Medicare Fraud and Improper Billing

NATIONAL CENTER ON LAW & ELDER RIGHTS

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Part I. Medicare Fraud Prevention

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California Health Advocates

Founded in 1997, California Health Advocates (CHA) is the leading Medicare advocacy and education non-profit in California. We advocate on behalf of Medicare beneficiaries and their families; conduct public policy research to support improved rights and protections for Medicare beneficiaries; and provide accurate and up-to-date Medicare information for both Medicare beneficiaries and their families as well as the advocates and providers who serve them.

Senior Medicare Patrol

The California Senior Medicare Patrol (SMP) is a project under CHA. We empower and assist Medicare beneficiaries, their families, and caregivers to prevent, detect, and report healthcare fraud, errors and abuse through: **(1) Education**: SMPs give presentations to groups, exhibit at events and work one-on-one with Medicare beneficiaries; **(2) Counseling**: SMPs work to protect older adults' health, finances and medical identity while saving precious Medicare dollars; and **(3) Assisting** Medicare beneficiaries, caregivers and family members when they bring their concerns or complaints to the SMP. We determine whether fraud, errors, or abuse are suspected. When fraud or abuse is assumed, we make referrals to the appropriate state and federal agencies for further investigation. There are 54 Senior Medicare Patrol (SMP) programs throughout the country. SMPs are grant-funded projects of the federal U.S. Department of Health and Human Services, Administration for Community Living.

Key Lessons

1. **The Medicare Trust Fund loses $60–$90 billion every year to fraud, errors, and abuse.** Although the exact figure is impossible to measure, the U.S. Government estimates that 3%–10% of annual health care expenditures are lost or stolen from the Medicare Trust Funds.

2. **Medicare beneficiaries are the eventual victims of Medicare fraud.** Medical identity theft occurs when a beneficiary's Medicare number is misused, either by a provider, supplier, or by someone posing as the real beneficiary to receive medical care. When fraudulent or abusive billing occurs using a beneficiary's Medicare number to bill Medicare for a service or supply, it is recorded on the beneficiary's Medicare record even if the beneficiary did not actually have service rendered.

3. **There are health care consequences due to Medicare fraud.** Receiving health care from a fraudulent provider can mean the quality of the care is poor, the intervention is not medically necessary, or worse: the intervention is harmful. A beneficiary may later receive improper medical treatment from legitimate providers because of inaccurate medical records that may contain false diagnoses or incorrect lab results.

4. **Medicare beneficiaries may be denied Medicare benefits due to fraud.** Some health care services have limits. If Medicare thinks such services were already provided to the beneficiary, Medicare may deny payment.

5. **Medicare fraud, errors, and abuse can result in higher out-of-pocket costs for beneficiaries.** Beneficiaries may have to pay higher copayments for health care services that were never provided, were

excessive, or were medically unnecessary. Beneficiaries may also find themselves stuck with bills for services from providers who should have billed Medicare but instead billed the beneficiary for the entire cost of that service.

PRACTICE TIPS

- Medicare will never call a beneficiary and ask for their Medicare number, social security number, or personal health care information.
- Medicare pays for durable medical equipment only when it is prescribed by the beneficiary's provider and it is medically necessary.
- Medicare benefits include home health services only when it is prescribed by the beneficiary's doctor, is medically necessary, and the beneficiary is mainly homebound.
- Hospice is a Medicare-covered benefit when a beneficiary is certified to be terminal (projected to pass away within six months) and provides comfort care.
- Medicare removed the social security number from the new Medicare card and replaced it with a unique identifier. When the new card is received, beneficiaries should shred the old one, bring the new card to their provider once, and then keep it in a safe, secure place.
- Medicare beneficiaries should regularly review medical statements, Medicare Summary Notices, and Explanations of Benefits to ensure only legitimate services and supplies are recorded. Beneficiaries can sign up to view medical statements online.
- If a Medicare beneficiary has a Medicare Advantage plan that they like and want to stay with, they do not have to change plans during Annual Open Enrollment.
- The Health Insurance Counseling and Advocacy Programs (HICAP) in California, also known as the State Health Insurance Assistance Programs (SHIP) in other states, provide free, unbiased, one-on-one insurance counseling and assistance to Medicare beneficiaries, their families, and caregivers.

Part 2. Financial Exploitation: Improper Billing of Qualified Medicare Beneficiaries

Georgia Burke, Directing Attorney, Justice in Aging

Justice in Aging

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

Improper Billing: The Basic Issue

CASE EXAMPLE

Ms. Mock,[1] a 72 year old senior with multiple chronic conditions, felt increasingly frustrated and helpless. She had seen the same primary care doctor for many years, and her doctor knew she had both Medicare and Medicaid coverage (a dual eligible). However, the new receptionist at the doctor's office told her that because the office did not accept Medicaid, Ms. Mock must pay the 20% co-insurance that Medicare did not cover. Ms. Mock lived on a fixed income that barely covered rising rent and groceries. She worried about

1 Ms. Mock's situation is based on the stories that advocates have reported when helping dual eligibles with this problem.

the onslaught of future bills and feared being hounded by a collection agency. Her case manager at the local senior center told Ms. Mock that she should not have to pay for covered medical procedures, and helped her write a letter telling them not to bill her. However, the doctor's office persisted in sending bills, and soon Ms. Mock began to dread visits to her doctor, as the office repeatedly reminded her about the growing, unpaid balance on her account.

