DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICARE

MEDICARE PARTS C AND D OVERSIGHT AND ENFORCEMENT GROUP

December 6, 2023

Ms. Hilary Marden-Resnik
President & Chief Operating Officer
UCare Minnesota
500 Stinson Boulevard NE
Minnesota, MN 55413

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug
Contract Numbers: H2459 and H8783

Dear Ms. Marden-Resnik:

Pursuant to 42 C.F.R. §§ 422.752(c)(1), 422.760(c), 423.752(c)(1), and 423.760(c), the Centers for Medicare & Medicaid Services (CMS) is providing notice to UCare Minnesota (UCare), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **$13,224** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H2459 and H8783.

An MA-PD organization's[1] primary responsibility is to provide Medicare enrollees with medical services and prescription drug benefits in accordance with Medicare requirements. CMS has determined that UCare failed to meet that responsibility.

Summary of Noncompliance

CMS conducted an audit of UCare's Medicare operations from April 11, 2022, through April 29, 2022. In a program audit report issued on July 19, 2022, pursuant to 42 C.F.R. §§ 422.503(d)(2)(iv) and 423.504(d)(2)(iv), CMS required UCare to hire an independent auditor to determine if deficiencies found during that initial audit were corrected and were not likely to recur. An independent auditor retained by UCare conducted a validation audit of UCare's Medicare operations from January 3, 2023, through March 9, 2023. On July 21, 2023, CMS issued a 2022 Program Audit Validation Results Notice, which found that UCare failed to comply with Medicare requirements related to Part D coverage determinations, appeals, and grievances in violation of 42 C.F.R. Part 423, Subpart M. One (1) failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees. The enrollees experienced, or likely experienced delayed or denied access to covered benefits, increased out-of-pocket costs, and/or untimely appeal rights.

[1] Referenced collectively as "plan sponsor".

CMS reviews validation 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 MA-PD's overall audit performance.

Part D Coverage Determination, Appeal, and Grievance Requirements *(42 C.F.R. Part 423, Subpart M; Part C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance)*

A Medicare enrollee has the right to contact his or her plan sponsor to express general dissatisfaction with the sponsor's operations, activities, or behavior, or to make a specific complaint about the denial of coverage for drugs to which the enrollee believes he or she is entitled to receive. Sponsors are required to classify general complaints about benefits or the sponsor's operations or activities as grievances. Sponsors are required to classify complaints about coverage for drugs as coverage determinations. It is critical for a sponsor to properly classify each complaint as a grievance, coverage determination, or both. Improper classification may result in enrollees not receiving the required level of review, and/or experiencing delayed access to medically necessary or life-sustaining drugs.

The first level of review is the coverage determination, which is conducted by the plan sponsor. The enrollee, the enrollee's representative, or the enrollee's treating physician or prescriber may make a request for a coverage determination. If the coverage determination is adverse (i.e., not in favor of the enrollee), the enrollee has the right to file an appeal. The first level of appeal - called a redetermination – is handled by the plan sponsor and must be conducted by a person who was not involved in the coverage determination decision. The second level of appeal is made to an independent review entity (IRE) that contracts with CMS. If the sponsor does not issue the reconsideration decision timely, the decision is considered to be unfavorable to the enrollee and must be automatically sent to the IRE.

Violation Related to Part D Coverage Determination, Appeal, and Grievance Requirements

CMS determined that UCare violated Part D coverage determination, appeal, and grievance requirement(s) by failing to process coverage requests for Part D drugs. Specifically, when enrollees called or wrote in to request or complain about drug coverage or cost, UCare did not start the coverage request process at that time. This is because front line staff failed to follow UCare's standard processes for identifying coverage determination or redetermination requests that were part of complaints or grievances. As a result, enrollees' access to the coverage determination and/or appeals process was impeded, which had the substantial likelihood of causing delays or denials of access to medications, increased out-of-pocket costs, or appeal rights. This failure violates 42 C.F.R. § 423.564(b).

Basis for Civil Money Penalty

Pursuant to § 423.752(c)(1)(ii), CMS may impose a CMP for any determination made under 42 C.F.R. § 423.509(a)(1). Specifically, CMS may issue a CMP if a MA-PD has failed substantially to follow Medicare requirements according to its contract. Pursuant to § 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 UCare failed substantially to carry out the terms of its contract with CMS (42 C.F.R. § 423.509(a)(1)) and to comply with the requirements in Subpart M relating to grievances and appeals (42 C.F.R. § 423.509(a)(4)(ii)). UCare's violations of Part D requirements directly adversely affected (or had the substantial likelihood of adversely affecting) enrollees.

Right to Request a Hearing

UCare 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. UCare must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by February 5, 2024[2]. The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which UCare disagrees. UCare 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 emailed to CMS at the following address:

Kevin Stansbury
Director, Division of Compliance Enforcement
Centers for Medicare & Medicaid Services

[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.

7500 Security Boulevard
Baltimore, MD 21244
Mail Stop: C1-22-06
Email: kevin.stansbury@cms.hhs.gov

If UCare 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 February 6, 2024. UCare 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 UCare 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 UCare 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: Megan Mason, CMS/ OPOLE
Raymond Swisher, CMS/OPOLE
Adams Solola, CMS/OPOLE
Elizabeth Smith, CMS/OPOLE
Kevin Stansbury, CMS/CM/MOEG/DCE