

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**

April 1, 2025

Mr. John Cole  
Chief Executive Officer  
Shared Health Mississippi, Inc.  
1 Cameron Hill Circle  
Chattanooga, TN 37402

Mr. Casey Dungan  
President  
Volunteer State Health Plan  
1 Cameron Hill Circle  
Chattanooga, TN 37402

Mr. JD Hickey  
President and Chief Executive Office  
BlueCross BlueShield of Tennessee, Inc.  
1 Cameron Hill Circle  
Chattanooga, TN 37402

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Numbers: H3015, H3259, and H7917

Dear Mr. Cole, Mr. Dungan, and Mr. Hickey:

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 BlueCross BlueShield of Tennessee (BCBS TN), that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$21,692** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H3015, H3259, and H7917.

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 BCBS TN failed to meet that responsibility.

**Summary of Noncompliance**

CMS conducted an audit of BCBS TN's Medicare operations from August 19, 2024, through September 6, 2024. In a program audit report issued on December 23, 2024, CMS auditors reported that BCBS TN 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. One (1) failure was systemic and adversely affected, or had the substantial likelihood of adversely affecting, enrollees because the enrollees experienced delayed access to medications, paid out-of-pocket costs for medications, or never received medications.

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 MA-PD's overall audit performance.

### **Part D Formulary and Benefit Administration Relevant Requirements**

Medicare Part D Prescription Drug Program requirements apply to stand-alone Prescription Drug Plan Sponsors and to Medicare Advantage organizations 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.

#### *Qualified Prescription Drug Coverage*

*(42 C.F.R. § 423.104; Chapter 5, Section 20.1 of the Medicare Prescription Drug Benefit Manual, (IOM Pub. 100-18))*

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.

### **Violation Related to Part D Formulary and Benefit Administration**

CMS determined that BCBS TN inappropriately rejected formulary medications due to errors with enrollees' eligibility files. Specifically, BCBS TN's pharmacy benefit manager's system incorrectly applied out of sequence member records in its eligibility files, which caused enrollees' active coverage to be voided. Therefore, BCBS TN rejected enrollee claims for "coverage terminated" even though the enrollee had active coverage. As a result, enrollees were inappropriately denied coverage for medications at the point of sale and there is a substantial likelihood that enrollees experienced delayed access to medications, paid for medications out-of-pocket, or never received their medications. BCBS TN's failure to comply with Part D formulary and benefit administration requirements violates 42 C.F.R. § 423.104(a).

### **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 42 C.F.R. §§ 422.510(a) and 423.509(a). Specifically, CMS may issue a CMP if an MA-PD plan sponsor has failed substantially to carry out 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 BCBS TN failed substantially to carry out the terms of its contract with CMS (42 C.F.R. § 423.509(a)(1)) because it substantially failed to comply with requirements related to the administration of the Part D prescription benefit at 42 C.F.R. § 423.104(a). BCBS TN'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**

BCBS TN 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. BCBS TN must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by June 2, 2025.<sup>1</sup> The request for hearing must identify the specific issues and the findings of fact or conclusions of law with which BCBS TN disagrees. BCBS TN 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 emailed to CMS at the following address:

Kevin Stansbury  
Director  
Division of Compliance Enforcement

---

<sup>1</sup> Pursuant to 42 C.F.R. §§ 422.1020(a)(2) and 423.1020(a)(2), the organization must file an appeal within 60 calendar days of receiving the CMP notice. The 60<sup>th</sup> day falls on a weekend or holiday, therefore the date reflected in the notice is the next regular business day for you to submit your request.

Centers for Medicare & Medicaid Services  
Email: [kevin.stansbury@cms.hhs.gov](mailto:kevin.stansbury@cms.hhs.gov)

If BCBS TN 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 June 3, 2025. BCBS TN may choose to have the penalty deducted from its monthly payment or transfer the funds electronically. To notify CMS of your intent to make payment and for instructions on how to make payment, please email the enforcement contact provided in the email notification.

### **Impact of CMP**

Further failures by BCBS TN 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 BCBS TN 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  
Ashley Hashem, CMS/OPOLE  
Michael Taylor, CMS/OPOLE  
Erick Bowen, CMS/OPOLE  
Hugo Huapaya, CMS/OPOLE