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 16, 2023

Chris McDade
Vice President, Integrated Health Plans & Revenue Management
AmeriHealth Caritas
200 Stevens Drive, 1st Floor
Philadelphia, PA 19113

Stephen Fera
Executive Vice President, Public Affairs & Government Markets
Independence Blue Cross
1901 Market Street, 45th floor
Philadelphia, PA 19103

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Numbers: H8213 and H4227

Dear Mr. Chris McDade and Mr. Stephen Fera:

Pursuant to Section 5.3.14 of the Healthy Connections Prime (South Carolina) contract and 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 Health) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **$6,032** for Medicare-Medicaid Plan (MMP) Contract Number H8213 and Medicare Advantage-Prescription Drug (MA-PD) Contract Number H4227.

An MMP and 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 Health failed to meet that responsibility.

Summary of Noncompliance

CMS conducted an audit of Independence Health's Medicare operations from June 6, 2022 through June 24, 2022. In a program audit report issued on September 16, 2022, CMS auditors reported that Independence Health failed to comply with Medicare requirements related to Part D formulary and benefits administration in violation of 42 C.F.R. Part 423, Subpart C.[1] One (1)

[1] Per Appendix F, "Part D Addendum", of the Healthy Connections Prime (South Carolina) contract, MMPs must comply with Part D requirements including those in 42 C.F.R. Part 423, Subpart C.

failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees. The enrollees experienced or likely experienced a delay in access to medication, paid out-of-pocket for medications, or never received the medication.

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 MMP or MA-PD's overall audit performance.

Part D Formulary and Benefit Administration Relevant Requirements
(42 C.F.R. Part 423, Subpart C (§§423.104 and 423.120(b)); Chapter 5, Section 20.1 and Chapter 6, Section 30.3 of the Medicare Prescription Drug Benefit Manual (IOM Pub. 100-18))

Medicare Part D Prescription Drug Program requirements apply to MMP and MA-PD plans that offer Part D prescription drug benefits. Sponsors that offer these plans are required to enter into agreements with CMS by which the sponsors agree to comply with a number of statutory, regulatory, and sub-regulatory requirements. A Part D sponsor must provide its enrollees with qualified prescription drug coverage. Qualified prescription drug coverage, which consists of either standard or alternative prescription drug coverage, may be provided directly by the Part D sponsor or through arrangements with other entities.

As part of the qualified prescription drug coverage, each Part D sponsor maintains a drug formulary or list of prescription medications covered by the sponsor. A number of Medicare requirements govern how Part D sponsors create and manage their formularies. Each Part D sponsor is required to submit its formulary for review and approval by CMS on an annual basis. The formulary review and approval process includes reviewing the Part D sponsor's proposed drug utilization management processes to adjudicate Medicare Part D prescription drug claims. Once CMS approves a sponsor's formulary, the sponsor cannot change the formulary unless it obtains CMS approval and subsequently notifies its enrollees of the changes.

Violations Related to Part D Formulary and Benefit Administration

CMS determined that Independence Health violated Part D formulary and benefit administration requirements because the sponsor inappropriately rejected formulary medications due to errors with enrollees' eligibility files. There were two causes for Independence Health's failure. First, the sponsor did not timely reinstate MMP enrollees when the sponsor received conflicting effective dates from CMS and the state. Second, Independence Health was late in processing new enrollments and providing eligibility files to its pharmacy benefit manager. As a result, enrollees were inappropriately denied coverage for medications at the point of sale and there is a substantial likelihood that enrollees experienced a delay in access to medication, paid for medications out-of-pocket, or never received their medication. This failure violates 42 C.F.R. §§ 423.104(a) and 423.120(b).

Basis for Civil Money Penalty

Pursuant to Healthy Connections Prime (South Carolina), Section 5.3.14.4.1, and 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 MMP or MA-PD plan 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 directly adversely affected (or with the substantial likelihood of being adversely affected) by the deficiency.

CMS has determined that Independence Health failed substantially:

- To carry out the terms of its contract (42 C.F.R. §423.509(a)(1)).
- To comply with service access requirements in 42 C.F.R. § 423.120 (42 C.F.R. § 423.509(a)(4)(iv)).
- To comply with federal regulatory requirements related to Healthy Connections Prime (South Carolina) contract with CMS (Section 5.3.14.3.6).

Independence Health's violation of Part D 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

Independence Health 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 Health must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by May 16, 2023.[2] The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which Independence Health disagrees. Independence Health 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:

Department of Health & Human Services
Departmental Appeals Board, MS 6132
Civil Remedies Division
Medicare Appeals Council
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:

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

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 Independence Health 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 17, 2023. Independence Health 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 Health 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 Health 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
Tammy McCloy, CMS/OPOLE
Michael Taylor, CMS/OPOLE
Shannon Comage, CMS/OPOLE
Annemarie Anderson, CMS/OPOLE
Kevin Berna, CMS/OPOLE