

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 9, 2016

Ms. Charlene Maher
Chief Executive Officer
Blue Cross of Idaho Care Plus, Inc.
300 East Pine Ave.
Meridian, Idaho 83642

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Number: H1350

Dear Ms. Maher:

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 Blue Cross of Idaho Care Plus, Inc. (Blue Cross), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$102,820** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number: H1350

CMS has determined that Blue Cross failed to provide clear and accurate benefit information to its enrollees in the combined Contract Year (CY) 2016 Annual Notice of Change (ANOC) and Evidence of Coverage (EOC) documents.

Summary of Noncompliance

Blue Cross reported to CMS that 5,141 of its enrollees received inaccurate information about their 2016 benefits in Blue Cross' CY 2016 ANOC and EOC documents. The ANOC/EOC documents contained the following errors:

- The documents did not indicate that enrollees had a deductible in the deductible phase of the Part D benefit. However, enrollees were responsible for a \$200 deductible for Tier 3, Tier 4, and Tier 5 drugs.
- The documents incorrectly stated that, when the Sponsor approved coverage for a non-formulary drug, the enrollee must pay the cost-sharing amount that applies to drugs in Tier 4 (\$90 preferred pharmacy/\$100 non-preferred pharmacy). However, the Sponsor actually applied the cost-sharing amount that applies to drugs in Tier 5 (28% of total cost) to approved non-formulary exception requests.

Blue Cross mailed errata sheets correcting the inaccurate information on October 20, 2015. However, the inaccurate information combined with the delay in correcting the errors resulted in affected enrollees having a much shorter period of time to consider their Medicare health care and prescription drug options than is required during the Annual Election Period (AEP), and not being able to make fully informed decisions about their Medicare plan options for the 2016 plan benefit year.

Relevant Disclosure and Information Dissemination Requirements

Pursuant to 42 C.F.R. §§ 422.111(a) and 423.128(a), Sponsors are required to ensure that enrollees receive clear and accurate ANOC/EOC documents at least 15 days before the AEP. For the 2016 plan year, Sponsors were required to deliver ANOC/EOC documents to enrollees by September 30, 2016. The ANOC and EOC provide vital information to Medicare beneficiaries about their plans, and allow beneficiaries to make informed choices concerning Medicare health care and prescription drug options for the upcoming plan year. Sponsors are required to ensure that their ANOC/EOCs are accurate and mail errata sheets to enrollees quickly when inaccuracies are identified. Since 2009, CMS has repeatedly stressed the importance of providing accurate ANOC/EOC documents to enrollees timely, and noted that Sponsors would be subject to penalties for inaccurate documents and late mailings.

Violations Related to Disclosure and Information Dissemination Requirements

CMS has determined that Blue Cross violated the disclosure and information dissemination requirements, and the violation had the substantial likelihood of adversely affecting Blue Cross' enrollees. Blue Cross' violation includes:

1. Failure to provide clear and accurate benefit information to its enrollees for the 2016 Medicare AEP. As a result, affected enrollees did not receive accurate benefit information and were not able to make fully informed choices concerning their Medicare coverage for the 2016 plan benefit year. Blue Cross' action violated 42 C.F.R. §§ 422.111(a) and 423.128(a).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 422.752(c)(1), § 422.760(b), § 423.752(c)(1), and § 423.760(b), CMS has determined that Blue Cross' violations of Parts C and D requirements had the substantial likelihood of adversely affecting enrollees and warrants the imposition of a CMP. CMS has also determined that Blue Cross' action resulted in the Sponsor carrying out its contract in a manner that is "inconsistent with the effective and efficient implementation of this part." *See* 42 C.F.R. §§ 422.510(a)(2) and 423.509(a)(2).

Right to Request a Hearing

Blue Cross may appeal CMS' determination by requesting a hearing in accordance with the procedures outlined in 42 C.F.R. Parts 422 and 423, Subpart T. Blue Cross must send a written request for a hearing to the Departmental Appeals Board office listed below within 60 calendar

days from receipt of this notice (i.e., by October 11, 2016). The request for hearing must identify the specific issues, findings of fact, and conclusions of law with which Blue Cross disagrees. Blue Cross must also specify the basis for each contention that the finding or conclusion of law is incorrect. The request must be sent to:

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

A copy of the hearing request should also be sent to CMS at the following address:

John A. Scott
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-06
Email: JohnScott@cms.hhs.gov

If Blue Cross does not request an appeal in the manner and timeframe described above, the determination by CMS to impose a CMP will become final and the CMP will be due to CMS on October 11, 2016. Blue Cross may choose to have the CMP deducted from a monthly payment, transfer the funds electronically, or mail a check to CMS. Please call or email the enforcement contact indicated in the email notification sent to you in order to notify CMS of your intent to make payment and to receive instructions on making the payment.

Please note that additional violations by Blue Cross may result in CMS taking applicable remedies available under law, including penalties, intermediate sanctions, contract termination, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If Blue Cross has questions about this notice, please call or email the enforcement contact indicated in the email notification sent to you.

Sincerely,

/s/

Gerard J. Mulcahy
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Brenda Suiter, CMS/ CMHPO/Region X

Roya Rezai, CMS/ CMHPO/Region X
Bella Roytberg, CMS/ CMHPO/Region X
John Scott, CMS/CM/MOEG/DCE
Kevin Stansbury, CMS/CM/MOEG/DCE
Eric Butcher, CMS/CM/MOEG/DCE
Tim Roe, CMS/CM/MCAG/DSCM
Erica Sontag, CMS/CM/MCAG/DSCM