

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

February 22, 2023

Dr. Pavel Bindra
Chief Executive Officer
Imperial Health Plan of California
1100 East Green Street
Pasadena, CA 91106

Re: Termination Notice for Medicare Advantage-Prescription Drug Contract Number: H2793

Dear Dr. Bindra:

The Centers for Medicare & Medicaid Services (CMS) notifies you of its decision to terminate (effective 11:59:59 P.M. Eastern Standard Time (EST) December 31, 2023) Imperial Health Plan of California's (Imperial) Medicare Advantage-Prescription Drug (MA-PD)¹ contract H2793 pursuant to Sections 1860D-12(b)(3)(B) and 1857(c)(2) of the Social Security Act (the Act), 42 C.F.R. § 423.509(a)(4)(x), and Art. VIII of the MA-PD contract between CMS and Imperial. CMS has determined that Imperial has substantially failed to carry out its contract with CMS by failing to achieve a Part D summary Star Rating of at least three stars in the past three most recent Star Rating periods for contract H2793.

Summary of Noncompliance

H2793 is a MA-PD contract that has been in operation since January 1, 2019. Medicare regulations at 42 CFR §§ 422.504(a)(17) and 423.505(b)(26) require MA-PD contracts to maintain Part C and Part D summary plan rating scores of at least three stars. H2793 has had three consecutive years of low Part D summary Star Ratings as of the 2023 Star Ratings released in October 2022 in violation of 42 C.F.R. §§ 423.509(a)(4)(x) and 423.505(b)(26), and Art. II.D.3 of the Part D addendum to the MA-PD contract. Therefore, H2793 has failed substantially to carry out the terms of its contract and CMS has made the determination to terminate contract H2793 at the end of 2023.

Part C and D Star Rating Requirements

Since 2007, CMS has developed and published annual performance ratings for stand-alone Medicare prescription drug plan (PDP) contracts. In 2008, CMS began issuing ratings for

¹ An MA-PD is a Medicare Advantage organization that offers a qualified prescription drug plan. An MA-PD is subject to the same Part D requirements at 42 Part 423 as a stand-alone Part D plan sponsor.

Medicare Advantage (MA) contracts as well. The ratings are based on measures that address a range of health and drug plan performance categories, including access to care, communication with members, and clinical quality of care. The scores in each performance category are based on data reported by MA organizations and PDP sponsors, member satisfaction, and monitoring conducted by CMS and its contractors. MA-PD contracts receive a score for each performance measure, a summary score each for Part C and Part D, as well as an overall rating. These scores are called Star Ratings.²

The performance measures used to calculate a contract's Part C or Part D summary Star Rating reflect an MA-PD's contract performance across multiple Medicare program requirements. A contracting organization's administrative and management arrangements necessarily have a direct impact on its performance of a similarly broad range of program requirements.³ Therefore, CMS considers a low Part C or Part D summary Star Rating to be evidence that the MA-PD has insufficient administrative and management arrangements to meet its obligations as a Medicare plan sponsor.

Based on that determination, CMS established the Medicare requirement that all contracts maintain a Part C and Part D summary plan rating score of at least three stars. *See* 42 C.F.R. §§ 422.504(a)(17) and 423.505(b)(26) and Art. II.D.3 of the Part D addendum to the MA-PD contract. In addition, CMS promulgated the requirement that CMS may terminate an MA-PD contract if it achieves a Part C summary plan rating of less than three stars for three consecutive contract years (*see* 42 CFR § 422.510(a)(4)(xi)), or a Part D summary plan rating of less than three stars for three consecutive contract years (*see* 42 CFR § 423.509(a)(4)(x)).

CMS has also promulgated regulations that states that CMS may terminate an MA-PD if the organization has substantially failed to comply with the regulatory requirements contained in Part 422 or Part 423 or both (*see* 42 C.F.R. § 422.510(a)(4)(ix)). CMS has stated that “organizations that offer both Part C and Part D benefits must fully meet the requirements of each program independently” (emphasis added). 77 FR 22109. CMS reiterated this position in the 2015 Call Letter, stating that “CMS will terminate MA-PD contracts that scored a Part D summary rating of less than three stars in each of the most recent consecutive rating periods, regardless of their Part C summary ratings during the same period.”

