

## What Should California Advocates Do If Their Clients are Improperly Billed?

### Case Example #1

Ms. Jones is a dual eligible who resides in a CCI county. After opting-out of Cal MediConnect and picking a Medi-Cal managed care plan, she visits her Medicare fee-for-service doctor for a regularly scheduled office visit. Although the doctor typically bills Medicare and Medi-Cal for her visits, he does not have a contract with Ms. Jones's new Medi-Cal plan so he instead sends her a bill for the charges that Medicare did not pay.

**RULE:** Under no circumstances may the doctor bill Ms. Jones. Even if he does not have a contract with Ms. Jones's Medi-Cal plan, the doctor can still bill her plan for the Medicare coinsurance.

### Case Example #2

Mr. Lee is a dual eligible who resides in a CCI county but is not eligible for Cal Medi Connect. He signs up for a Medi-Cal plan and visits his Medicare fee-for-service doctor. The doctor tells him that he cannot see Mr. Lee unless he agrees to pay the 20 percent co-insurance.

**RULE:** Under no circumstances may the doctor bill Mr. Lee. Even if he does not have a contract with Mr. Lee's Medi-Cal plan, the doctor can still bill his plan for the Medicare coinsurance.

Improper billing, sometimes referred to as a form of “balance billing,” is the practice in which providers, particularly physicians, seek to bill (1) dual eligible beneficiaries (those with both Medicare and Medi-Cal) for charges not covered by either Medicare or Medi-Cal; or (2) Medi-Cal only seniors and persons with disabilities any amount for a Medi-Cal covered service.

Improper billing violates both federal and state law.<sup>1</sup> State law protects any Medi-Cal beneficiary against improper billing.<sup>2</sup> A provider must accept as payment in full whatever amount the provider receives from Medicare, other insurance (if any), and Medi-Cal. Private pay agreements or other waivers of the improper billing protection are unlawful. Furthermore, federal law protects all dual eligibles – regardless of whether they are QMB – who are enrolled in Medicare Advantage plans from paying co-pays.<sup>3</sup>

Note that the state law improper billing protection applies to Medi-Cal share of cost beneficiaries when the share of cost has been met for the month during which services were rendered.

Providers, however, are often confused about their obligations under law and that confusion can affect both dual eligibles and SPDs. Providers who improperly bill beneficiaries are subject to penalties under both federal and state law. If a provider has erroneously billed a beneficiary, upon proof of Medi-Cal enrollment, the provider must call off any

<sup>1</sup>Federal law provides that all Medicare providers who serve qualified Medicare beneficiaries (“QMBs”) cannot bill them for Medicare cost-sharing. 42 U.S.C. Sec. 1396a(n)(3)(B) (Sec. 1902(n)(3)(B) of the Social Security Act). The state law covers all Medi-Cal beneficiaries, whether or not they are QMBs. Cal. Welf. & Inst. Code § 14019.4.

<sup>2</sup> Cal. Welf. & Inst. Code § 14019.4. See also the All Plan Letter on Coordination of Benefits: Medicare and Medi-Cal guidance (supersedes APL 13-001) (February 8, 2013), available at <http://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2013/APL13-003.pdf>.

<sup>3</sup>42 C.F.R. sec. 422.504(g)(1)(iii)

collection efforts that have begun, and if the bill has been sent a debt collection agency, the agency also must correct any erroneous information sent to credit reporting agencies.<sup>4</sup>

As dual eligible beneficiaries transition from fee-for-service to managed care, advocates may begin to see increased instances of improper billing during the implementation of the Coordinated Care Initiative (CCI) due to provider confusion and misunderstanding.

## What Should Advocates Do If Their Clients are Improperly Billed?

- Beneficiaries should be instructed to contact the local Health Insurance Counseling and Advocacy Program (HICAP) agency (1-800-434-0222) to report the issue. The Health Consumer Alliance (1-888-804-3536) can also assist clients on improper billing issues.
- Advocates should work with beneficiaries to make sure their improper billing provider knows of the beneficiary's Medi-Cal enrollment, inform beneficiaries of their legal rights, and encourage them not to pay the bill.
- Please tell Justice in Aging if you see improper billing issues so we can monitor the issue. Justice in Aging also is available to provide technical assistance to

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<sup>4</sup> Cal. Welf. & Inst. Code § 14019.4(d).

### Case Example #3

Ms. Garcia is a dual eligible with a Medi-Cal share of cost of \$100 and lives in a CCI county. She opts out of Cal MediConnect and picks a Medi-Cal plan. In February, she sees her Medicare fee-for-service doctor, and she receives a bill from him for \$50, which is 20 percent of the Medicare-approved amount for the service.

**RULE:** If Ms. Garcia has not yet met her share of cost for February, she can pay the \$50 bill and have it count toward her share of cost. If she has already met her share of cost for February prior to this visit, improper billing protections are in effect, and she should not pay the bill.

### Case Example #4

Ms. Allen lives in California and has both Medicare and Medi-Cal. She is also a member of a Medicare Advantage plan. Upon visiting her in-network knee surgeon prior to a scheduled knee surgery, she is told by the billing staff that she owes a co-pay and has to pay as a condition to getting the surgery.

**RULE:** Under no circumstances may the knee surgeon bill Ms. Allen. As a dual in a Medicare Advantage plan, Ms. Allen is protected from paying any co-pays.

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