

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

August 7, 2023

Ms. Karen M. 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 and Prescription Drug Plan Contract Numbers: H3528, H3300, and S5966

Dear Ms. Ignagni:

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 EmblemHealth, Inc. (Emblem), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$19,024** for Medicare Advantage-Prescription Drug (MA-PD) and Prescription Drug Plan (PDP) Contract Numbers H3528, H3300, and S5966.

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 Emblem failed to meet that responsibility.

Summary of Noncompliance

In 2022, CMS conducted an audit of Emblem's 2020 Medicare financial information. In a financial audit report issued on August 11, 2022, CMS auditors reported that Emblem failed to comply with Medicare requirements related to Part D Late Enrollment Penalties (LEP) in violation of 42 C.F.R. Part 423, Subpart F. More specifically, auditors found that in 2020 that Emblem failed to comply with Part D premium requirements by billing and collecting incorrect LEP amounts as part of enrollees' Part D premiums.

Part D Premium Requirements (42 C.F.R. §§ 423.752(a)(2), 423.286 and 423.293)

Pursuant to 42 C.F.R. § 423.293(a) MA-PD or PDP organizations must charge enrollees a consolidated monthly Part D premium equal to the sum of the Part D monthly premium for basic prescription drug coverage (if any) and the premium for supplemental coverage (if any and if the

beneficiary has enrolled in such supplemental coverage). Per 42 C.F.R. § 423.286(d)(3), the base beneficiary premium for a Part D enrollee who is subject to a late enrollment penalty is increased by the amount of any late enrollment penalty (LEP). MA-PD organizations must not impose on enrollees, premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under § 423.293.

Violation Related to Part D Premiums

CMS determined that Emblem failed to comply with Part D premium requirements by billing and collecting incorrect LEP amounts as part of enrollees Part D premiums. This occurred because Emblem implemented a new pre-enrollment system, and in doing so failed to move the updated LEP information to the new system and outdated LEP amounts continued to be charged to enrollees. As a result, beneficiaries received and paid incorrect Part D premium bills. This failure violates §§ 423.752(a)(2), 423.286, and 423.293.

Basis for Civil Money Penalty

Pursuant to § 423.752(c)(1)(ii), CMS may impose a CMP for any of the bases listed under § 423.752(a). Specifically, CMS may issue a CMP if an MA-PD imposes on Part D plan enrollees, premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under section 1860D-1 et seq. of the Act and subpart F of part 423.

CMS has determined that Emblem failed to comply with Part D premium requirements by billing and collecting incorrect Part D premium amounts from enrollees (§§ 423.752(a)(2)).

Right to Request a Hearing

Emblem 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. Emblem must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by October 10, 2023¹. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Emblem disagrees. Emblem 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

¹ 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 60th 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.

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 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

If Emblem 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 October 11, 2023. Emblem 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 Emblem 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 Emblem 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/CMS/MOEG/DCE