Violations Related to Part D Summary Star Ratings

CMS has determined that Imperial's contract H2793 failed to comply with Part D Star Ratings requirements by failing to achieve a Part D summary Star Rating of at least three stars for three consecutive years in violation of 42 C.F.R. §§ 423.505(b)(26) and 423.509(a)(4)(x). Specifically, contract H2793 received a 2023 Part D Summary Star Rating of 2.5, a 2022 Part D Summary Star Rating of 2.5, and a 2021 Part D Summary Star Rating of 2. Imperial was informed of its

² See 42 C.F.R. §§ 422.160-166 and 423.180-186 for details on the calculation of Star Rating measures.

³ Medicare regulations at 42 C.F.R. §§ 422.503(b)(4)(ii) and 423.504(b)(4)(ii) require MA-PD organizations to have administrative and management arrangements satisfactory to CMS, including personnel and systems sufficient for the organization to market and administer benefit plans and conduct utilization management and quality assurance activities consistent with Medicare requirements.

Part D summary Star Ratings for 2021, 2022, and 2023 on October 8, 2020, October 6, 2021, and October 4, 2022, respectively.

Basis for Termination

Pursuant to 42 C.F.R. § 423.509(a)(4)(x), CMS may terminate a Part D sponsor's contract if it "achieves a Part D summary plan rating of less than 3 stars for 3 consecutive years."⁴ In addition, pursuant to 42 C.F.R. § 422.510(a)(ix), CMS may terminate a MA-PD's contract if it substantially "failed to comply with the regulatory requirement's contained in [Part 422] or Part 423 or both." CMS has determined that Imperial's contract H2793 substantially failed to comply with the Part D Star Ratings requirements by failing to achieve a Part D summary Star Rating of at least three stars for three consecutive years. This is in violation of 42 C.F.R. §§ 423.510(a)(4)(ix), 423.509(a)(4)(x), and 423.505(b)(26), and Art. II.D.3 of the Part D addendum to the MA-PD contract.⁵

Imperial has been on notice of the need to improve its Part D summary Star Ratings performance since the issuance of the 2021 Star Ratings on October 8, 2020. Imperial, therefore, had an opportunity to improve certain measures for the 2022 Star Ratings and all of its measures for the 2023 Star Ratings. In addition, on February 25, 2022, CMS notified Imperial of its low Part D summary Star Ratings and the possibility that contract H2793 would be terminated if it failed to achieve a Part D summary Star Rating of at least three stars for three consecutive years. Therefore, pursuant to 42 C.F.R. § 423.509(c), Imperial has had notice of its insufficient Part D summary Star Ratings and an opportunity to correct this deficiency by improving its Star Rating performance, which it failed to do.

Right to Request a Hearing

This contract termination is effective at 11:59:59 P.M. EST on December 31, 2023. Imperial may request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 CFR Subpart N of Parts 422 and 423. Pursuant to 42 CFR §§ 422.662 and 423.651, your written request for a hearing must be received by CMS within 15 calendar days from the date CMS notified you of this determination, or by March 10, 2023. The request for hearing must be sent to the CMS Hearing Officer at the following address:

CMS Office of Hearings
Attn: Benjamin R. Cohen, Director
7500 Security Boulevard
Baltimore, MD 21244-1850
Mail Stop: B1-01-31
Phone: (410) 786-3169

⁴ Pursuant to 42 CFR § 423.4, the definition of "Part D sponsor" includes "a PDP sponsor, MA organization offering a MA-PD plan, a PACE organization offering a PACE plan including qualifying prescription drug coverage, and a cost plan offering qualified prescription drug coverage."

⁵ As stated in the 2015 Call Letter, CMS has informed sponsors that "CMS will terminate MA-PD contracts that scored a Part D summary rating of less than three stars in each of the most recent consecutive rating periods, regardless of their Part C summary ratings during the same period."

E-Mail: 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
Baltimore, MD 21244
Mail Stop: C1-22-06
Email: 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 Imperial (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request.

If Imperial has any questions about this notice, please call or email the enforcement contact provided in the email notification.

Sincerely,

/s/

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

cc: Kevin Stansbury, CMS/MOEG/DCE
Amy Larrick Chavez-Valdez, CMS/MDBG
Linda Anders, CMS/MDBG
Michael Neuman, CMS/MDBG
Arianne Spaccarelli, CMS/MDBG
Kathryn Coleman, CMS/MCAG
Scott Sturiale, CMS/MCAG
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