

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

Mr. Robert Gootee
Chief Executive Officer
Moda Health Plan, Inc.
601 S.W. Second Avenue
Suite 900
Portland, OR 97204

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Number: H3813

Dear Mr. Gootee:

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 Moda Health Plan, Inc. (Moda Health), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$5,800** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number H3813.

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 Moda Health failed to meet that responsibility.

Summary of Noncompliance

In 2022, CMS conducted an audit of Moda Health's 2020 Medicare financial information. In a financial audit report issued on August 8, 2022, CMS auditors reported that Moda Health failed to comply with Medicare requirements related to Part C cost sharing in violation of 42 C.F.R. Part 422, Subpart F. More specifically, auditors found that in 2020 that Moda Health overcharged enrollees for Part C medical services. Moda Health's failures adversely affected (or had the substantial likelihood of adversely affecting) enrollees because they may have experienced increased out-of-pocket costs.

Part C Cost Sharing Requirements (42 C.F.R. §§ 422.111(b), 422.254, and 422.270; Chapter 4, Section 50 of the Medicare Managed Care Manual (IOM Pub. 100-16))

Every year, a plan sponsor must submit to CMS an aggregate monthly bid amount which must include a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of the deductibles, coinsurance, and copayments. When the bid is approved by CMS the plan sponsor must provide to each enrollee a description of the benefits offered under a plan, including the applicable cost-sharing for the benefits (see 42 C.F.R. § 422.111(b)). The plan sponsor must not charge an enrollee a different amount from what was approved in the bid and disclosed to the enrollee for that benefit. Pursuant to 42 C.F.R. §422.270(b), if the plan sponsor charges amounts in excess of the agreed upon cost-sharing, then the plan sponsor must agree to refund all amounts incorrectly collected from its Medicare enrollees.

Violation Related to Part C Cost Sharing

CMS determined that Moda Health failed to comply with cost sharing requirements by charging incorrect coinsurance amounts. More specifically, Moda Health failed to download and update their systems with a correct Medicare fee schedule when pricing out-of-network claims. Additionally, Moda Health did not reduce the reimbursement to out-of-network non-physician practitioners (i.e., nurse practitioners, nurse midwives, clinical nurse specialists, and physician assistants) by 15% as required by Medicare reimbursement requirements¹. This caused claims to providers to be paid incorrectly which resulted in enrollees being overcharged for their coinsurance. Moda Health did not refund the enrollees until after the financial audit concluded, which was two years after the incurred costs. This failure violates 42 C.F.R. § 422.270(b).

Basis for Civil Money Penalty

Pursuant to § 422.752(c)(1)(ii), CMS may impose a CMP for any determination made under 42 C.F.R. § 422.510(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 § 422.760(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 Moda Health substantially to carry out the terms of its contract (42 C.F.R. § 422.510(a)(1)) and that Moda Health's violations of Part C requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

Right to Request a Hearing

Moda 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. Moda Health must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by October 10,

¹ 42 C.F.R. §§ 414.52(c) & (d) and 414.56

2023². The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Moda Health disagrees. Moda 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:

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 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 Moda 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 October 11, 2023. Moda 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 Moda 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.

² 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.

If Moda 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: Adrienne Carter, CMS/ OPOLE
Nyetta Patton, CMS/OPOLE
Estavan Carter, CMS/OPOLE
Jose Hernandez, CMS/OPOLE
Kevin Stansbury, CMS/CMS/MOEG/DCE