

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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March 22, 2022

Ms. Camille Harrison  
Executive Vice President & CEO  
Guidewell Mutual Holding Corporation  
4800 Deerwood Campus Parkway  
Jacksonville, FL 32246

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Numbers: H1035, H5434, and R3332

Dear Ms. Harrison:

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 Guidewell Mutual Holding Corporation (Guidewell), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$52,258** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H1035, H5434, and R3332.

An MA-PD 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 Guidewell failed to meet that responsibility.

**Summary of Noncompliance**

CMS conducted an audit of Guidewell's Medicare operations from May 10, 2021 through May 28, 2021. In a program audit report issued on August 13, 2021, CMS auditors reported that Guidewell failed to comply with Medicare requirements related to Part C organization determinations, appeals, and grievances in violation of 42 C.F.R. Part 422, Subpart M. One (1) failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees. The enrollees experienced, or likely experienced, delayed or denied access to covered benefits and/or increased out-of-pocket costs.

CMS reviews 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.

## **Part C Organization Determination, Appeal, and Grievance Requirements** *(42 C.F.R. Part 422, Subpart M)*

A Part C organization determination is when an enrollee, provider, or legal representative of a deceased enrollee requests coverage or payment for an item or service with an MA organization. The first level of review is the organization determination, which is conducted by the MA organization. If the MA organization expects to deny (either partially or fully) the organization determination based on medical necessity, the organization determination must be reviewed by a physician or other appropriate health care professional with sufficient medical and other expertise, including knowledge of Medicare coverage criteria.

Medical coverage decisions must be made within the required timeframes and in accordance with Medicare coverage guidelines, Medicare covered benefits, each MA organization's CMS-approved coverage, and contracts with providers. This can be made by furnishing the benefits directly or through arrangements, or by paying for the benefits. If the MA organization incorrectly denies or delays coverage decisions, then enrollees may be inappropriately denied or delayed access to services, or may be held financially liable for services already received.

### **Violation Related to Part C Organization Determinations, Appeals and Grievances**

CMS determined that Guidewell inappropriately denied organization determination requests that were based on medical necessity because they were not reviewed by a physician or other appropriate health care professional prior to the denial. As a result, enrollees may have incurred inappropriate out-of-pocket expenses for the denied services. The failure violates 42 C.F.R. § 422.566(d).

### **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 Medicare Advantage - Prescription Drug Plan 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 Guidewell failed substantially to carry out the terms of its contract (42 C.F.R. § 422.510(a)(1)). Additionally, CMS determined that Guidewell failed substantially to comply with requirements in Subpart M relating to grievances and appeals (42 C.F.R. § 422.510(a)(4)(ii)). Guidewell'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**

Guidewell 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. Guidewell must send a request

for a hearing to the Departmental Appeals Board (DAB) office listed below by May 23, 2022.<sup>1</sup> The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Guidewell disagrees. Guidewell 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 Guidewell 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 May 24, 2022. Guidewell 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 Guidewell to provide its enrollees with Medicare benefits in accordance with CMS requirements may result in CMS imposing additional remedies available under law,

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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.

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 Guidewell 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  
Michael Taylor, CMS/ OPOLE  
Shannon Comage, CMS/ OPOLE  
Kevin Stansbury, CMS/CM/MOEG/DCE