

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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December 6, 2021

Mr. Art Carlos  
Chief Executive Officer  
Clear Spring Health Insurance Company  
250 S. Northwest Highway, Suite 302  
Park Ridge, IL 60068

Re: Notice of Imposition of Civil Money Penalty for Prescription Drug Plan Contract  
Number: S6946

Dear Mr. Carlos:

Pursuant to 42 C.F.R. §§ 423.752(c)(1) and 423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Clear Spring Health Insurance Company (Clear Spring) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$53,162** for Prescription Drug Plan (PDP) contract number: S6946

A PDP's primary responsibility is to provide Medicare beneficiaries with prescription drug benefits in accordance with Medicare requirements. CMS has determined that Clear Spring failed to meet that responsibility.

**Summary of Noncompliance**

In January 2021, CMS received an influx of complaints in CMS's Complaints Tracking Module (CTM) indicating that, Clear Spring (contract S6946), was experiencing issues with processing enrollment requests. Clear Spring informed CMS that some enrollment applications were inappropriately denied.<sup>1</sup> In some cases, enrollment processors lacked knowledge of enrollments that are permitted through special election periods and the open enrollment period. In other cases, when beneficiaries contacted Clear Spring's customer call center to provide missing enrollment information, beneficiaries were either unable to get through to a representative or their information was routed to the wrong department. As a result of these issues, CMS' CTM indicated that Clear Spring was an outlier for enrollment related complaints. CMS finds Clear Spring's failures to be substantial and to have adversely affected or had the substantial likelihood of adversely affecting enrollees.

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<sup>1</sup> Clear Spring did not provide CMS with the exact number of inappropriately denied applications.

**Prescription Drug Plan Enrollment Processing Requirements and Information  
Dissemination Requirements** (42 C.F.R. Part 423, Subpart B, 42 C.F.R. §§ 423.128(c)(1),  
423.128(d)(1) ; Medicare Prescription Drug Benefit Manual sections 40.2.2 and 40.2.3)

All PDP sponsors must timely process enrollment requests, for individuals who are eligible to enroll in a PDP plan, in accordance with CMS enrollment guidelines. Sponsors must have an effective system for receiving, controlling, and processing enrollment elections. Sponsors must timely transmit the information necessary for CMS to add the beneficiary to its records as an enrollee of the sponsor.

Sponsors are also required to give individual enrollment applicants prompt notice of acceptance or denial in a format specified by CMS. In the cases where an enrollment request is incomplete, the sponsor must promptly notify the individual that additional documentation is needed for the enrollment request. When the applicant fails to provide the information within the required time frame, a sponsor must deny the enrollment and must send notice of the denial to the individual that includes an explanation of the reason for denial. However, if the applicant provides the information within the required time frame, the sponsor must process the enrollment to completion.

Prior to the effective date of coverage, a sponsor must provide enrollees with all the necessary information about being a member of the PDP organization, the PDP organization rules, the member's rights and responsibilities, and the member's ID card. Member ID cards or other technology must be issued or reissued to enrollees to access services or covered Part D drugs. In addition, each sponsor must have a call center that provides specific information on a timely basis to current and prospective members. This includes answering the calls within a reasonable timeframe to ensure that enrollee's issues are addressed quickly and accurately. Failing to promptly acknowledge enrollment elections, provide required materials to enrollees, and timely answer enrollees' requests for information may result in delays or denials of medications and services because the enrollee does not have the necessary documentation or information to substantiate insurance coverage.

Sponsors must pay particular attention to their enrollment operations each December in preparation for the start of a new plan benefit year the following January. They must make certain that prior to January 1, their enrollment records show that the sponsor's continuing enrollees are assigned to the correct benefit plan package for the upcoming year, that new enrollees who elected the sponsor's plan during the annual election period are assigned to the plan they chose, and that the correct LIS status is recorded for each beneficiary.

**Violations Related to Prescription Drug Plan Enrollment Processing Requirements and Information Dissemination Requirements**

CMS determined that Clear Spring violated the following Medicare Part D requirements:

1. Sponsor failed to timely and accurately process beneficiary enrollment requests. As a result, there is a substantial likelihood that beneficiaries were delayed and/or denied medications. This is in violation of 42 C.F.R. § 423.32(c).

2. Sponsor failed to provide information on a timely basis to current and prospective enrollees when enrollees contacted the customer service call center. As a result, there is a substantial likelihood that beneficiaries' issues were not adequately addressed, which may cause delays in access to medications and other beneficiary needs. This is in violation of 42 C.F.R. § 423.128(d)(1).

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

Pursuant to 42 C.F.R. §423.752(c)(1)(i), CMS may impose a CMP for any determination made under §423.509. Specifically, CMS may issue a CMP if a Part D Prescription Drug Plan has failed substantially to follow Medicare requirements according to its contract. Pursuant to §423.760(b)(2), a penalty may be imposed for each determination where the deficiency has adversely affected (or that had the substantial likelihood of being adversely affecting) one or more enrollees.

CMS has determined that Clear Spring failed substantially to carry out the terms of its contract (42 C.F.R. 423.509(a)(1)) and that Clear Springs's violations of Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

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

Clear Spring may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. Part 423, Subpart T. Clear Spring must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by February 7, 2022.<sup>2</sup> The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Clear Spring disagrees. Clear Spring 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.

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<sup>2</sup> The 5<sup>th</sup> falls on a weekend or holiday, therefore the date reflected in the notice is the next regular business day for you to submit your request.

A copy of the hearing request should also be sent 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 Clear Spring 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 February 8, 2022. Clear Spring 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**

Please note, this action may factor into Clear Spring's Past Performance calculations.

Further failures by Clear Spring 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 Clear Spring 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: Judith Flynn CMS/ OPOLE  
Raymond Swisher CMS/OPOLE  
Tim Lape, CMS/ OPOLE  
Avalon Gordon, CMS/ OPOLE  
Kevin Stansbury, CMS/CM/MOEG/DCE