

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Protecting Dual Eligibles from Balance Billing—What Advocates Need to Know

Edo Banach, Deputy Director
Medicare-Medicaid Coordination Office
Centers for Medicare and Medicaid Services

Georgia Burke
Directing Attorney
Justice in Aging

June 17, 2015
justiceinaging.org

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national non-profit organization that fights senior poverty through law. We secure health and economic security for older adults of limited income and resources by preserving their access to the courts, advocating for laws that protect their rights, and training advocates around the country to serve the growing number of older Americans living in poverty.

Visit us at - justiceinaging.org

What You Will Learn

- What is balance billing
- Federal protections from balance billing
 - Protections for QMBs
 - Protections for duals in Medicare Advantage plans
- In what circumstances do the protections apply
- What to do if a beneficiary is balance billed

#endbalancebilling

What is balance billing?

Balance billing is the practice in which Medicare providers seek to bill a beneficiary for Medicare cost sharing. Medicare cost sharing can include deductibles, coinsurance, and copayments.

Who are QMBs?

- **Qualified Medicare Beneficiaries:** Entitled to Medicare Part A and eligible for Part B; incomes below 100% FPL (higher in some states); and determined eligible for QMB status by their State Medicaid Agency.
- Medicaid pays Part A and B premiums, deductibles, co-insurance and co-payments. Some states also pay Part C premiums for certain Medicare Advantage plans.
- Regardless of whether the State Medicaid Agency pays the Part C premium, the QMB is not liable for any co-insurance or deductibles for Part C benefits.

QMBs—Qualified Medicare Beneficiaries

- QMB-Only: Persons who qualify only for the QMB benefit but do not qualify for full Medicaid coverage.
- QMB-Plus: Persons who qualify both for full Medicaid benefits (full benefit dual eligible or FBDE) and also meet QMB qualifications.

Both categories of QMBs are protected.

All QMBs are protected from balance billing

All Medicare physicians, providers, and suppliers who offer services and supplies to QMBs may not bill QMBs for Medicare cost sharing. Any payment (if any) made by the State Medicaid plan shall be considered payment in full. Provider will be subject to sanctions.

Federal law: 42 U.S.C. Sec. 1396a(n)(3)(B) (Sec. 1902(n)(3)(B) of the Social Security Act)

Can a QMB waive this protection?

NO!

- QMBs have no legal obligation to make further payment to a provider or Medicare managed care plan for Part A or Part B cost sharing.
- Medicare providers who violate these billing restrictions are violating their Medicare provider agreement.

Are QMBs in Medicare Advantage plans protected?

YES!

- All providers of services to enrollees of Medicare Advantage plans are affected. They may not charge QMBs co-pays or deductibles.
- All Medicare Advantage plans? YES! Not just Dual Eligible Special Needs Plans (D-SNPs).

Another Federal Protection— Duals in Medicare Advantage

MA plans must include in their contracts with providers a protection against cost sharing for all full dual eligible enrollees and QMBs.

Note: *All* full dual enrollees, even if they are not QMBs

Federal regulation: 42 CFR Sec. 422.504(g)(1)(iii)

Impact of the MA Dual Eligible Protection:

- The regulation binds the Medicare Advantage plans.
- The plan contract binds providers.

BOTH are responsible for compliance.

Look for Additional State Law Protections

- States prohibit Medicaid providers from balance billing their Medicaid patients more than the Medicaid rate.
- Some state laws may be more expansive.
E.g. Cal. Welf. & Inst. Code § 14019.4.

Examples

Tom, Dick and Harry

Tom

Tom goes to Dr. Cutter, a surgeon, for an out-patient procedure. Tom tells the doctor's office that he is in FFS Medicare and also a QMB.

The office says Dr. Cutter takes Medicare but does not take Medicaid and will only see Tom if Tom signs an agreement to pay charges that Medicare won't pay.

Tom signs and has the surgery.

Tom can't afford to make the co-pays and is getting collection notices.

Does Tom have to pay Dr. Cutter?

NO!

The agreement Tom signed is invalid. Dr. Cutter is subject to sanctions if he continues to seek payment from Tom.

Dr. Cutter isn't enrolled in Medicaid. Does that make a difference?

NO!

All Medicare providers must conform to the QMB balance billing protections whether or not they accept Medicaid.

Is there any way Dr. Cutter can get paid? Yes, maybe.

Most states: Providers not enrolled in Medicaid can enroll for the limited purpose of receiving co-payments for Medicare claims. Shorter form, sometimes called “crossover enrollment.”

BUT

Most states: Only pay up to the Medicaid authorized amount. Provider may receive little or nothing.

QMB protection applies whether or not Medicaid pays anything and whether or not the provider even tries to bill Medicaid.

Provider payment for QMBs

Medicare pays (typically)
80% of the Medicare rate.

Medicaid covers the remaining 20
percent.
(But only required to pay up to the
Medicaid amount.)

Federal regulation: 42 CFR Sec. 422.504(g)(1)(iii)

Example of provider payment

Medicare allowed amount for office visit	\$100
Medicare pays provider	\$80
Medicaid allowed amount for office visit	\$70
Medicaid pays provider	\$0

Could Dr. Cutter have simply turned Tom away because he was a QMB?

Unfortunately, yes. Doctors in FFS Medicare do not have to accept all Medicare beneficiaries.

Dick

Dick is a full benefit dual eligible. He is not a QMB but he is enrolled in a Medicaid waiver program in his state with higher income limits. Dick gets his Medicare benefits through the *Keep 'Em Healthy* Medicare Advantage plan.

