

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

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

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February 23, 2016

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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.

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What You Will Learn

- What is balance billing
- What CMS found regarding inappropriate billing and agency efforts to address this problem
- 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.



Reducing Inappropriate Billing of Qualified Medicare Beneficiaries (QMBs)



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February 23, 2016

Overview

- Background on the Qualified Medicare Beneficiaries (QMB) program
- State QMB policies and provider reimbursement gap
- Financial Protections for QMBs
- CMS' 2015 findings regarding access
- Medicare-Medicaid Coordination Office (MMCO) priorities

Background

- Well over ten million persons in both Medicare and Medicaid (“dual eligible beneficiaries”) in 2013
 - Almost seven million (65%) enrolled in Qualified Medicare Beneficiary Program (QMB)
- Through QMB, Medicaid pays Medicare premiums and cost-sharing (subject to State limits)

QMB Eligibility

- QMBs must:
 - Be enrolled in Medicare Part A*
 - Have incomes up to 100% FPL and resources up to 300% SSI resource levels (adjusted for inflation)
 - But states can effectively raise these limits
 - Be determined eligible by their State Medicaid Agency.
- 80% of QMBs also have full Medicaid (QMB-plus) and 20% have QMB only (QMB-only)

* Or have applied for conditional Part A at the Social Security Administration. See <http://policynet.ba.ssa.gov/poms.nsf/lrx/0600801140>

State QMB Policies Can Cause Reimbursement Gap for Providers

- Here are the state options:
 - “Lesser-of” States
 - Providers in “lesser-of” States often paid less than they otherwise would have been reimbursed by Medicare and beneficiary payments of cost sharing when they treat QMBs
 - Reason is that “lesser-of” States apply the Medicare or Medicaid reimbursement rate, *whichever is less*
 - 39 States applied “lesser-of” policies to at least one category of service in 2012 (MACPAC)
 - “Full payment” States
 - “Full payment” States fully cover QMBs’ Medicare cost sharing regardless of whether the Medicare rate is higher or lower than the Medicare reimbursement rate

fee schedule is \$100

State Policy	Medicaid rate	Medicare portion (80 %)	Medicaid reimbursement for 20 % co-insurance	Total net provider Payment
Lesser-of	\$74	\$80	\$0	\$80
Lesser-of	\$82	\$80	\$2	\$82
Full Payment	\$74	\$80	\$20	\$100

Financial Protections for QMBs

- Providers are not allowed to charge QMBs for Medicare cost-sharing (“no balance billing”) under any circumstances
 - Social Security Act Sections 1902(n)(3)(C); 1905(p)(3); 1866(a)(1)(A); 1848(g)(3)(A)
- This rule applies to all providers:
 - Original Medicare and Medicare Advantage
 - Medicare-only and Medicaid
 - Out-of-state
- QMBs cannot waive their status

CMS' Evaluation of Access for QMBs

- Study of QMB access has two parts:
 - Effect of “lesser-of” policies
 - Beneficiary perspective on access and billing
 - See 2015 report at [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%20to%20Care%20Issues%20Among%20Qualified%20Medicare%20Beneficiaries.pdf)

Overview of CMS' 2015 findings

- Balance billing and beneficiary/provider confusion persist.
- QMBs' access to care compromised, as some providers opt to not accept QMBs as patients:
 - Reduced use of primary, routine and preventative care.
 - Increased use of acute care services.

Medicare-Medicaid Coordination Office (MMCO) Priorities

- Reduce incidence of balance billing:
 - Strengthen CMS supports for QMBs
 - Conduct targeted outreach to providers and their billers
 - Administrative reforms
- Minimize negative effects on access to care

Additional Resources

- **Provider article** <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/se1128.pdf>
- **QMB eligibility** <https://www.medicaid.gov/medicaid-chip-program-information/by-population/medicare-medicaid-enrollees-dual-eligibles/seniors-and-medicare-and-medicaid-enrollees.html>
- **MMCO** <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/MedicareMedicaidGeneralInformation.html>
- **MACPAC study** <https://www.macpac.gov/wp-content/uploads/2015/01/Medicaid-Payment-for-Cost-Sharing.pdf>

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.

Are all Medicare Advantage plans affected?

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

Alice, Barney and Caroline

Alice

Alice is in FFS “Original” Medicare and also a QMB.

Alice is having an out-patient procedure performed by Dr. Able.

When Alice arrives for her appointment and shows her Medicare and QMB cards, she is told that her procedure will be cancelled unless she signs an agreement to pay charges that Medicare won't pay.

Alice signs and has the surgery.

Alice can't afford to pay the co-insurance and is getting collection notices.

Does Alice have to pay Dr. Able?

NO!

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

**Dr. Able 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. Able can get paid?

Yes, maybe.

Many 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.

Could Dr. Able have simply turned Alice away because she was a QMB?

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

Barney

Barney 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. Barney gets his Medicare benefits through the *Keep 'Em Healthy* Medicare Advantage plan.

Barney has been going to Dr. Best, 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. Best.

Is this is right?

**Should Dr. Best be charging Barney
co-pays?**

NO!

Dr. Best is bound by contract not to charge
co-pays to dual eligibles.

Where should Barney complain?

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

Can Barney get a refund of the payments he already made?

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

What if Dr. Best refuses to see Barney 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.

Caroline

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

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

Dr. Capable says she must drop Caroline as a patient.

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

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

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

What if the state Medicaid agency used to pay Dr. Capable \$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. Capable should get the same payments as before.

When do balance billing protections NOT apply?

Medicaid Co-Pays. If your state imposes Medicaid co-pays, the 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 or providers not covered by Medicare. Providers usually must provide an Advance Beneficiary Notice –ABN—before providing the service.

Steps to Take When Balance Billing Occurs

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 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. Model letters at:
<http://www.justiceinaging.org/our-work/healthcare/dual-eligibles-california-and-federal/balance-billing/>
6. Contact your local legal services provider.
7. Contact your CMS Regional Office.
8. Contact us. GBurke@justiceinaging.org

Outstanding Advocacy Issues

Identifying QMBs. Can your state make it easier for providers to know someone is a QMB?

Educating beneficiaries 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)

CMS Medicare Managed Care Manual, Ch. 4 at 10.5 <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c04.pdf>

CMS Medicare Learning Network MLN Matters, SE 1128 (Feb. 4, 2016)

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

CMS Report: Access to Care Issues Among Qualified Medicare Beneficiaries (July 2015)

www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/Access_to_Care_Issues_Among_Qualified_Medicare_Beneficiaries.pdf

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