

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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January 17, 2025

Mrs. Laura Leech  
Vice President  
Medco Containment Life and Medco Containment NY  
10833 Brandie Meadow Lane  
Huntersville, NC 28078

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Number: S5660

Dear Mrs. Leech:

Pursuant to 42 C.F.R. §§ 423.752(c)(1) and 423.760(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Medco Containment Life and Medco Containment NY (Medco), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$32,364** for Prescription Drug Plan (PDP) Contract Number S5660.

A PDP's primary responsibility is to provide Medicare beneficiaries with prescription drug benefits in accordance with Medicare requirements. CMS has determined that Medco failed to meet that responsibility.

**Summary of Noncompliance**

In 2023, CMS conducted an audit of Medco's 2021 Medicare financial information. In financial audit reports issued on June 16, 2023, CMS auditors reported that Medco 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 2021, Medco failed to reprocess prescription drug claims in accordance with enrollee's LIS levels within 45 days of receiving complete information regarding the enrollee's LIS status. Medco's failure to comply with Part D requirements adversely affected (or had the substantial likelihood of adversely affecting) enrollees because they may have experienced increased out-of-pocket costs.

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

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

Pursuant to 42 C.F.R. § 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), whenever a sponsor receives information that necessitates a retroactive claims adjustment, the sponsor must process the adjustment 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 and Low-Income Subsidy (LIS) Requirements**

CMS determined that Medco failed to comply with Part D coordination of benefits and LIS requirements by failing to process retroactive adjustments to cost sharing for LIS individuals and issue any resulting refunds within 45 days of the receipt of complete information regarding the claims adjustment. More specifically, due to an ineffective adjustment process, retroactive adjustments to prescription drug event (PDE) records were not reprocessed automatically after revised LIS level changes were received. As a result, enrollees were overcharged for Part D drugs. Medco's failure to comply with LIS requirements violates 42 C.F.R. §§ 423.466(a) and 423.800(e).

### **Basis for Civil Money Penalty**

Pursuant to 42 C.F.R. § 423.752(c)(1)(i), CMS may impose a CMP for any determination made under 42 C.F.R. § 423.509(a)(1). Specifically, CMS may issue a CMP if a PDP has failed substantially to carry out its contract. Pursuant to 42 C.F.R. § 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 Medco 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. Medco's violations of Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees and warrant the imposition of a CMP.

### **Right to Request a Hearing**

Medco may request a hearing to appeal CMS's determination in accordance with the procedures outlined in 42 C.F.R. Part 423, Subpart T. Medco must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by March 19, 2025.<sup>1</sup> The request for hearing must identify the specific issues and the findings of fact and conclusions of law with

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<sup>1</sup> Pursuant to 42 C.F.R. § 423.1020(a)(2), the Part D sponsor must file an appeal within 60 calendar days of receiving the CMP notice.

which Medco disagrees. Medco 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 Medco 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 March 20, 2025. Medco may choose to have the penalty deducted from its monthly payment or transfer the funds electronically. 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 Medco 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. Part 423, Subparts K and O.

If Medco 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  
Ashley Hashem, CMS/ OPOLE  
Adele Pietrantonio, CMS/OPOLE  
Ericka Williams, CMS/OPOLE