

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

In the case of:

**WellCare Health Insurance of North
Carolina, Inc.**

Contract No. H7157

v.

Centers for Medicare & Medicaid Services

Review of:

Hearing Officer Case Nos.

H-24-00005

H-24-00006

Dated: May 31, 2024

This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the CMS Hearing Officer’s decision pursuant to 42 C.F.R. § 422.692. WellCare Health Insurance of North Carolina, Inc. (WellCare) requested review by the Administrator. The parties were notified of the Administrator’s intention to review the Hearing Officer’s decision. Comments were received from WellCare and the Centers for Medicare and Medicaid Services. Accordingly, this case is now before the Administrator for final agency review. The entire record, which was furnished by the CMS Hearing Officer has been examined, including all correspondence, position papers, exhibits, and subsequent submissions.

ISSUE AND CMS HEARING OFFICER’S DECISION

The issue in this case, as stated by the Hearing Officer, involved whether CMS’ December 27, 2023 Notice of Termination and Intermediate Sanctions for WellCare (Contract No. H7175) was proper.

The Hearing Officer granted CMS’ Motion for Summary Judgment. The Hearing Officer found that it was undisputed that WellCare received Star Ratings of less than three stars for contract years 2022, 2023, and 2024¹ As required by 42 C.F.R. § 422.504(a)(17), all MA-PD contracts must contain a term requiring the MAO to maintain a Part C summary plan rating score of at least 3 stars under the 5-star rating system.² Under 42 C.F.R. §

¹ See Line “CSR, Part C Summary Rating”, CMS Brief Exhibit C-6 (Demonstrative aid regarding the Part C measure-level Star Ratings and Part C summary Star Ratings for H7175 for contract years 2022, 2023 and 2024).

² See Paragraph E under “Article XI Miscellaneous” which notes “MA Organization agrees to maintain a Part C summary plan rating score of at least 3 stars under the 5-star rating system specified in 42 CFR Part 422 subpart D, as required by 42 CFR §422.504(a)(17). CMS Brief Exhibits C-1 (Contract H7175 for 2020), C-2 (Contract H7175 for 2021), C-3

422.510(a)(1), CMS may at any time terminate a contract if CMS determines that the MA organization has substantially failed to carry out the contract. 42 C.F.R. § 422.510(a)(4)(xi) specifies that CMS may terminate a contract at any time if a MAO achieves a Part C summary plan rating of less than 3 stars for 3 consecutive contract years. Thus, the CMS Hering Officer determined that CMS was justified in terminating WellCare's contract. Additionally, CMS' use of Intermediate Sanctions was appropriate under 42 C.F.R. § 422.752(b), which allows for intermediate sanctions if CMS makes a determination that could lead to a contract termination.

COMMENTS

WellCare requested review by the Administrator under 42 C.F.R. §422.692(a).³ WellCare argued that based on corrected contract year 2024 Star Rating⁴ information provided by CMS on June 13, 2024, H7175, received a 3 star rating for 2024, and, as result, did not meet the criteria for termination or intermediate sanctions.

CMS responded to WellCare's request for review by the Administrator, pointing out that CMS provided additional documents concerning the recalculation of the 2024 Star Ratings that occurred after Hearing Officer's decision, in which WellCare still received a Part C Star Rating of less than 3 stars.⁵

The Administrator notified the parties that the Hearing Officer's decision would be reviewed in response to these requests. The Notice requested that the parties address the impact CMS' recalculation of the 2024 Star Ratings may have on this case.

In WellCare's supplemental comments submitted subsequent to the Administrator's notice of review, WellCare stated that their Part C rating for 2024 had changed from a 2.52 to a 2.67⁶, but argued that the corrected 2024 Star Rating confirmed that its "deliberate and comprehensive campaign to improve the contract performance of H7175 on Part C measures for 2024 was working, and that it was projecting continued improvements for 2025. WellCare argued that the Part C Star Ratings for contract years 2022, 2023 and 2024

(Contract H7175 for 2022), C-4 (Contract H7175 for 2023), and C-5 (Contract H7175 for 2024).

³ See "Appellant's Request for Administrator Review", dated June 14, 2024.

⁴ On June 13, 2024, CMS announced that it was recalculating the 2024 Medicare Advantage Star Ratings in light of the rulings issued in *SCAN Health Plan v. Department of Health and Human Services*, Civil Action 1:23-cv-03910 (CJN) (D.D.C. Jun. 3, 2024) and *Elevance Health, Inc. v. Becerra* (Civil Action No. 23-3902 (RDM) (D.D.C. Jun. 7, 2024). CMS stated that it would recalculate the Star Ratings for CY 2024 using the actual cut points established for the CY 2023 Star Ratings, not the CY 2023 Star Ratings cut points calculated after removal of Tukey outliers, as the basis for guardrails for the CY 2024 calculations. See CMS Exhibit C-25 included with CMS Supplemental Submission.

⁵ See "Centers for Medicare & Medicaid Services' Response to Appellant's Request for Administrator Review" dated June 25, 2024.

