

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 17, 2020

Dr. Talya Schwartz
President and CEO
MetroPlus Health Plan, Inc.
160 Water St., 3rd Floor
New York, NY 10038

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Numbers: H0423

Dear Ms. Schwartz:

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 MetroPlus, Inc. (MetroPlus), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$6,784** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number H0423.

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 MetroPlus failed to meet that responsibility.

Summary of Noncompliance

In 2019, CMS conducted an audit of MetroPlus's 2017 Medicare financial information. In a financial audit report issued on May 23, 2019, CMS auditors reported that MetroPlus 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 2017 MetroPlus failed to comply with cost-sharing requirements by charging incorrect co-payments to enrollees for physical, speech, and occupational therapy services under certain circumstances. MetroPlus'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); Section 50 Chapter 4 of the Medicare Managed Care Manual (IOM Pub. 100-16))

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 MetroPlus failed to comply with cost sharing requirements by charging incorrect co-payments. Some providers were not assigned the proper provider codes within their systems causing certain claims arising from a specific care setting to be paid under a method other than the one specified by the contract with the provider. As a result, enrollees were charged a coinsurance for each claim line instead of one coinsurance for the day. Enrollees were not refunded the overcharged amounts until after the financial audit concluded which was two years after the incurred costs. This failure violates 42 C.F.R. § 422.270(b) and Chapter 4, Section 50 of the Medicare Managed Care Manual (IOM Pub.100-16).

Basis for Civil Money Penalty

Pursuant to 42 C.F.R. § 422.752(c)(1), § 422.760(b), § 423.752(c)(1), and § 423.760(b), CMS has determined that MetroPlus's violations of Part C requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees and warrants the imposition of a CMP. MetroPlus failed substantially to carry out the terms of its contract with CMS (42 C.F.R. § 422.510(a)(1)).

Right to Request a Hearing

MetroPlus 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. MetroPlus must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by January 19, 2021.¹ The request for hearing must identify the specific issues and the findings of fact and

¹Since January 17th falls on a weekend or holiday, the date reflected in the notice is the next regular business day for you to submit your request.

conclusions of law with which MetroPlus disagrees. MetroPlus 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 MetroPlus 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 20, 2021. MetroPlus 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

Please note, this action may factor into MetroPlus' Past Performance calculations.

Further failures by MetroPlus 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 MetroPlus 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: Heather Lang, CMS/OPOLE
Michelle Baker-Bartlett, CMS/ OPOLE
Olivia Pessima, CMS/ OPOLE
Kevin Stansbury, CMS/CM/MOEG/DCE