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**CORRECTIVE ACTION PLAN (CAP) REQUEST**

January 19, 2018

Contract ID: S5660,S5983

MEDCO CONTAINMENT LIFE AND MEDCO CONTAINMENT NY, MEDCO CONTAINMENT INSURANCE  
COMPANY OF NEW YORK

Pamela Wood

One Express Way  
St. Louis, MO 63121

VIA EMAIL: pwood@express-scripts.com

**Re: Request for CAP Due to Medicare Plan Finder Submission Errors**

Dear Pamela Wood:

Express Scripts, Inc. failed to comply with Part D requirements concerning the representation of its contracted preferred cost sharing pharmacies in reports to CMS for use in populating the Medicare Plan Finder (MPF). Consequently, the Centers for Medicare & Medicaid Services (CMS) is issuing this request for the development and implementation of a corrective action plan (CAP) to Express Scripts, Inc., which operates through its subsidiaries, Medco Containment Life Insurance Company and Medco Containment Insurance Company of New York, the Medicare Prescription Drug Plan (PDP) sponsor contracts listed above.

Consistent with 42 C.F.R. §§423.48 and 423.505(f)(2), Part D sponsors must provide CMS with information necessary to facilitate a process for current and prospective beneficiaries to exercise choice in obtaining prescription drug coverage. Pursuant to that authority, CMS collects pharmacy network and drug pricing information from Part D sponsors to maintain the MPF, a searchable website where beneficiaries can find information about a Part D plan's network pharmacies in their area and the prices they can expect to pay for Part D drugs under sponsors' plans.

CMS routinely provides instructions to Part D sponsors on the requirements for submitting their pharmacy network and drug pricing information, including "Contract Year 2017 Pricing Data Requirements and Submission Calendar issued directly to sponsors through CMS' contractor, Destination Rx (DRX) on May 19, 2016. According to these instructions, sponsors were to begin submitting their CY 2017 network and pricing information on September 12, 2016 to allow the MPF to display the information beneficiaries needed to select a Part D plan during the annual election period (AEP) that began on October 15, 2016.

CMS also instructed sponsors to continue to submit updated information on their contracted pharmacy networks every two weeks during the plan year. Required data elements for each pharmacy include an indication of whether they have preferred status or not (see data definitions for PREFERRED\_STATUS\_RETAIL and PREFERRED\_STATUS\_MAIL on pages 12 and 13 of the instructions). On page 14 of the instructions, CMS noted that sponsors' submissions were to include a full representation of their contracted Part D networks. CMS also advised sponsors on page nine that we would review all MPF submissions and would suppress from display information about plans whose data submission was incorrect. We adopted this policy to prevent beneficiaries from relying on incorrect information in making their

plan election during the AEP or during any other election period for which they may qualify during a plan year.

Between March 27, 2017 and April 24, 2017, your organization consistently marked an estimated 11,000 preferred cost sharing pharmacies as non-preferred in the Medicare Plan Finder Data it submitted to CMS. This included 8,200 Walgreens locations. This represented approximately 35% of the approximately 31,000 preferred cost sharing pharmacies in your organization's network. CMS discovered this information following an investigation we conducted in response to complaints we had received from pharmacies. The April 24, 2017 submission corrected this error. CMS notes that the root cause issues have been corrected.

As noted above, CMS has instructed all Part D sponsors that their information will be suppressed from display on the MPF upon a determination that the submitted information is incorrect. Your organization avoided this consequence by failing to disclose to CMS the information it had concerning its inaccurate MPF submissions.

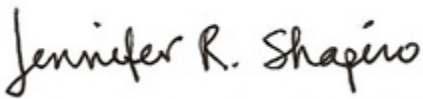
Consistent with CMS' authority at 42 C.F.R. §§423.507(b)(3) and 423.509(c), we request that your organization develop and implement a corrective action plan designed to ensure that your organization maintains compliance with Part D requirements concerning the accurate reporting of MPF data. CMS will continue to monitor your organization's performance and will consider the CAP closed when it is demonstrated that your organization has come into compliance with identified program requirements.

We appreciate your organization's prompt attention to this matter. Should your organization fail to maintain compliance with Part D requirements regarding this issue, CMS may consider taking 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. part 423 Subpart O or the issuance of a contract termination notice pursuant to 42 C.F.R. part 423 Subpart K.

Please be aware that this CAP request will be included in the record of your organizations' 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. In issuing this CAP, CMS considered that your organization failed to self-disclose this matter.

If you have questions about this notice, please contact Arianne Spaccarelli at [arianne.spaccarelli@cms.hhs.gov](mailto:arianne.spaccarelli@cms.hhs.gov). Please copy your account manager on all communications.

Sincerely,



Jennifer Shapiro, Acting Director

Medicare Drug Benefit and C&D Data Group

CC via email:

Ericka Williams, CMS

Scott Nelson, CMS