⁶ See Exhibit 3 of WellCare's Supplemental Submission.

were based on plan performance during 2020, 2021 and 2022, and that as a new MA plan in 2020, WellCare faced substantial issues due to the impact of the COVID-19 pandemic. WellCare pointed out that CMS provided COVID-related Star Rating flexibilities, but only to plans that were operational prior to 2020. WellCare argued that the Administrator should disregard the Part C Star Rating for contract year 2022 (performance year 2020) and allow WellCare to continue operating for another year to see if it can raise its 2025 Part C rating up to above a 3. WellCare pointed out that it had improved the plan's overall star rating from 2.5 to 3 stars, and that it projects that for contract year 2025 Star Ratings, H7175 will improve on 19 of 22 Part C measures.⁷

In CMS' supplemental comments submitted subsequent to the Administrator's notice of review, CMS stated that the recalculated 2024 Star Ratings do not impact CMS' determination to terminate and impose intermediate sanctions against contract H7175, as it was WellCare's Part C summary Star Rating, not the overall rating, that was used by CMS to impose sanctions and terminate contract H7175. CMS noted that the recalculated overall rating for contract H7175 was 3.0 stars, the recalculated Part C summary rating for H7175 was 2.5 stars, and the recalculated Part D summary rating for H7175 was 2.5 stars.⁸ As WellCare's 2024 Part C summary Star Rating for contract H7175 remained a 2.5 after the June 2024 recalculation, and as the basis for CMS's decision to terminate and impose intermediate sanctions was WellCare's failure to achieve a Part C summary plan rating of at least 3 stars for contract years 2022, 2023 and 2024, CMS pointed out that it was justified in terminating the contract under 42 C.F.R. § 422.510(a)(1), (a)(4)(xi).

DISCUSSION

CMS is authorized to enter into contracts with companies to provide medical coverage under the Medicare Advantage (MA) program to their plan enrollees through Medicare Part C, as well as private prescription drug benefits to their plan enrollees under Medicare Part D. Regulations governing Parts C and D of the Medicare program are set forth at 42 C.F.R §§ 422 and 423, respectively.

CMS developed and published annual performance ratings for stand-alone Medicare prescription drug (PD) plan contracts beginning in 2007, and for Medicare Advantage (MA) contracts beginning in 2008. Ratings are based on measures that address a range of health and drug plan performance categories, including access to care, access to prescription medications, and communication with members. MA-PD contracts receive a score for each performance measure, a summary score for Part C (called a Part C Star Rating), a summary score for Part D (called a Part D Star Rating), and an overall Star Rating. MA organizations and Part D sponsors are rated on a 5-star scale, where 3 or more stars is an indication of sponsors with "average" or better performance, and the best performers receiving a rating of 5 stars. Organizations receiving below 3 stars are

⁷ See Exhibit 4 of WellCare's Supplemental Submission.

⁸ See CMS Exhibit C-26 included with CMS Supplemental Submission. Also available online at <https://www.cms.gov/medicare/health-drug-plans/part-c-d-performance-data>.

considered weak performers. As CMS considers the plan ratings to be a direct indicator of the ongoing effectiveness of a contracting organization's administrative and management arrangements, CMS in 2012 added 42 C.F.R. §§ 422.504(a)(18) and 423.505(b)(26) to require an organization to demonstrate that it maintains satisfactory administrative and management arrangements by achieving a summary plan rating of at least 3 stars each year, and also established the failure to achieve a 3-star summary rating consistently as a basis for contract termination.⁹ The requirement to achieve at least a 3-star rating is included in all contracts between CMS and MAOs/MAPD plans.

WellCare has offered MAPD plans since January 1, 2020, when it entered the Medicare Advantage program and began offering MAPD preferred provider organization plans as well as dual eligible special needs PPO plans. WellCare currently has approximately 6,483 Medicare beneficiaries enrolled in its MAPD plans. Approximately 50 percent of the beneficiaries enrolled in H7175 are dually eligible for Medicare and Medicaid.

WellCare received a 2.5 Star Part C Rating in October 2021 for Contract Year 2022. On February 25, 2022, CMS issued a "Corrective Action Plan (CAP) Request" to WellCare, noting that, based on its low star rating, WellCare had failed to meet the administrative and management requirements that apply to MAOs and MAPD plans.¹⁰ CMS requested that WellCare develop and implement a corrective action plan that would ensure WellCare achieved at least an "average" star rating. Specifically, the notice stated:

CMS advises your organization to take steps to improve its operations in the areas identified above and bring its Summary Star Rating(s) to a level that indicates at least average contract performance, compliant with Medicare requirements. **CMS is not requiring a CAP submission from your organization.** CMS will simply look at your organization's star rating performance in the coming year to determine whether you took the necessary corrective action to achieve at least a three-star summary star rating.¹¹ (Emphasis in original.)

WellCare received a 2 Star Part C Rating in October 2022 for Contract Year 2023. On February 22, 2023, CMS again issued a "Corrective Action Plan (CAP) Request" to WellCare.¹² As in the previous notice, CMS noted that it was not requiring a CAP submission, but rather, would use the next year's star rating to determine whether or not WellCare took the corrective action necessary to achieve a 3 star rating. This notice also stated:

⁹ 77 Fed. Reg. 22,072, 22,109 (Apr. 12, 2012).

