

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**

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February 25, 2022

Mr. Brian Lobley  
Chief Operating Officer  
Independence Health Group, Inc.  
1901 Market Street, 45<sup>th</sup> Floor  
Philadelphia, PA 19103

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Number: H3909 and H3952

Dear Mr. Lobley:

Pursuant to 42 C.F.R. §§ 422.752(c)(1), 422.760(b), 423.752(c)(1), and 423.760(b), the Centers for Medicare & Medicaid Services (CMS) is providing notice to Independence Health Group, Inc. (Independence), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$26,500** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number H3909 and H3952.

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 Independence failed to meet that responsibility.

**Summary of Noncompliance**

CMS conducted an audit of Independence's Medicare operations from July 14, 2020 through October 5, 2020. In a financial audit report issued on October 19, 2020, CMS auditors reported that Independence failed to comply with Medicare requirements related to Part C cost sharing in violation of 42 C.F.R. Part 422, Subpart F. More specifically, auditors found that in 2018, Independence failed to comply with cost-sharing requirements by charging incorrect co-payments to enrollees for medical services. Independence's failure was systemic and adversely affected (or had the substantial likelihood of adversely affecting) enrollees because they may have experienced increased out-of-pocket costs.

## **Part C Cost Sharing Requirements**

(42 C.F.R. §§422.254, 422.270, and 422.111(b))

Every year, an MA-PD organization must submit to CMS an aggregate monthly bid amount which must include a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of the deductibles, coinsurance, and copayments. When the bid is approved by CMS the MA-PD organization must provide to each enrollee a description of the benefits offered under a plan, including the applicable cost-sharing for the benefits (see 42 C.F.R. § 422.111(b)). The MA-PD organization must not charge an enrollee a different amount from what was approved in the bid and disclosed to the enrollee for that benefit. Pursuant to 42 C.F.R. §422.270(b), if the MA-PD organization charges amounts in excess of the agreed upon cost-sharing, then the MA-PD organization must agree to refund all amounts incorrectly collected from its Medicare enrollees.

### **Violations Related to Part C Cost Sharing**

CMS determined that Independence failed to comply with cost sharing requirements by charging incorrect co-payments. More specifically, out-of-network critical access hospital claims were not paid per the applicable out-of-network CMS fee schedule. As a result, enrollees were charged the incorrect cost-sharing for critical access hospital services. Independence did not have evidence that every enrollee received a refund for potential overpayments. This failure violates 42 C.F.R. § 422.270(b).

### **Basis for Civil Money Penalty**

Pursuant to 42 C.F.R. § 422.752 (c)(1)(i), CMS may impose a CMP for any determination made under §§ 422.510. Specifically, CMS may issue a CMP if a MA-PD has failed substantially to follow Medicare requirements according to its contract. Pursuant to § 422.760(b)(2), a penalty may be imposed for each enrollee directly adversely affected (or with the substantial likelihood of being adversely affecting) by the deficiency.

CMS has determined that Independence failed substantially to carry out the terms of its contract (42 C.F.R. §§ 422.510(a)(1)) and that Independence's violations of Part C requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

### **Right to Request a Hearing**

Independence 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. Independence must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by April 27, 2022. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Independence disagrees. Independence 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](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](mailto:kevin.stansbury@cms.hhs.gov)

If Independence 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 April 28, 2022. Independence 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 Independence 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 Independence 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: Tamara McCloy, CMS/ OPOLE  
Mortez Williams, CMS/OPOLE  
Ann Marie Anderson, CMS/OPOLE  
Kevin Berna, CMS/OPOLE  
Kevin Stansbury, CMS/CM/MOEG/DCE