

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Below is the Section on Balance Billing in the 2017 Call Letter to Medicare Advantage Plans. The entire Call Letter can be accessed at <https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Announcement2017.pdf>. The balance billing portion begins on page 181.

## ***Prohibition on Billing Medicare-Medicaid Enrollees for Medicare Cost-Sharing***

We remind all Medicare Advantage (MA) plans of their obligation to protect dual eligible beneficiaries from incurring liability for Medicare cost-sharing. In July 2015, CMS released a study finding that confusion and inappropriate balance billing persist notwithstanding laws prohibiting Medicare cost-sharing charges for QMB beneficiaries, *Access to Care Issues Among Qualified Medicare Beneficiaries (QMB) ("Access to Care")* [https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Access\\_to\\_Care\\_Issues\\_Among\\_Qualified\\_Medicare\\_Beneficiaries.pdf](https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Access_to_Care_Issues_Among_Qualified_Medicare_Beneficiaries.pdf). These findings underscore the need to re-educate providers, plans, and beneficiaries about proper billing practices for dual eligible enrollees.

Under 42 CFR §422.504(g)(1)(iii), all MAOs --without exception-- must educate providers about balance billing protections applicable to dual eligible enrollees. Federal law bars Medicare providers from collecting Medicare Part A and Medicare Part B deductibles, coinsurance, or copayments from those enrolled in the Qualified Medicare Beneficiaries (QMB) program, a dual eligible program which exempts individuals from Medicare cost-sharing liability. (See Section 1902(n)(3)(B) of the Social Security Act, as modified by 4714 of the Balanced Budget Act of 1997). Balance billing prohibitions may likewise apply to other dual eligible beneficiaries in MA plans if the State Medicaid Program holds these individuals harmless for Part A and Part B cost sharing. See 42 CFR §422.504(g)(1)(iii). For more information about dual eligible categories and benefits, please visit: [https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/medicare\\_beneficiaries\\_dual\\_eligibles\\_at\\_a\\_glance.pdf](https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/medicare_beneficiaries_dual_eligibles_at_a_glance.pdf).

In contracts with providers, MAOs must specify these balance billing prohibitions and instruct providers to either accept the MA payment as payment in full or bill the State for applicable Medicare cost-sharing for enrollees that are eligible for both Medicare and Medicaid. MA plans can find information about an enrollee's dual eligible status in the Monthly Membership Detail Data File. (See Appendix F.12, # 85 Dual Status Code in *the Plan Communications User Guide Appendices* at [https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/mapdhelpdesk/Plan\\_Communications\\_User\\_Guide.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/mapdhelpdesk/Plan_Communications_User_Guide.html)).

In addition, CMS encourages MAOs to take affirmative steps to address common points of confusion among providers regarding balance billing. For example, we urge MAOs to explain that all MA providers-- not only those that accept Medicaid-- must abide by the balance billing prohibitions.

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Further, CMS suggests that plans clarify that balance billing restrictions apply regardless of whether the State Medicaid Agency is liable to pay the full Medicare cost sharing amounts. (Federal law allows State Medicaid Programs to reduce or negate Medicare cost-sharing reimbursements for QMBs in certain circumstances. See Section 1902(n)(3)(B) of the Social Security Act, as modified by 4714 of the Balanced Budget Act of 1997).

Finally, to monitor provider compliance with balance billing rules and target provider outreach, CMS encourages MAOs to identify problem areas from plan grievance and CMS Complaint Tracking Module data. These steps will complement continued MAO efforts to remediate individual violations and clarify appropriate billing procedures.

We received several supportive comments regarding the draft Call Letter's reminder to MA plans of their obligations to protect dual eligible beneficiaries from balance billing by educating providers about billing prohibitions. Numerous commenters concurred that confusion and inappropriate billing still exist, agreed that provider contracts must specify applicable rules, and supported our recommendations that plans address common points of confusion and use grievance and Complaint Tracking Module data to monitor plan compliance. We thank commenters for these comments and note that we are adopting the draft language in its entirety.

Additionally, we received a number of requests seeking further information for providers and additional CMS recommendations to improve compliance. In response to commenters' request for clarification, we note that our interpretation of the applicable anti-discrimination provisions is that MA providers are prohibited from discriminating against patients based on their QMB status. (See Managed Care Manual, Ch. 4, Section 10.2.5). We will consider adding a policy clarification to future guidance in this regard. We point out that CMS has stepped up efforts to educate providers and beneficiaries about balance billing rules and is considering administrative options to help providers better identify QMB patients. Finally, CMS continues to explore further measures to address and track billing problems and to promote adherence to billing rules.