¹⁰ See Exhibit P-2 of WellCare's Hearing Brief.

¹¹ *Id.*

¹² See Exhibit P-3 of WellCare's Hearing Brief.

Please be advised that pursuant to 42 C.F.R. § 422.510(a)(4)(xi), your organization will be eligible for termination if it achieves a Part C Summary Star Rating of below three stars for three (3) consecutive years.¹³

WellCare received a 2.5 Star Part C Rating in October 2023 for Contract Year 2024.

On December 27, 2023, CMS issued WellCare a Notice of Termination and Intermediate Sanctions (Suspension of Enrollment and Marketing) for Medicare Advantage-Prescription Drug Contract Number: H7175, which cited WellCare's failure to achieve a Star Rating of at least three stars in three consecutive Part C Star Rating periods as the basis.¹⁴

Under 42 C.F.R. § 422.510(a)(1), CMS may at any time terminate a contract if CMS determines that the MA organization has substantially failed to carry out the contract. 42 C.F.R. § 422.510(a)(4)(xi) specifies that CMS may terminate a contract at any time if a MAO achieves a Part C summary plan rating of less than 3 stars for 3 consecutive contract years. Plans have been on notice since 2012 that, "Sponsors that fail for three consecutive years to achieve at least a 3-star rating have demonstrated that they have substantially failed to meet the requirements of the Part C and D programs and failed to take timely and effective corrective action,"¹⁵ and that CMS had the authority "to terminate the contracts of Part C and D sponsors that fail to achieve at least a 3-star plan rating for 3 consecutive years."¹⁶

The record demonstrates that the CMS Hearing Officer properly found that CMS was justified in terminating WellCare's contract. In addition, CMS' use of intermediate sanctions was appropriate under 42 C.F.R. § 422.752(b), which allows for intermediate sanctions if CMS makes a determination that could lead to a contract termination. Thus, the Hearing Officer was correct in granting Summary Judgment for CMS.

Shortly after the Hearing Officer's decision was issued, CMS announced that it was recalculating the 2024 Medicare Advantage Star Ratings in light of the rulings issued in *SCAN Health Plan v. Department of Health and Human Services* and *Elevance Health, Inc. v. Becerra*. CMS stated that it was recalculating the Star Ratings for CY 2024 using the actual cut points established for the CY 2023 Star Ratings, not the CY 2023 Star Ratings cut points calculated after removal of Tukey outliers, as the basis for guardrails for the CY 2024 calculations.¹⁷ In its request for Administrator Review, WellCare argued that it had

¹³ *Id.*

¹⁴ See Exhibit P-1 of WellCare's Hearing Brief.

¹⁵ 77 Fed. Reg. 22,072, 22,074 (Apr. 12, 2012).

¹⁶ *Id.* Further, although WellCare argued it was disadvantaged because of the Pandemic and uneven application of related polices to new MAOs, CMS pointed out that this MAO performed significantly worse when compared even to other "new" MAOs.

¹⁷ CMS noted in n.t of its Supplemental Comments that: "The decisions in *SCAN Health Plan v. Department of Health & Human Services*, Civ. A. No. 23-3910 (CJN) (D.D.C.), and *Elevance Health, Inc. v. Becerra*, Civ. A. No. 23-3902 (RDM) (D.D.C.), were issued on June 3, 2024 and June 7, 2024 respectively. CMS Ex. 25. 'CMS's decision to recalculate

received a 3 star rating based on the recalculation, and thus, the termination of its contract was not appropriate.¹⁸ However, in WellCare's supplemental comments submitted subsequent to the Administrator's notice of review, WellCare clarified that the specific aspect of the ratings at issue here, the Part C rating for 2024, had not risen to at least a 3.¹⁹

The record demonstrates that there are no material facts in dispute. In addition, even assuming arguendo, it would be appropriate to use the recalculated star rating, the recalculated star ratings for 2024 for WellCare still results in star ratings of less than three stars for contract years 2022, 2023, and 2024. Consequently, the Hearing Officer was correct to grant summary judgment for CMS. CMS' decisions to terminate contract H7175 and impose intermediate sanctions were consistent with the controlling authorities, and WellCare was provided adequate notice that its failure to improve its Star Ratings would lead to termination. Thus, the Administrator upholds the CMS Hearing Officer's decision.

2024 Star Ratings...has no bearing on CMS's potential exercise of its right to appeal those decisions.' *Id.*"

¹⁸ See "Appellant's Request for Administrator Review", dated June 14, 2024.


¹⁹ See Exhibit 3 of WellCare's Supplemental Submission. See also CMS Exhibit C-26 included with CMS Supplemental Submission. Updated Star Ratings are also available online at <https://www.cms.gov/medicare/health-drug-plans/part-c-d-performance-data>.

DECISION

The Administrator affirms the CMS Hearing Officer decision.

THIS CONSTITUTES THE FINAL ADMINISTRATIVE DECISION OF THE
SECRETARY OF HEALTH AND HUMAN SERVICES

Date: September 13, 2024



Jonathan Blum
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Centers for Medicare & Medicaid Services