

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

March 21, 2024

Mr. Curtis Barnett
Chief Executive Officer
USABLE Mutual Insurance Company
601 Gaines Street
Little Rock, AR 72201

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug and Part D Prescription Drug Contract Numbers: H3554, H6158, H9699, and S5795

Dear Mr. Barnett:

Pursuant to 42 C.F.R. §§ 422.752(c)(1), 422.760(b), 423.752(c)(1), and 423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to USABLE Mutual Insurance Company (USABLE) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$5,336** for Medicare Advantage-Prescription Drug (MA-PD) and Part D Prescription Drug (PDP) Contract Numbers H3554, H6158, H9699, and S5795.

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

Summary of Noncompliance

CMS conducted an audit of USABLE's operations from May 30, 2023 through June 16, 2023. In a program audit report issued on September 6, 2023, CMS auditors reported that USABLE failed to comply with Medicare requirements related to the administration of the Part D prescription drug benefit in violation of 42 C.F.R. 423 Subpart C. One (1) failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees. These enrollees experienced or likely experienced delays in access to medications or paid out-of-pocket costs for medications.

CMS reviews audit findings individually to determine if an enforceable violation has occurred warranting a CMP. CMPs are calculated and imposed when a finding of non-compliance adversely affected or had a substantial likelihood of adversely affecting enrollees. The determination to impose a CMP on a specific finding does not correlate with the MA-PD's overall audit performance.

Part D Formulary and Benefit Administration Requirements

Medicare Part D Prescription Drug Program requirements apply to stand-alone Prescription Drug Plan sponsors and to Medicare Advantage organizations that offer Part D prescription drug benefits. Sponsors that offer these plans are required to enter into agreements with CMS by which the sponsors agree to comply with a number of statutory, regulatory, and sub-regulatory requirements.

Qualified Prescription Drug Coverage.

(42 C.F.R. §423.104; Chapter 5, Section 20.1 of the Medicare Prescription Drug Benefit Manual, (IOM Pub. 100-18))

A Part D sponsor must provide its enrollees with qualified prescription drug coverage. Qualified prescription drug coverage, which consists of the either standard or alternative prescription drug coverage, may be provided directly by the Part D sponsor or through arrangements with other entities.

Violation Related to Part D Formulary and Benefit Administration

CMS determined that US Able inappropriately rejected formulary medications because its staff failed to ensure enrollees' Part D coverage was updated timely in its pharmacy adjudication system. As a result, enrollees were inappropriately denied coverage for medications at the point of sale and enrollees experienced a delay in access to medications or paid for medications out-of-pocket. This failure violates 42 C.F.R. §§ 423.104(a).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. §§ 422.752 (c)(1)(i) and 423.752(c)(1)(i), CMS may impose a CMP for any determination made under 42 C.F.R. §§ 422.510 (a)(1) and 423.509(a)(1). Specifically, CMS may issue a CMP if an MA-PD has failed substantially to follow Medicare requirements according to its contract. Pursuant to 42 C.F.R. §§ 422.760(b)(2) and 423.760(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 US Able failed substantially to carry out the terms of its contract (42 C.F.R. §§ 422.510(a)(1) and 423.509(a)(1)) because it substantially failed to comply with requirements related to the administration of the Part D prescription drug benefit at 42 C.F.R. 423.104(a). US Able's violation of Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees and warrants the imposition of a CMP.

Right to Request a Hearing

US Able 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. US Able must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by May 21, 2024.¹ The request for

¹ Pursuant to 42 C.F.R. §§ 422.1020(a)(2) and 423.1020(a)(2), the organization must file an appeal within 60 calendar
Page 2 of 4

hearing must identify the specific issues and the findings of fact and conclusions of law with which USABLE disagrees. USABLE 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:

Department of Health & Human Services
Departmental Appeals Board, MS 6132 Civil
Remedies Division
Medicare Appeals Council 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:

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 USABLE 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 May 22, 2024. USABLE 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 email the enforcement contact provided in the email notification.

Impact of CMP

Further failures by USABLE 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 USABLE 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/CM/MOEG/DCE
Laura Coleman, CMS/OPOLE
Mike Moore, CMS/OPOLE
Verna Hicks, CMS/OPOLE
Mark Holly, CMS/OPOLE