

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

November 30, 2022

Ms. Agnes Strandberg
Senior Vice President, Medicare
1800 Harrison St., 11th Floor
Oakland, CA 94612

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Number: H0524, H0630, H1170, H1230, and H9003

Dear Ms. Strandberg:

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 Kaiser Foundation Health Plan, Inc, (Kaiser) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$27,260** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers, H0524, H0630, H1170, H1230, and H900.

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 Kaiser failed to meet that responsibility.

Summary of Noncompliance

In 2021, CMS conducted an audit of Kaiser's 2019 Medicare financial information. In a financial audit report issued on June 9, 2021, CMS auditors reported that Kaiser failed to comply with Medicare requirements related to Part D coordination of benefits and low-income subsidy (LIS) requirements in violation of 42 C.F.R. Part 423, Subparts J and P. More specifically, auditors found that in 2019 Kaiser failed to reprocess prescription drug claims in accordance with enrollee's LIS levels within 45 days of the receiving complete information regarding the enrollees LIS status. As a result, enrollees were over charged for Part D drugs at the point of sale and Kaiser then failed to ensure refunds were provided to enrollees who overpaid.

Part D Coordination of Benefits Low-Income Subsidy (LIS) Requirements

42 C.F.R. §§ 423.466(a) and 423.800(d)-(e)

Medicare Part D Prescription Drug Program requirements apply to stand-alone Prescription Drug Plan sponsors, Medicare Cost Plans, and Medicare Advantage organizations that offer Part D

prescription drug benefits. Sponsors that offer these plans are required to enter into agreements with CMS by which the sponsors agree to comply with a number of statutory, regulatory, and sub-regulatory requirements.

Pursuant to 42 C.F.R. §§ 423.466 and 423.800, CMS notifies the sponsor offering the Part D plan of an individual's eligibility for a subsidy and the amount of the subsidy. Pursuant to § 423.800(d)-(e), a sponsor must process prescription drug claims in accordance with the LIS enrollees' subsidy amount to ensure LIS enrollees are charged appropriate cost sharing for Part D drugs. In addition, pursuant to § 423.466(a), if LIS enrollees are not charged the correct cost sharing, the organization must reprocess (i.e., retroactively adjust) the drug claim and issue refunds or recovery notices within 45 days of the sponsor's receipt of complete information regarding claims adjustment.

Violations Related to Part D Coordination of Benefits Low-Income Subsidy (LIS) Requirements

CMS determined that Kaiser failed to comply with Part D coordination of benefits and LIS requirements by failing to reprocess prescription drug claims in accordance with enrollee's LIS levels within 45 days of the receiving complete information regarding the enrollees LIS status. This issue occurred because Kaiser implemented a manual review process of LIS eligibility levels which resulted in omitting a specific subset of enrollees whose LIS levels changed and whose claims required reprocessing at the correct LIS level. As a result, enrollees overpaid for prescription drugs and were not refunded within the applicable timeframes. This failure violates 42 C.F.R. §§ 423.466(a) and 423.800(e).

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 affected) by the deficiency.

CMS has determined that Kaiser failed substantially to carry out the terms of its contract (42 C.F.R. § 423.509(a)(1)) by substantially failing to comply with requirements at 42 C.F.R. Part 423, Subparts J and P. Kaiser's violations of Part D 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

Kaiser 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. Kaiser must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by January 30, 2023. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with

which Kaiser disagrees. Kaiser 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_cr_d_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 Kaiser 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 January 31, 2023. Kaiser 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 Kaiser 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 Kaiser 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/CMS/MOEG/DCE
Brenda Suiter, CMS/OPOLE
Jordan Luke, CMS/OPOLE
Ayanna Busby Jackson, CMS/OPOLE
Jullin Kwok, CMS/OPOLE