

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

November 2, 2023

Ms. Martha Wofford
Chief Executive Officer
Blue Cross & Blue Shield of Rhode Island
500 Exchange Street
Providence, RI 02903

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Numbers: H3557 and H4152

Dear Ms. Wofford:

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 Blue Cross & Blue Shield of Rhode Island (BCBS of RI) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$24,940** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H3557 and H4152.

An MA-PD organization's¹ primary responsibility is to provide Medicare enrollees with medical services and prescription drug benefits in accordance with Medicare requirements. CMS has determined that BCBS of RI failed to meet that responsibility.

Summary of Noncompliance

In 2022, CMS conducted an audit of BCBS of RI's 2020 Medicare financial information. In a financial audit report issued on July 13, 2022, CMS auditors reported that BCBS of RI failed to comply with Medicare requirements related to the Part D low-income subsidy program in violation of 42 C.F.R. Part 423, Subparts J and P and Part C cost sharing in violation of 42 C.F.R. Part 422, Subpart F. More specifically, auditors found that BCBS of RI overcharged enrollees for Part D medications and Part C medical services. BCBS's failures 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 D Low Income Subsidy and Claims Adjustment Requirements (42 C.F.R. §§ 423.466(a) and 423.800 (d) - (e))

Medicare Part D Prescription Drug Program requirements apply to stand-alone Prescription Drug Plan sponsors, Medicare Cost Plans, and 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.

Pursuant to 42 C.F.R. § 423.800, CMS notifies the sponsor offering the Part D plan of an individual's eligibility for a subsidy and the amount of the subsidy. Pursuant to 42 C.F.R. § 423.800(d)-(e), a sponsor must process prescription drug claims in accordance with the low-income subsidy (LIS) enrollees' subsidy amount to ensure LIS enrollees are charged appropriate cost sharing for Part D drugs. In addition, pursuant to 42 C.F.R. § 423.466(a), if LIS enrollees are not charged the correct cost sharing, the organization must reprocess (i.e., retroactively adjust) the drug claim and issue refunds or recovery notices within 45 days of the sponsor's receipt of complete information regarding claims adjustment.

Violation Related to Part D Low Income Subsidy and Claims Adjustment Requirements

CMS determined that BCBS of RI failed to process retroactive adjustments to cost sharing for LIS individuals, after receiving complete information regarding LIS eligibility updates, and issue any resulting refunds within the applicable timeframes. This issue occurred because BCBS of RI did not send LIS eligibility updates to its pharmacy benefit manager (PBM). As a result, the PBM processed Part D claims using incorrect LIS eligibility data and overcharged enrollees for their medications. In some cases, beneficiaries overpaid for prescription drugs. BCBS of RI did not refund enrollees who overpaid until after the financial audit. This is in violation of 42 C.F.R. §§ 423.466(a) and 423.800(e).

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 BCBS of RI failed to comply with cost sharing requirements by charging incorrect cost sharing amounts. More specifically, ambulance cost sharing was not being applied

to enrollees' Maximum Out of Pocket (MOOP) accumulations, and therefore, BCBS of RI failed to correctly calculate out-of-pocket spending accrued by its enrollees. As a result, enrollees paid amounts in excess of their annual MOOP limit. In some cases, BCBS of RI did not refund enrollees who overpaid until after the financial audit. This failure violates 42 C.F.R. §422.270(b).

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 a MA-PD or PDP 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 affected) by the deficiency.

CMS has determined that BCBS of RI failed substantially to carry out the terms of its contract (42 C.F.R. §§ 422.510(a)(1) and 423.509(a)(1)) by substantially failing to comply with requirements at 42 C.F.R. Part 422, Subpart F and Part 423, Subparts J and P. BCBS of RI's violations of Part C and Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

Right to Request a Hearing

BCBS of RI 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. BCBS of RI must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by January 2, 2024². The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which BCBS of RI disagrees. BCBS of RI 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

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.

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 BCBS of RI 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. BCBS of RI 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 BCBS of RI 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 BCBS of RI 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: Doug Edwards, CMS/OPOLE
Adele Pietrantoni, CMS/OPOLE
Liza Marie Cintron, CMS/OPOLE
Deborah O'Leary, CMS/OPOLE
Kevin Stansbury, CMS/CM/MOEG/DCE