

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**

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November 2, 2023

Mr. James Repp  
President and Chief Operating Officer  
AvMed, Inc.  
3470 NW 82<sup>nd</sup> Avenue  
Doral, FL 33122

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Number: H1016

Dear Mr. Repp:

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 AvMed, Inc. (AvMed), 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) Contract Number H1016.

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

**Summary of Noncompliance**

In 2022, CMS conducted an audit of AvMed's 2020 Medicare financial information. In a financial audit report issued on July 26, 2022, CMS auditors reported that AvMed failed to comply with Medicare requirements related to Part C cost sharing in violation of 42 C.F.R. Part 422, Subpart F. More specifically, auditors found that in 2020 that AvMed overcharged enrollees for Part C medical services. AvMed's failures adversely affected (or had the substantial likelihood of adversely affecting) enrollees because they may have experienced increased out-of-pocket costs.

**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

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<sup>1</sup> Referenced collectively as "plan sponsor".

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 AvMed failed to comply with cost sharing requirements by charging incorrect coinsurance amounts. More specifically, due to a configuration error, AvMed did not apply the appropriate cost sharing to inpatient hospital care during the same 60-day benefit period.<sup>2</sup> Per the Plan's benefit design, the copayment for an inpatient hospital stay aligns with the inpatient hospital day of service.<sup>3</sup> If the individual leaves the hospital and returns within the 60-day benefit period, then the copayment amount will continue from the day after the end of the prior inpatient hospital stay. AvMed, however, did not consider the prior inpatient discharge dates when evaluating cost-sharing for inpatient stays during the same 60-day benefit period. This caused claims to providers to be paid incorrectly which resulted in enrollees being overcharged for their coinsurance. AvMed did not refund the enrollees until after the financial audit. This failure violates 42 C.F.R. § 422.270(b).

### **Basis for Civil Money Penalty**

Pursuant to § 422.752(c)(1)(ii), 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 follow Medicare requirements according to its contract. Pursuant to § 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 AvMed 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, Subpart F. AvMed's violations of Part C requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

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

AvMed 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. AvMed must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by January 2, 2024<sup>4</sup>. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with

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<sup>2</sup> 42 C.F.R. §§ 409.60 and 422.100(a)

<sup>3</sup> Per the 2020 CMS approved EOC: *Inpatient hospital care: You pay \$0 for days 1-5. You pay \$40 per day for days 6-20. You pay \$0 for days 21-90. You pay \$0 for days 91 and beyond.*

<sup>4</sup> 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.

which AvMed disagrees. AvMed 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](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](mailto:kevin.stansbury@cms.hhs.gov)

If AvMed 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 January 3, 2024. AvMed may choose to have the penalty deducted from its monthly payment, transfer the funds electronically, or mail a check to CMS. 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 AvMed 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 AvMed 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: Tamara McCloy, CMS/ OPOLE  
Mortez Williams, CMS/OPOLE  
Ruth-Lande Charles Rogers, CMS/OPOLE  
Scott Beach, CMS/OPOLE  
Kevin Stansbury, CMS/CM/MOEG/DCE