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Improper Billing Rules and the Qualified Medicare Beneficiary (QMB) Program

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Diversity, Equity, and Inclusion

To achieve Justice in Aging, we must:

- Acknowledge systemic racism and discrimination

- Address the enduring negative effects of racism and differential treatment

- Promote access and equity in economic security, health care, and the courts for our nation's low-income older adults

- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class

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Today's Discussion

Improper Billing Rules

Example and Developing Trends

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Improper Billing Rules

What is improper billing? The low-income dual eligible definition

Improper billing occurs when Medicare providers seek to bill a beneficiary for Medicare cost sharing. Medicare cost sharing can include deductibles, coinsurance, and copayments.

CMS Study on Improper Billing

- 31 interviews across three states
- Improper billing "<u>relatively commonplace</u>"
- Most paid the bills
- Those unpaid were sent to collections
- Many experienced appeal challenges and found billing processes complex and confusing

<u>cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Access_to_Care_Issues_Among_Qualified_Medicare_Beneficiaries.pdf</u>

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Who is protected?

The QMB program is one of several Medicare Savings Programs that help low-income Medicare beneficiaries get help from Medi-Cal to pay for Medicare Parts A and B, assuming they meet certain criteria.

QMBs are at or below 100% FPL and meet QMB resource limits.

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Who is protected?

- QMBs are either QMB-only or QMB+
- Many QMBs have both Medicare and full scope Medi-Cal (QMB+), but some are QMB only (higher resources).

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Who else is protected?

- Full benefit dual eligibles (FBDE) are individuals with Medicare and full-scope Medi-Cal.

- They may be above the QMB eligibility limits, but they still meet the Medi-Cal eligibility criteria.

Federal law—All QMBs are protected from improper 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)

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Some Common Exceptions

- "Covered" Services
  - Non-Medicare covered services
  - Advance Beneficiary Notices
- Managed Care/Out of Network
- Part D Drug LIS Co-Pays
- Share of Cost

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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.

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Another Federal Protection—QMBs in Medicare Advantage and Medicare-Medicaid Plans

MA and MMP plans must include in their contracts with providers a protection against cost sharing for QMBs.

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

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Impact of the MA Dual Eligible Protection:

- The regulation binds the Medicare Advantage plans.

- The plan contract binds providers.

BOTH are responsible for compliance.

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California State Law Protection

California: A provider of health care services who obtains proof of Medi-Cal eligibility may not seek payment from the beneficiary for covered services. If receives notice, provider and any debt collector must cease debt collection and correct any reports to consumer reporting agencies.

Cal. Welf. & Inst. Code § 14019.4

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What about managed care?

- How a beneficiary receives her benefit does not change the improper billing protections.

- Automated crossover billing required in Medicaid Managed Care Rule. 42 C.F.R. sec. 438.

What about administrative fees?

- First, is the service for which the fee is being charged actually part of the covered service under Medicare or Medi-Cal?

- Some fees are improper on their face.
  - Charges for assessment paperwork to receive HCBS are improper. 42 USC sec. 1936t(c)(2)(A)

- Others may be improper under the Medi-Cal payment in full provisions. 42 C.F.R. sec. 447.15

Examples and Developments

The Case of Ms. Lee

- Ms. Lee is a QMB.
- On August 1, Ms. Lee went to visit Dr. Primary, her longstanding PCP, because of a worsening cold.
- Her doctor prescribes an antibiotic and sends her on her way.
- On August 31 she receives a bill for 20% of the costs of the office visit.

The Case of Ms. Lee

Medicare rate: $100

Medicaid rate: $75

Medicare pays 80%, so $80. Because Medicaid only pays when the rate is the same or greater, Dr. Primary is owed nothing ($75<$80).

Regardless, Ms. Lee cannot be billed!

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The Case of Mr. Wong

- Mr. Wong is QMB and a member of Humana Medicare Advantage.

- On July 30, he visits Dr. Smiles, an in-network PCP with Humana.

- Before he enters the exam room, he is asked for a $15 co-pay, the standard for all Humana members.

- He has waited weeks for his appointment, so he pays and sees Dr. Smiles.

The Case of Mr. Wong

- The $15 co-pay is improper since Mr. Wong is a QMB!

- Mr. Wong is owed a refund of the co-pay and any other co-pays he may have paid as a Humana member.

- Humana should go back to see if Dr. Smiles collected co-pays from other Humana QMBs in violation of federal law.

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The Case of Ms. Lincoln

- Ms. Lincoln is a QMB.

- She wants to get in-home care for help with ADLs through IHSS. She brings the provider certification form to Dr. Gaines, her PCP.

- Dr. Gaines charges a standard $25 for each form the office completes.

- Ms. Lincoln badly needs the in-home care and pays the $25.

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The Case of Ms. Lincoln

- If Dr. Gaines is contracted with Medi-Cal, his office cannot charge Ms. Lincoln $25 for completing the form.

- It does not matter that the $25 is a standard fee for the office.

- Medi-Cal rules mandate that beneficiaries cannot be charged for completion of assessments for HCBS.

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Developments, Tips, and Resources

Developments

- ## New changes at 1-800-MEDICARE
  - QMB identification
  - Complaint escalation mechanism

- ## Additional guidance and reminders from CMS to Medicare Advantage Plans

- ## HETS Changes

- ## Changes to Medicare Summary Notices and Provider Remittance Advice documents

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Tips

- Encourage the beneficiary not to pay up front.
- Remind the provider of the beneficiary's status as a QMB and the improper billing rules.
- Go up the chain in the billing department.
- For Medicare Advantage, remember both points of advocacy.
- Medicaid plans are supposed to have automatic crossover processes set up.
- Use Justice in Aging's model letters.
- Identify QMBs and report providers using 1-800-MEDICARE.
- Get help from legal aid on individual cases (1-877-734-3258).
- Contact Justice in Aging for systemic issues.

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Resources to Stop Improper Billing

- [CMS Medicare Learning Network Bulletin](#)
- [Justice in Aging Issue Brief](#)
- [CMS July 2015 QMB Study](#)

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QMB Enrollment

- As few as one out of three eligible individuals are enrolled for QMB, even less for SLMB.

- Medi-Cal and DPSS may be less likely to screen for MSP eligibility with SSI-linked Medi-Cal older adults.

- Social Security Administration owns these files, not Medi-Cal.

- Practice Tip: Make sure your SSI-linked clients affirmatively apply for MSP with Medi-Cal.

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Questions?

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