

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

March 16, 2023

Dr. Pavel Bindra
Chief Executive Officer
Imperial Health Plan of California
1100 East Green Street
Pasadena, CA 91106

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Numbers: H2793 and H5496

Dear Dr. Bindra:

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 Imperial Health Plan of California (Imperial Health) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$39,208** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H2793 and H5496.

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 Imperial Health failed to meet that responsibility

Summary of Noncompliance

CMS conducted an audit of Imperial Health's Medicare operations from May 23, 2022 through June 10, 2022. In a program audit report issued on October 27, 2022, CMS auditors reported that Imperial Health 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 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, Subparts C and 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. Each MA organization must have a procedure for making timely organization determinations regarding the benefits an enrollee is entitled to receive under an MA plan, including basic benefits, mandatory, and optional supplemental benefits, and the amount, if any, that the enrollee is required to pay for a health service.

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 Imperial Health inappropriately denied post-service organization determinations (claims) from non-contracted providers because they did not have procedures in place to make appropriate clinical decisions. As a result of not having procedures, Imperial Health's staff did not review the available medical records and supporting documents before making a denial based on lack of medical necessity. An adverse decision based on a determination that the clinical documentation supporting the coverage request is unavailable or insufficient (i.e., there is unmet criteria) is generally considered a denial based on the lack of medical necessity (see Section 40.9 Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance). However, in this case Imperial Health had the clinical documentation, but due to the lack of procedures, staff did not review all of the available documents. This is in violation of 42 C.F.R. § 422.566(a), which requires plans to have procedures in place to make timely organization determinations in accordance with Subpart M regarding the benefits an enrollee is entitled to receive.

This resulted in the inappropriate denial of post-service organization determinations (claims). As a result, there is a substantial likelihood that these enrollees incurred inappropriate out-of-pocket costs for these items and services.

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)(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 affecting) by the deficiency.

CMS has determined that Imperial Health failed substantially to carry out the terms of its contract (42 C.F.R. § 422.510(a)(1)). Additionally, CMS determined that Imperial Health failed substantially to comply with requirements in Subpart M relating to grievances and appeals (42 C.F.R. § 422.510(a)(4)(ii)). Imperial Health'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

Imperial Health 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. Imperial Health must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by May 16, 2023¹. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Imperial Health disagrees. Imperial Health 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:

Department of Health & Human Services
Departmental Appeals Board, MS 6132
Civil Remedies Division
Medicare Appeals Council
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 Imperial Health 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 17, 2023.

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.

Imperial Health 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 Imperial Health 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 Imperial Health 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: Kevin Stansbury, CMS/CM/MOEG/DCE
Adrienne Carter, CMS/OPOLE
Nyetta Patton, CMS/OPOLE
Ayanna Busby-Jackson, CMS/OPOLE
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