

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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March 21, 2024

Dr. John Bennett  
President & Chief Executive Officer  
Capital District Physicians' Health Plan, Inc.  
500 Patroon Creek Blvd  
Albany, NY 12206

Re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug  
Contract Numbers: H3388 and H5042

Dear Dr. Bennett:

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 Capital District Physicians' Health Plan, Inc. (CDPHP) that CMS has made a determination to impose a civil money penalty (CMP) in the amount of **\$17,864** for Medicare Advantage-Prescription Drug (MA-PD) Contract Numbers H3388 and H5042.

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 CDPHP failed to meet that responsibility.

**Summary of Noncompliance**

CMS conducted an audit of CDPHP's Medicare operations from May 8, 2023 through May 26, 2023. In a program audit report issued on September 14, 2023, CMS auditors reported that CDPHP failed to comply with Medicare requirements related to Part C organization determinations, appeals, and grievances in violation of 42 C.F.R. Part 422, 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 increased out-of-pocket costs.

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 C Organization Determination, Appeal, and Grievance Requirements**

### Organization Determinations

(42 C.F.R. §§ 422.566, 422.568, and 422.574)

A Part C organization determination is when an enrollee, provider, or legal representative of a deceased enrollee requests coverage or payment for an item or service with an MA organization. Each MA organization must have a procedure for making timely organization determinations regarding the benefits an enrollee is entitled to receive under an MA plan, including basic benefits, mandatory, and optional supplemental benefits, and the amount, if any, that the enrollee is required to pay for a health service.

### Denials of Payment Requests from Non-Contract Providers

(42 C.F.R. §§ 422.568(e) and 422.2267(e)(27))

If a plan sponsor denies a request for payment from a non-contracted provider, the plan sponsor must notify the non-contracted provider with a specific reason for the denial and provide a description of the appeals process including a Waiver of Liability (WOL) form or link. The WOL form when signed by the non-contracted provider holds the enrollee harmless regardless of the outcome of the appeal. If non-contracted providers do not receive information from the plan sponsor on the appeals process, then enrollees are put at risk for being held financially liable for denied services.

## **Violation Related to Part C Organization Determinations, Appeals and Grievances**

CMS determined that CDPHP failed to provide non-contract provider denial notices with the applicable appeal rights. As a result, non-contract providers were not aware of the appeals process and there is a substantial likelihood enrollees may have been inappropriately held financially liable for medical items or services. This failure violates 42 C.F.R. § 422.568(e).

### **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)(1) and 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 42 C.F.R. §§ 422.760(b)(1) and 423.760(b)(1), a penalty may be imposed for each determination where the deficiency has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more enrollees.

CMS has determined that CDPHP failed substantially to carry out the terms of its contract (42 C.F.R. § 422.510(a)(1)). Additionally, CMS determined that CDPHP failed substantially to comply with requirements in Subpart M relating to grievances and appeals (42 C.F.R. § 422.510(a)(4)(ii)). CDPHP's violation of Part C 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**

CDPHP 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. CDPHP must send a request for a hearing to the Departmental Appeals Board (DAB) office listed below by May 21, 2024.<sup>1</sup> The request for hearing must identify the specific issues and the findings of fact and conclusions of law with which CDPHP disagrees. CDPHP 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](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  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail Stop: C1-22-06  
Email: [kevin.stansbury@cms.hhs.gov](mailto:kevin.stansbury@cms.hhs.gov)

If CDPHP 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 22, 2024. CDPHP 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 CDPHP to provide its enrollees with Medicare benefits in accordance with CMS requirements may result in CMS imposing additional remedies available under law,

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<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.

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 CDPHP 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  
Doug Edwards, CMS/OPOLE  
Yvette Banks, CMS/OPOLE  
Ericka Williams, CMS/OPOLE