

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**

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September 22, 2011

**VIA FEDERAL EXPRESS DELIVERY**

**E-MAIL ([rflachbart@bcidaho.com](mailto:rflachbart@bcidaho.com))**

**AND FACSIMILE (208-331-7321)**

Mr. Ray Flachbart  
President & CEO  
Blue Cross of Idaho Health Services, Inc.  
3000 E. Pine Ave.  
Meridian, ID 83642  
Phone: 208-331-8820

Re: Notice of Initial Determination to Impose a Civil Money Penalty (CMP) for Medicare Advantage-Prescription Drug Organization Contract Numbers H1302, H1350, and H5862

Dear Mr. Flachbart:

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 of Idaho Health Services, Inc. (BCIHS) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of \$60,000.

**Basis for Civil Money Penalty**

This action is based on your organization's failure to provide accurate enrollee information in Contract Year 2011 Evidence of Coverage (EOC) 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, responsive to CMS' February 9, 2011 request, 20,572 enrollees in BCIHS's contract numbers H1302, H1350, and H5862 were not provided accurate ANOC/EOC materials. Specifically, the following incorrect statement was made in the documents:

- The EOC for each contract incorrectly stated that enrollees remained in the coverage gap until out of pocket costs reached \$2,840. The correct out of pocket amount is \$4,550.

CMS has determined that your organization's failure to mail accurate EOC documents to Medicare enrollees is a deficiency which directly adversely affected or had the substantial likelihood of adversely affecting these enrollees. BCIHS 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 November 21, 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

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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 November 22, 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 BCIHS 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, please call or email the enforcement contact provided in your email notification.

Sincerely,

-s-

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