

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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May 23, 2023

Ms. Karen Ignagni  
President & CEO  
EmblemHealth, Inc.  
55 Water Street  
Admin - Corp Exec. Office  
New York, NY 10041

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug,  
Plan Contract Numbers: H3276, H3528, H3330, H5991

Dear Ms. Ignagni:

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 EmblemHealth, Inc. (EmblemHealth), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$116,288** for Medicare Advantage-Prescription Drug Plan (MA-PD) Contract Numbers H3276, H3528, H3330, H5991.

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

**Summary of Noncompliance**

CMS conducted an audit of EmblemHealth's Medicare operations from DATE. Pursuant to 42 C.F.R. §422.503(d)(2)(iv) and 42 C.F.R. §423.504(d)(2)(iv), CMS required EmblemHealth to hire an independent auditor to determine if deficiencies found during that initial audit were corrected and were not likely to recur. An independent auditor retained by EmblemHealth, conducted a validation audit of EmblemHealth's Medicare operations from DATE. On November 11, 2022, CMS issued a 2021 Program Audit Validation Results Notice, which found that EmblemHealth failed to comply with Medicare requirements related to Part C organization determinations, appeals, and grievances in violation of 42 C.F.R. Part 422, Subparts C and M. One (1) failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees. The enrollees experienced, or likely experienced increased out-of-pocket expenses.

CMS reviews validation 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.

### **Plan Directed Care Requirements**

*(42 C.F.R. § 422.105(a); Chapter 4, Section 160 of the Medicare Managed Care Manual, (IOM Pub. 100-16))*

If a contracted provider refers an enrollee to a non-contracted provider for a service that is covered by the MA organization upon referral, the enrollee is financially liable for only the applicable cost-sharing for that service. This is known as plan directed care and must be taken into consideration when the MA organization makes a decision to pay for services furnished by non-contracted providers.

### **Violation Related to Plan Directed Care Requirements**

CMS determined that EmblemHealth failed to hold enrollees harmless for Part C items or services provided by non-contracted providers referred by contract providers. This failure occurred because EmblemHealth's claims processing system was configured to automatically deny certain non-contract facility and radiology claims regardless of the referring provider. As a result, there is a substantial likelihood that these enrollees incurred inappropriate out-of-pocket costs for these items and services. This is in violation of 42 C.F.R. § 422.105(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 a MA-PD has failed substantially to follow Medicare requirements according to its contract. Pursuant to 42 C.F.R. §§ 422.760(b)(1) and 423.760(b)(1), a penalty may be imposed for each determination where the deficiency has directly adversely affected (or has substantial likelihood of adversely affecting) one or more enrollees.

CMS has determined that EmblemHealth failed substantially to carry out the terms of its contract (42 C.F.R. § 422.510(a)(1)) and that EmblemHealth's violation of Part C 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**

EmblemHealth 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. EmblemHealth must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by July 24,

2023.<sup>1</sup> The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which EmblemHealth disagrees. EmblemHealth 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 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](mailto:kevin.stansbury@cms.hhs.gov)

If EmblemHealth 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 July 24, 2023. EmblemHealth 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 EmblemHealth 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.

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<sup>1</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. The 60<sup>th</sup> day 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.

If EmblemHealth 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: Douglas Edwards, CMS/OPOLE  
Rachel Walker, CMS/ OPOLE  
Allan Auguste, CMS/ OPOLE  
Kevin Stansbury, CMS/CM/MOEG/DCE