

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

September 6, 2024

Mr. Michael Carson
Chief Executive Officer, Medicare
Wellcare of Missouri Health Insurance Company, Inc.
7700 Forsyth Blvd
Clayton, MO 63105

Re: Notice of Enrollment Suspension for Medicare Advantage-Prescription Drug Contract
Number H7518

Dear Mr. Carson:

Pursuant to 42 C.F.R. §§ 422.2410(c) and 423.2410(c),¹ the Centers for Medicare & Medicaid Services (CMS) is providing notice to Wellcare of Missouri Health Insurance Company, Inc. (“Wellcare of Missouri”) that CMS has made a determination to prohibit the enrollment of new beneficiaries under the Medicare Advantage-Prescription Drug (MA-PD) contract H7518 for contract year (CY) 2025.

Medical Loss Ratio (MLR) Relevant Requirements

Section 1857(e)(4) of the Social Security Act (“the Act”) requires Medicare Advantage organizations to maintain a medical loss ratio (MLR) of at least 85%, a requirement made applicable to Medicare Part D contracts through section 1860D-12(b)(3)(D) of the Act. The statute further provides, at section 1857(e)(4)(B) of the Act, that when an organization has an MLR for a contract that is less than 85% for three or more consecutive contract years, CMS must suspend that organization’s ability to accept new enrollments in the plans it offers under the non-compliant contract for coverage during the second succeeding contract year following the third consecutive year for which the organization failed to meet the minimum MLR requirement.

CMS administers the MLR review process for MA-PD organizations through the application of regulations established in Subpart X of Parts 422 and 423. In particular, MA-PD organizations are required, per §§ 422.2410(a) and 423.2410(a), to report an MLR each year for each of their contracts, and §§ 422.2460 and 423.2460 obligates sponsors to make such reports in a form and manner specified by CMS. The rules for calculating the MLR are codified in §§ 422.2420 and 423.2420. CMS has published MLR instructions and workbooks for submitting MLR data on

¹ All regulatory citations in this notice are to Title 42 of the Code of Federal Regulations.

May 31, 2022 (for CY 2021 data), June 2, 2023 (for CY 2022 data), and June 12, 2024 (for CY 2023 data).

Violation Related to MLR Requirements

Wellcare of Missouri has reported to CMS the following MLRs for MA-PD contract H7518: 78.9% for CY 2021, 77.7% for CY 2022, and 84.0% for CY 2023. Based on this plan sponsor-reported information, CMS has determined that Wellcare of Missouri has failed to meet the 85% MLR threshold for three consecutive contract years.

As a result of this determination, Wellcare of Missouri will be prohibited from accepting any MA-PD plan enrollments for 2025; this prohibition is effective for any enrollments for coverage that begins between January 1, 2025, through December 31, 2025. This action will include the removal of H7518 from the list of MA-PD plans from which beneficiaries may make an election during the CY 2025 Annual Election Period (AEP), which runs between October 15, 2024, and December 7, 2024. However, Wellcare of Missouri may continue to accept and process enrollments that become effective on or before December 31, 2024 (i.e., for enrollments beginning in CY 2025).

During CY 2025, all individual market plans offered under H7518 will be precluded from accepting any new enrollees, including beneficiaries already enrolled in a Wellcare of Missouri MA-PD plan who may want to elect a different plan offered under the same contract. Pursuant to sections 1857(i) and 1860D-22(b) of the Act, if Wellcare of Missouri has employer group plans, it may apply for an employer group waiver in order to continue to enroll members into their existing employer group plans, although CMS will not permit Wellcare of Missouri to add new employer group plans to contract H7518 during CY 2025.

Wellcare of Missouri must ensure that its marketing and communications materials and activities are not misleading to beneficiaries, and therefore must accurately reflect the fact that the plans under H7518 are not available for enrollment during 2025. Enforcement actions, as described in Subparts K and O of Parts 422 and 423, may be imposed if CMS finds that Wellcare of Missouri has engaged in activities that could mislead or confuse Medicare beneficiaries or misrepresent the plan(s). See §§ 422.2262 and 423.2262.

