

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C1-22-06
Baltimore, Maryland 21244-1850



PROGRAM COMPLIANCE AND OVERSIGHT GROUP

October 25, 2011

VIA FEDERAL EXPRESS DELIVERY
E-MAIL (William_Gracey@bcbst.com)
AND FACSIMILE (423) 535-8846

Mr. Bill Gracey
President and Chief Operating Officer
Blue Cross Blue Shield of Tennessee
One Cameron Hill Circle
Chattanooga, TN 37402
Phone: 423-535-5533

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) Medicare
Advantage-Prescription Drug Organization Contract Number H7917

Dear Mr. Gracey:

Pursuant to 42 C.F.R. §422.752(c)(1), §422.756(f), §422.760(b), §423.752(c)(1), §423.756(f), and §423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Blue Cross Blue Shield of Tennessee (BCBST) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of \$20,000.

Basis for Civil Money Penalty

This action is based on your organization's failure to provide accurate enrollee information in Contract Year 2011 Annual Notice of Change (ANOC) documents, in violation of 42 C.F.R. §422.64, §422.111, §423.48, and §423.128. As a result, CMS has determined that your organization is carrying out its contract in a manner "inconsistent with the effective and efficient implementation of this part." *See* 42 C.F.R. §422.510(a)(2) and §423.509(a)(2).

The ANOC and EOC provide vital information to Medicare enrollees about their plan and permit enrollees to make informed choices concerning Medicare health care and prescription drug options. Since 2009, CMS has clearly informed plans about the importance of accuracy in these documents and noted that plans would be subject to penalties for lateness and inaccuracy. For contract year 2010, 8 sponsors were assessed CMPs for inaccurate documents, and one sponsor was assessed a CMP for untimely documents.

Based on the information provided by your organization on August 9, 2011, 21,605 enrollees in BCBST's contract number H7917 were not provided accurate ANOC materials. Specifically, the following was omitted from the document:

- The ANOC failed to include a 20% coinsurance for Part B, non-chemotherapy drugs.

CMS has determined that your organization's failure to mail accurate ANOC documents to Medicare enrollees is a deficiency which has directly adversely affected or had the substantial likelihood of adversely affecting these enrollees. BCBST failed to provide Medicare enrollees with vital information about changes to benefits and cost-sharing. Therefore, enrollees did not have ample opportunity to consider plan changes in order to make an informed healthcare choice during the 2011 Medicare Annual Election Period.

Right to Request a Hearing

Your organization may request a hearing to appeal CMS' determination in accordance with the procedures outlined in Subpart T of 42 C.F.R. §422 and 42 C.F.R. §423. In accordance with the requirements of 42 C.F.R. §422.1006, §423.1006, §422.1020, and §423.1020, you must send a written request for a hearing to the Departmental Appeals Board office listed below, with a copy to CMS at the address listed below, within 60 calendar days from receipt of this notice of our initial determination, or by December 27, 2011. The request for hearing must identify the specific issues, the findings of fact and conclusions of law with which you disagree, and specify the basis for each contention that the finding or conclusion of law is incorrect. Your request should be sent to:

Oliver Potts
Chief, 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

Mr. Bill Gracey
October 25, 2011
Page 3 of 3

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

Patricia Axt
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services
7500 Security Boulevard
MAIL STOP: C1-22-06
Baltimore, MD 21244
Email: Trish.Axt@cms.hhs.gov
FAX: 410-786-6301

If you do 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 December 28, 2011. You may choose to have the penalty deducted from your monthly payment, transfer the funds electronically, or mail a check to CMS.

Please note that any further failures by Blue Cross Blue Shield of Tennessee to comply with these or any other CMS requirements may subject your organization to other applicable remedies available under law, including the imposition of intermediate sanctions, penalties, or other enforcement actions as described in 42 C.F.R. Parts 422 and 423, Subparts K and O.

If you have any questions about this notice or payment instructions, please call or email the enforcement contact provided in your email notification.

Sincerely,

-5-

Gerard J. Mulcahy
Acting Director,
Program Compliance and Oversight Group