

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

March 21, 2024

Mr. Daniel Loepp
President & Chief Executive Officer
Blue Cross Blue Shield of Michigan Mutual Insurance Company
600 East Lafayette Blvd. - MC 2001
Detroit, MI 48226

Mrs. Kathryn Levine
President & Chief Executive Officer
Blue Cross Blue Shield of Michigan Mutual Insurance Company
441 E. Jefferson
Detroit, MI 48226

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
and Prescription Drug Plan Contract Numbers: H5883 and H9572

Dear Mr. Daniel Loepp & Mrs. Kathryn Levine:

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 Blue Cross Blue Shield of Michigan Mutual Insurance Company (BCBS of Michigan), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$7,424** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H5883 and H9572.

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 BCBS of Michigan failed to meet that responsibility.

Summary of Noncompliance

CMS conducted an audit of BCBS of Michigan's Medicare operations from April 24, 2023, through May 12, 2023. In a program audit report issued on August 28, 2023, CMS auditors reported that BCBS of Michigan failed to comply with Medicare requirements related to Part C organization determinations, appeals, and grievances in violation of 42 C.F.R. Part 422, Subpart M. One (1) failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees. The enrollees either experienced, or likely experienced, a delay in access to Part B drugs and/or delay in appeal rights.

CMS reviews audit findings individually to determine if an enforceable violation has occurred warranting a CMP. CMPs are calculated and imposed when a finding of non-compliance adversely affected or had a substantial likelihood of adversely affecting enrollees. The determination to impose a CMP on a specific finding does not correlate with the MA-PD's overall audit performance.

Part C Organization Determinations, Appeals, and Grievance Requirements (42 C.F.R. Part 422, Subpart M)

A Part C organization determination is when an enrollee, provider, or legal representative of a deceased enrollee requests coverage or payment for an item or service with an MA organization. Each MA organization must have a procedure for making timely organization determinations regarding the benefits an enrollee is entitled to receive under an MA plan, including basic benefits, mandatory, and optional supplemental benefits, and the amount, if any, that the enrollee is required to pay for a health service.

An MA organization may dismiss an organization determination request only if the organization's dismissal rationale is one of four discrete reasons permitted by CMS (e.g. the individual or entity making the request is not permitted to request an organization determination).¹ An MA organization may not dismiss requests for reasons not explicitly included in the regulation.²

Violation Related to Part C Organization Determinations, Appeals, and Grievances

CMS determined that BCBS of Michigan violated Part C requirements because the sponsor inappropriately dismissed valid organization determination requests for Part B drugs for reasons not explicitly included in regulation. Specifically, a BCBS of Michigan delegated entity was responsible for processing organization determination requests for some but not all Part B drugs. The entity's policy was to dismiss organization determination requests for Part B drugs that they were not responsible for processing, which is not a valid reason for dismissing organization determination requests. As a result, BCBS of Michigan did not process the organization determination requests causing delays in access to Part B drugs and/or appeal rights. This failure violates 42 C.F.R. § 422.568(g).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. §§ 422.752 (c)(1)(i) and 423.752(c)(1)(i), CMS may impose a CMP for any determination made under 42 C.F.R. §§ 422.510 (a)(1) and 423.509(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 42 C.F.R. §§ 422.760(b)(2) and 423.760(b)(2), a penalty may be imposed for each enrollee adversely affected (or with the substantial likelihood of being adversely affected) by the deficiency.

¹ 42 C.F.R. § 422.568(g).

² See discussion in enacting the final rule 86 FR 5864, 5960 (January 19, 2021)).

CMS has determined that BCBS of Michigan failed substantially to carry out the terms of its contract (42 C.F.R. § 422.510(a)(1)). Additionally, CMS determined that BCBS of Michigan failed substantially to comply with requirements in Subpart M relating to grievances and appeals (42 C.F.R. § 422.510(a)(4)(ii)). BCBS of Michigan's violation of Part C requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees and warrants the imposition of a CMP.

Right to Request a Hearing

BCBS of Michigan 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. BCBS of Michigan must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by May 21, 2024.³ The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which BCBS of Michigan disagrees. BCBS of Michigan 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 emailed 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

³ Pursuant to 42 C.F.R. §§ 422.1020(a)(2) and 423.1020(a)(2), the organization must file an appeal within 60 calendar days of receiving the CMP notice.

If BCBS of Michigan 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 May 22, 2024. BCBS of Michigan 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 email the enforcement contact provided in the email notification.

Impact of CMP

Further failures by BCBS of Michigan 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.

If BCBS of Michigan 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
Megan Mason, CMS/ OPOLE
Adams Solola, CMS/OPOLE
Elizabeth Smith, CMS/OPOLE