and 423.756(c)(3), the sanction will remain in effect until CMS receives notification from the State of California that Vitality can successfully operate under good standing and that the order has been removed, thereby, allowing Vitality to accept new enrollments.

### **Opportunity to Respond to Notice**

Pursuant to 42 C.F.R. §§ 422.756(a)(2) and 423.756(a)(2), Vitality has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by July 13, 2020. Please note that CMS considers receipt as the day after the notice is sent by fax, email, or overnight mail or in this case July 3, 2020. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the address noted below. Note that the sanctions imposed pursuant to this letter are not stayed pending a rebuttal submission.

### **Right to Request a Hearing**

Vitality may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. §§ 422.641-696 and 423.650-668. Pursuant to 42 C.F.R. §§ 422.756(b) and 423.756(b), a written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by July 20, 2020.<sup>1</sup> Please note, however, a request for a hearing will not delay the date specified by CMS when the sanctions become effective. Your hearing request will be considered officially filed on the date that it is mailed; accordingly, we recommend using an overnight traceable mail carrier.

The request for a hearing must be sent to the CMS Hearing Office at the following address:

Benjamin R. Cohen, Esq.  
CMS Office of Hearings  
Attn: Benjamin R. Cohen, Director  
1508 Woodlawn Drive, Suite 100  
Baltimore, MD 21207-2671  
Phone: 410-786-3169  
Email: [benjamin.cohen@cms.hhs.gov](mailto: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

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<sup>1</sup> Since July 18<sup>th</sup> falls on a weekend or holiday, the date reflected in the notice is the next regular business day for you to submit your request.

Security Boulevard  
Baltimore, MD 21244  
Mail Stop: C1-22-27  
Email: [kevin.stansbury@cms.hhs.gov](mailto:kevin.stansbury@cms.hhs.gov)

CMS will consider the date the Office of Hearings receives the email or the date it receives the fax or traceable mail document, whichever is earlier, as the date of receipt of the request. The request for a hearing must include the name, fax number, and e-mail address of the contact within Vitality (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request.

Please note that we are closely monitoring your organization and Vitality may also be subject to other applicable remedies available under law, including the imposition of additional sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O. CMS will consider taking action to immediately terminate your contract if issues that pose a serious threat to the health and safety of Medicare beneficiaries are identified or left uncorrected.

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: Kevin Stansbury, CMS/CM/MOEG/DCE  
Ann Duarte, CMS/OPOLE  
Brenda Suiter, CMS/OPOLE  
Deanna Gee, CMS/OPOLE  
Grace Materon, CMS/OPOLE