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

January 17, 2025

Mr. Stephen Bush
Chief Financial Officer
Baylor Scott & White Holdings
1206 West Campus Drive
Temple, TX 76502

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug Contract Numbers: H2032 and H8142

Dear Mr. Bush:

Pursuant to 42 C.F.R. §§ 422.752(c)(1), 422.760(c), 423.752(c)(1), and 423.760(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Baylor Scott & White Holdings (BSW), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **$37,816** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H2032 and H8142.

An MA-PD organization's[1] primary responsibility is to provide Medicare enrollees with medical services and prescription drug benefits in accordance with Medicare requirements. CMS has determined that BSW failed to meet that responsibility.

Summary of Noncompliance

In 2023, CMS conducted an audit of BSW's 2021 Medicare financial information. In financial audit reports issued on September 7, 2023, and September 11, 2023, CMS auditors reported that BSW failed to comply with Medicare requirements related to Part C cost sharing and Part C maximum out-of-pocket (MOOP) limit requirements in violation of 42 C.F.R. Part 422, Subparts C and F. More specifically, auditors found that in 2021, BSW overcharged enrollees for Part C medical services and charged enrollees more than the annual Part C MOOP limit. BSW's failure to comply with Medicare Part C requirements adversely affected (or had the substantial likelihood of adversely affecting) enrollees because they may have experienced increased out-of-pocket costs.

[1] Referenced collectively as "plan sponsor".

Part C Cost Sharing Requirements *(42 C.F.R. §§ 422.111(b), 422.254, and 422.270; and Chapter 4, Section 50 of the Medicare Managed Care Manual (IOM Pub. 100-16))*

Every year, a plan sponsor must submit to CMS an aggregate monthly bid amount which must include a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of the deductibles, coinsurance, and copayments. When the bid is approved by CMS, the plan sponsor must provide to each enrollee a description of the benefits offered under a plan, including the applicable cost-sharing for the benefits (see 42 C.F.R. § 422.111(b)). The plan sponsor must not charge an enrollee a different amount from what was approved in the bid and disclosed to the enrollee for that benefit. Pursuant to 42 C.F.R. § 422.270(b), if the plan sponsor charges amounts in excess of the agreed upon cost-sharing, then the plan sponsor must agree to refund all amounts incorrectly collected from its Medicare enrollees.

Violation Related to Part C Cost Sharing Requirements

CMS determined that BSW failed to comply with cost sharing requirements by charging incorrect coinsurance amounts. More specifically, BSW claims examiners inappropriately applied the $90 emergency room copay for enrollees that were admitted to the hospital within 24 hours of receiving emergency care for the same condition. In addition, in some cases, the claims examiner incorrectly calculated the inpatient copay. As a result, enrollees were overcharged for inpatient hospital care. BSW did not refund the enrollees until after the financial audit, which was approximately two to three years after the incurred costs. BSW's failure to comply with cost sharing requirements violates 42 C.F.R. § 422.270(b).

Part C Maximum Out-of-Pocket Limit Requirements *(42 C.F.R. §§ 422.100(f)(4) and (5) and Health Plan Management System (HPMS) Memo, Final Contract Year 2021 Part C Benefits Review and Evaluation, April 8, 2020)*

Medicare Advantage (MA) organizations must have an enrollee in-network MOOP amount for basic benefits that is no greater than the annual limit calculated by CMS. In addition, MA Preferred Provider Organization (PPO) plans must also establish a combined MOOP amount for basic benefits that are provided in-network and out-of-network. MA organizations are responsible for tracking out-of-pocket spending accrued by their enrollees and must alert enrollees and contracted providers when the plan's MOOP amounts are reached. MA organizations must not charge an enrollee in excess of MOOP limits.

Violation Related to Part C Maximum Out-of-Pocket Limit Requirements

CMS determined that BSW failed to comply with MOOP requirements by failing to track enrollee out-of-pocket spending and charging enrollees more than annual MOOP limits. More specifically, when skilled nursing facility (SNF) claims were manually processed, the claims processors did not check to see whether enrollees had met their MOOP limits and did not factor those limits into the calculation of the enrollees' cost sharing for the SNF claims. In other cases, the claims system did not recognize when enrollees reached their MOOP limit in cases where enrollees had both in- and out-of-network claims. Lastly, in some cases, MOOP overages were created when a medical claim in BSW's internal claim system and a Part B medication claim in

the pharmacy benefit manager external system were processed at the same time. As a result, enrollees were charged amounts in excess of their annual MOOP limit. BSW's failure to comply with MOOP limit requirements violates 42 C.F.R. §§ 422.100(f)(4) and (5).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 422.752(c)(1)(i), CMS may impose a CMP for any determination made under 42 C.F.R. § 422.510(a)(1). Specifically, CMS may issue a CMP if a MA-PD has failed substantially to carry out its contract. Pursuant to 42 C.F.R. § 422.760(b)(2), a penalty may be imposed for each enrollee directly adversely affected (or with the substantial likelihood of being adversely affecting) by the deficiency.

CMS has determined that BSW failed substantially to carry out the terms of its contract (42 C.F.R.§ 422.510(a)(1)) by substantially failing to comply with requirements at 42 C.F.R. Part 422, Subparts C and F. BSW's violations of Part C requirements directly adversely affected (or had the substantial likelihood of adversely affected) enrollees and warrant the imposition of a CMP.

Right to Request a Hearing

BSW may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. Parts 422 and 423, Subpart T. BSW must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by March 19, 2025.[2] The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which BSW disagrees. BSW must also specify the basis for each contention that the finding or conclusion of law is incorrect.

The request should be filed through the DAB E-File System (https://dab.efile.hhs.gov) unless the party is not able to file the documents electronically. If a party is unable to use DAB E-File, it must send appeal-related documents to the Civil Remedies Division using a postal or commercial delivery service at the following address:

Civil Remedies Division
Department of Health and Human Services
Departmental Appeals Board
Medicare Appeals Council, MS 6132
330 Independence Ave., S.W.
Cohen Building Room G-644
Washington, D.C. 20201

Please see https://dab.efile.hhs.gov/appeals/to_crd_instructions for additional guidance on filing the appeal.

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

[2] Pursuant to 42 C.F.R. §§ 422.1020(a)(2) and 423.1020(a)(2), the plan sponsor must file an appeal within 60 calendar days of receiving the CMP notice.

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

If BSW does not request an appeal in the manner and timeframe described above, the initial determination by CMS to impose a CMP will become final and due on March 20, 2025. BSW may choose to have the penalty deducted from its monthly payment or transfer the funds electronically. To notify CMS of your intent to make payment and for instructions on how to make payment, please call or email the enforcement contact provided in the email notification.

Impact of CMP

Further failures by BSW to provide its enrollees with Medicare benefits in accordance with CMS requirements may result in CMS imposing additional remedies available under law, including contract termination, intermediate sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If BSW 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: Ashley Hashem, CMS/ OPOLE
Verna Hicks, CMS/OPOLE
MG Baraybar, CMS/OPOLE
Kevin Stansbury, CMS/CM/MOEG/DCE