

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

Ms. Coreen Dicus-Johnson  
President & Chief Executive Officer  
Network Health Insurance Corporation  
1570 Midway Place  
Menasha, WI 54952

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Number: H5215

Dear Ms. Dicus-Johnson:

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 Network Health Insurance Corporation (Network Health) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$11,236** for Medicare Advantage-Prescription Drug (MA-PD) Contract Number H5215.

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 Network Health failed to meet that responsibility.

**Summary of Noncompliance**

In 2020, CMS conducted an audit of Network Health's 2018 Medicare financial information. In a financial audit report issued on November 3, 2020, CMS auditors reported that Network Health failed to comply with Medicare requirements related to the hospice requirements in violation of 42 C.F.R. Part 418 Subpart D, 42 C.F.R. Part 423 Subpart C, and §1860D-2(e)(2)(B) of the Social Security Act. More specifically, auditors found that in 2018, Network Health inappropriately paid for drugs under the Medicare Part D benefit during the beneficiaries' hospice eligibility which resulted in enrollees being overcharged for their medications. Network Health then failed to ensure refunds were provided to enrollees who may have overpaid. Network Health'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.

## **Medicare Hospice Requirements**

*(42 C.F.R. Part 418 and § 423.100(Part D Drug)(2)(i) and § 1860D-2(e)(2)(B) of the Social Security Act)*

Pursuant to 42 C.F.R. § 418.20, in order to be eligible for hospice care under Medicare an individual must be 1) entitled to Part A of Medicare and 2) certified as being terminally ill in accordance with § 418.22. Drugs and biologicals related to palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care, must be provided by the hospice while the patient is under hospice care under the Part A benefit (not the Part D benefit) (see § 418.106). While under hospice care, patients either do not owe a coinsurance for drugs and biologicals while in an inpatient setting, or pay 5% of the cost the drug or biological (not to exceed \$5) while in home hospice (see § 418.400).

## **Violation Related to Medicare Hospice Requirements**

CMS determined that Network Health inappropriately paid for drugs under the Medicare Part D benefit during the beneficiaries' hospice eligibility which resulted in enrollees being overcharged for their medications. Network Health then failed to ensure refunds were provided to enrollees who may have overpaid. As a result, enrollees may have incurred inappropriate out-of-pocket expenses. This failure violates 42 C.F.R. §§ 418.106 and 423.100(Part D Drug)(2)(i) and § 1860D-2(e)(2)(B) of the Social Security Act.

## **Basis for Civil Money Penalty**

Pursuant to 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 §§ 422.510 and 423.509. Specifically, CMS may issue a CMP if a Medicare Advantage - Prescription Drug Plan has failed substantially to follow Medicare requirements according to its contract. Pursuant to §§ 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 affecting) by the deficiency.

CMS has determined that Network Health failed substantially to carry out the terms of its contract (42 C.F.R. §§ 422.510 (a)(1) and 423.509(a)(1)) and that Network Health's violations of Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

## **Right to Request a Hearing**

Network 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. Network Health 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 Network Health disagrees. Network 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:

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 Network 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 April 28, 2022. Network 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 Network 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 Network 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  
Judith Flynn, CMS/ OPOLE  
Raymond Swisher, CMS/OPOLE  
Timothy Lape, CMS/ OPOLE  
Dorothy Carpenter, CMS/OPOLE