If Wellcare of Missouri submits a CY 2024 report in 2025 for H7518 consistent with the reporting requirements at §§ 422.2460 and 423.2460 that demonstrates it has achieved an MLR of at least 85%, CMS will allow the sponsor to resume accepting enrollments in plans under contract H7518 for coverage that becomes effective on or after January 1, 2026. In such an instance, CMS would allow Wellcare of Missouri to offer plans under H7518 to beneficiaries during the CY 2026 AEP, which will be held between October 15, 2025, and December 7, 2025. In the event that the CY 2024 MLR report for H7518 again shows an MLR below 85%, enrollment under that contract will remain closed during CY 2026. CMS will provide Wellcare of Missouri with the timeframe and instructions for submitting its CY 2024 MLR report in a separate communication. Furthermore, CMS reminds Wellcare of Missouri that if it fails to report an MLR of at least 85% for five consecutive years for H7518, CMS must terminate that contract, pursuant to sections 1857(e)(4)(C) and 1860D-12(b)(3)(D) of the Act.

Opportunity to Respond and Right to Request a Hearing

In accordance with our statement in the May 23, 2013, final rule (78 FR 31287-88), through which CMS adopted the MA organization and Part D sponsor MLR regulations, CMS is affording Wellcare of Missouri the opportunity to contest this determination through the processes that currently apply to suspensions of enrollment imposed as an intermediate sanction. Therefore, Wellcare of Missouri may provide a response to this notice, pursuant to §§ 422.756(a) and 423.756(a), and/or request a hearing, pursuant to §§ 422.756(b) and 423.756(b).

Consistent with §§ 422.756(a) and 423.756(a), Wellcare of Missouri has ten (10) calendar days from the date of receipt of this notice to provide a written rebuttal, or by September 17, 2024. Please note that CMS considers the date of receipt to be the day after the notice is sent by fax, email, or overnight mail or in this case, September 7, 2024. If you choose to submit a rebuttal, please send it to the attention of Kevin Stansbury at the email address noted below.

Consistent with §§ 422.756(b) and 423.756(b), Wellcare of Missouri may also request a hearing before a CMS hearing officer in accordance with the procedures outlined in 42 C.F.R. Part 422 Subpart N and Part 423 Subpart N. Pursuant to 42 C.F.R. §§ 422.662 and 423.662, a written request for a hearing must be received by CMS within fifteen (15) calendar days of receipt of this notice, or by September 23, 2024.² Please note, that the suspension of enrollment that begins January 1, 2025, through December 31, 2025 will not be stayed pending a rebuttal submission or a request for a hearing.

CMS notes that the statute does not provide any discretion in the imposition of the enrollment sanction described in this notice. Further, the information underlying the MLR determination for the three relevant contract years has been provided by Wellcare of Missouri. Therefore, we anticipate that any response to this notice or request for a hearing would be limited to mistakes or errors made by CMS in accepting the reports from Wellcare of Missouri or arguments that we are misapplying the law.

The request for a hearing must be sent to CMS electronically to the CMS Office of Hearings (OH). OH utilizes an electronic filing and case management system, the Office of Hearings Case and Document Management System (“OH CDMS”).

Wellcare of Missouri should complete the one-time OH CDMS registration process as soon as possible after receiving this Notice, even if Wellcare of Missouri is unsure whether it will appeal CMS’s determination. After the registration process is complete, Wellcare of Missouri must then file its request for a hearing within the time frame set forth above.

Registration information (including how to add an outside representative/law firm to participate in the appeal), filing instructions, and general information may be found on the OH webpage at <https://www.cms.gov/medicare/regulations-guidance/cms-hearing-officer/hearing-officer-electronic-filing>.

² September 22, 2024 falls on a weekday or holiday, therefore the date reflected in the notice is the next regular business day for you submit your request.

Follow the OH CDMS External Registration Manual for step-by-step instructions regarding registration and the OH CDMS Hearing Officer User Manual for appeal filing instructions.³

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: C1-22-26
Email: kevin.stansbury@cms.hhs.gov

CMS will consider the date the Office of Hearings receives the request via the CDMS as the date of receipt of the request(s). The request for a hearing must include the name, fax number, and email address of the contact within Wellcare of Missouri (or an attorney who has a letter of authorization to represent the organization) with whom CMS should communicate regarding the hearing request.

If you have any questions about this notice, please call or email the enforcement contact provided in your email notification.

Sincerely,

/s/

John A. Scott
Director
Medicare Parts C and D Oversight and Enforcement Group

cc: Jennifer Shapiro, CMS/CM/MPPG
Kevin Stansbury, CMS/CM/MOEG/DCE
Ashley Hashem, CMS/OPOLE
Verna Hicks, CMS/OPOLE
Kristen Duval, CMS/OPOLE

³ If technical assistance is required, please contact the OH CDMS Help Desk at 1-833-783-8255 or by email at helpdesk_ohcdms@cms.hhs.gov. The hours of operation are Monday–Friday (excluding federal holidays) from 7:00 a.m. to 8:00 p.m. Eastern Time.