

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

November 30, 2022

Ms. Elena Mcfann
President Medicare Programs
Elevance Health
220 Virginia Avenue
Indianapolis, IN 46204

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Numbers: H0544, H1894, H2593, H3240, H3342, H3447, H3655, H4036,
H4346, H5471, H5746, H5854, H7728, H8432, H9525, R4487, and R5941

Dear Ms. Mcfann:

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 Elevance Health (Elevance), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$38,512** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H0544, H1894, H2593, H3240, H3342, H3447, H3655, H4036, H4346, H5471, H5746, H5854, H7728, H8432, H9525, R4487, and R5941.

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 Elevance failed to meet that responsibility.

Summary of Noncompliance

In 2021, CMS conducted an audit of Elevance's 2019 Medicare financial information. In a financial audit report issued on June 2, 2021, CMS auditors reported that Elevance failed to comply with Medicare requirements related to Part D premium amounts in violation of 42 C.F.R. Part 423, Subpart F. More specifically, auditors found that in 2019 Elevance failed to comply with Part D premium requirements by billing and collecting incorrect late enrollment penalty (LEP) amounts as part of enrollee Part D premiums. Elevance's failure adversely affected (or had the substantial likelihood of adversely affecting) enrollees because they may have experienced increased out-of-pocket costs.

Part D Premium Requirements

(42 C.F.R. §§ 423.286, 423.293, and 423.752(a)(2))

Pursuant to 42 C.F.R. § 423.293(a), an MA-PD must charge enrollees a consolidated monthly Part D premium equal to the sum of the Part D monthly premium for basic prescription drug coverage (if any) and the premium for supplemental coverage (if any and if the beneficiary has enrolled in such supplemental coverage). Per 42 C.F.R. § 423.286(d)(3), the base beneficiary premium for a Part D enrollee who is subject to a late enrollment penalty is increased by the amount of any late enrollment penalty (LEP). MA-PD organizations must not impose on enrollees, premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under § 423.293.

Violation Related to Part D Premiums

CMS determined that Elevance failed to comply with Part D premium requirements by billing and collecting incorrect LEP amounts as part of enrollee Part D premiums. Elevance then failed to ensure that refunds were provided to enrollees who overpaid. This issue occurred because Elevance's billing system was not configured to process LEP data that was received after an enrollee disenrolled. As a result, disenrolled beneficiaries received and paid incorrect final Part D premium bills.

Basis for Civil Money Penalty

Pursuant to § 423.752(c)(1)(ii), CMS may impose a CMP for any of the bases listed under § 423.752(a). Specifically, CMS may issue a CMP if a Medicare Advantage-Prescription Drug sponsor (MA-PD) imposes on Part D plan enrollees, premiums in excess of the monthly basic and supplemental beneficiary premiums permitted under section 1860D-1 et seq. of the Act and subpart F of part 423.

CMS has determined that Elevance failed to comply with Part D premium requirements by billing and collecting incorrect Part D premium amounts from enrollees (42 C.F.R. § 423.752(a)(2)).

Right to Request a Hearing

Elevance 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. Elevance must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by January 30, 2023. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Elevance disagrees. Elevance 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 Elevance 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 January 31, 2023. Elevance 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 Elevance 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 Elevance 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: Judith Flynn, CMS/ OPOLE
Raymond Swisher, CMS/OPOLE
Tim Lape, CMS/OPOLE
Albert Licup, CMS/OPOLE
Elizabeth Smith, CMS/OPOLE
Kevin Stansbury, CMS/CMS/MOEG/DCE