Dick has been going to Dr. Primary, his PCP and an in-network provider in *Keep 'Em Healthy*, for the last three months. Every time, the front desk charges him a \$20 co-pay before he even sees Dr. Primary.

Is this is right?

Should Dr. Primary be charging Dick co-pays?

No. Dr. Primary is bound by contract not to charge co-pays to dual eligibles.

Where should Dick complain?

Dick can contact both Dr. Primary's office and *Keep 'Em Healthy*. Both are responsible.

Can Dick get a refund of the payments he already made

Yes. *Keep 'Em Healthy* has a responsibility to refund the overpayments.

What if Dr. Primary refuses to see Dick any more?

Complain to *Keep 'Em Healthy*. Medicare Advantage plans must have procedures in place to ensure that members are not discriminated against in the delivery of services, including specifically, discrimination on the basis of source of payment.

See Medicare Managed Care Manual, Ch. 4 at 10.6.

Harry

Harry is a QMB plus. His state recently moved all dual eligibles, including Harry, into Medicaid managed care. Harry's FFS Medicare doctor, Dr. Eyeful, has been treating Harry's glaucoma for years and not balance billing him.

Now Dr. Eyeful tells Harry that, because Dr. Eyeful is not in Harry's Medicaid managed care plan's network, things have changed.

Dr. Eyeful starts charging Harry the amounts Medicare doesn't pay for Harry's appointments.

Does it matter that Dr. Eyeful is not part of the network of Harry's Medicaid plan?

No. Some doctors mistakenly think they must drop patients because the doctor is not part of patient's Medicaid plan's network. Dr. Eyeful will still be paid by Medicare. She does not need to be part of Harry's Medicaid plan's network.

Can Dr. Eyeful start charging Harry co-insurance? No. Harry's protections as a QMB have not changed just because he now receives his Medicaid benefit through managed care.

The state Medicaid agency used to pay Dr. Eyeful \$10 per visit. Will she still be able to collect? Yes. Some states adopting Medicaid managed care delegate Medicaid co-payments to the Medicaid plans; some continue to pay directly. Either way, Dr. Eyeful should get the same payments as before.

When do balance billing protections NOT apply?

Medicaid Co-Pays. If your state imposes Medicaid co-pays, provider may collect them.

Medicare Part D co-pays. Duals and QMBs qualify automatically for the Low Income Subsidy (LIS). They must pay these lowered co-pays.

NOTE: Part B drug co-pays (primarily drugs administered in a doctor's office) are subject to balance billing protections.

Out of network providers. If a Medicare Advantage member goes to a provider who is out of her MA plan's network or goes to a specialist without required prior authorization, that is not a Medicare-covered service and is NOT covered by balance billing protections. MA members must follow MA rules.

Services not covered by Medicare. For example, cosmetic surgery.

Steps to Take When Balance Billing Occurs

Steps To Take When Balance Billing Occurs

1. Tell the beneficiary – DO NOT PAY THE BILL!!
2. Make sure the provider knows that the individual is a QMB (or dual if in MA plan).
3. Educate the provider about balance billing protections.
Use <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf>
4. Contact the MA plan.
5. Write a letter, go up the chain.
6. Contact us. GBurke@justiceinaging.org

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



News Flash –

REVISED product(s) from the Medicare Learning Network® (MLN)

- [“Medicare Physician Guide”](#), Guide, ICN 005933, Downloadable

MLN Matters® Number: SE1128 **Revised** Related Change Request (CR) #: N/A
Related CR Release Date: N/A Effective Date: N/A
Related CR Transmittal #: N/A Implementation Date: N/A

Prohibition on Balance Billing Qualified Medicare Beneficiaries (QMBs)

Note: This article was revised on March 28, 2014, to change the name of the Coordination of Benefits Contractor (COBC) to Benefits Coordination & Recovery Center (BCRC). All other content remains the same.

Provider Types Affected

All Medicare physicians, providers and suppliers who submit claims to Medicare for services and supplies provided to Qualified Medicare Beneficiaries (QMBs) are affected. This includes providers of services to enrollees of Medicare Advantage plans.

What You Need to Know



STOP – Impact to You

This Special Edition MLN Matters® Article provides guidance from the Centers for Medicare & Medicaid Services (CMS) to Medicare providers

Disclaimer

This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. CPT only copyright 2010 American Medical Association.

Outstanding Advocacy Issues

Identifying QMBs. Better ways for providers to know someone is a QMB.

Educating beneficiaries about their status and about their rights.

Educating providers —and their front office staff and billing departments about balance billing protections.

Improving Medicaid payments for duals. Low Medicaid rates deny Medicare beneficiaries access to the providers they need.

Federal Sources

Federal Balance Billing Statute: 42 U.S.C. 1396a (§ 1902(n)(3)(B) of SS Act).

Medicare Managed Care regulations: 42 CFR 422.504(g)(1)(iii)

Medicare Managed Care regulations 42 CFR 422.270

CMS State Medicaid Manual Section 3490.14

CMS Managed Care Manual, Ch. 4 at 10.6

CMS Medicare Learning Network MLN Matters, SE 1128, March 28, 2014

www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf

CMS Medicare Learning Network MLN Matters (Nov. 2014) www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Medicare_Beneficiaries_Dual_Eligibles_At_a_Glance.pdf

CMS Webpage on Medicare-Medicaid Enrollee Billing Questions (March 10, 2014)

www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/MedicareMedicaidGeneralInformation.html.

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Thank You!

Gburke@justiceinaging.org

MedicareMedicaidCoordination@cms.hhs.gov

#endbalancebilling

Visit us at - justiceinaging.org