Improper billing protections

Federal law, 42 U.S.C. § 1396a(n)(3)(B), provides that no Medicare-enrolled provider may require payment directly from a Qualified Medicare Beneficiary (QMB) for Medicare-covered services. The statute subjects Medicare providers to federal sanctions, including disenrollment from the Medicare program, for violating this provision. Federal regulation, 42 C.F.R § 422.504(g)(1)(iii), specifically extends this requirement to contracted providers in Medicare Advantage plans.

In addition to federal statutory protections, state laws and additional authorities may also protect dual eligibles from being charged for covered medical services. Some states, like California, protect all Medicaid enrollees, including dual eligibles who may not be QMBs, from being billed for covered services by any health care provider.[2] In other states, the protections may only apply if a provider is enrolled in the state Medicaid program. Since these protections vary from state-to-state, advocates need to review their specific state laws. As an initial resource for advocates, Justice in Aging has compiled a list of state authorities on improper billing.[3]

Improper billing persists despite these legal prohibitions. Many QMBs report that their doctors and other providers bill them for Medicare deductibles and co-insurance, often referring unpaid bills to collections. However, in recent years, action from the advocates, CMS, and provider associations have helped bring awareness to improper billing.

PRACTICE TIPS: General improper billing

- Use your client's Medicare Summary Notice (MSN) to show a provider that no payments are due.
- Use the Justice in Aging toolkit and model letters to educate providers when they improperly bill beneficiaries. If problems persist, use the system of reporting complaints to 1-800-MEDICARE. Please contact Justice in Aging with feedback on how well it is working and on any difficulties encountered.
- Work with your local and state medical associations and other provider associations to educate providers about their responsibilities to protect their patients from improper billing.
- Educate and empower your clients with trainings and handouts, such as "What to Do if You're Wrongfully Billed" in English and Spanish. Use these consumer resources or create your own.
- Use the list of state authorities as a starting point and determine what additional levers, if any, are available through state law, and under what circumstances they may be appropriate.

PRACTICE TIPS: Improper billing in Medicare Advantage plans

- If a Medicare Advantage plan member experiences illegal billing, and the provider insists on continuing the improper billing, ask the plan to intervene. Plans, just like their contracted providers, have a duty to ensure that the billing stops and that improper payments be returned.
- If you learn that a plan employee is giving providers or beneficiaries incorrect information on billing protections, go up the chain of command with the plan. In most cases, supervisory personnel are more familiar with CMS requirements. Justice in Aging can assist if these efforts are unsuccessful.

2 See, e.g., Cal. Welf. & Inst. Code § 14019.4.

3 This compilation is intended to be a starting point for state-based protections, and attorneys should check for possible changes before asserting the protections on behalf of consumers.

- If a provider refuses to serve a plan member because of QMB status or dual eligibility, enlist assistance from the plan. Plans have a duty to ensure that all members, including dual eligibles and QMBs, have the same access to in-network providers.
- Reach out to Medicare Advantage plans in your area to partner in educating providers and beneficiaries about billing protections.

Conclusion

Law and aging advocates play an important role in helping older adults prevent, detect, and report Medicare fraud and abuse. The Senior Medicare Patrol assists Medicare beneficiaries with Medicare fraud prevention information so they are not victimized by criminal fraudsters and scammers. Beneficiaries and their advocates also have helpful tools for combatting improper billing in Medicare. Promising practices are emerging for increased education of beneficiaries, providers, plans, advocates, and state policymakers. By using these new tools effectively, advocates can continue to make inroads to attack the persistent problems of improper billing and Medicare fraud, which wreak havoc on the limited budgets of the lowest-income Medicare beneficiaries and imperils their access to care.

Glossary

Medicare Fraudulent Billing
Knowingly and intentionally billing Medicare for services or supplies not rendered or not medically necessary. See Federal False Claims Act.

Medicare Trust Funds
Medicare is paid for through two trust fund accounts held by the U.S. Treasury—the Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

CMS
The Center for Medicare and Medicaid Services (CMS) is a branch of the federal Department of Health and Human Services and the agency that runs the Medicare program.

Durable Medical Equipment (DME)
Medicare covers medically necessary equipment that a provider prescribes. The equipment includes, among other things, walkers, wheelchairs, prosthetics, and diabetic supplies.

Medicare Advantage Plan
A type of Medicare health plan offered by a private insurance company that contracts with Medicare.

Additional Resources

This Issue Brief provides an overview of how to combat financial exploitation in Medicare improper billing and how to help prevent Medicare fraud. More in-depth information and resources are available from Senior Medicare Patrol and Justice in Aging:

- Government websites:
  - » Center for Medicare and Medicaid Services, 1-800-MEDICARE (1-800-633-4227)
  - » CMS Qualified Medicare Beneficiary webpage

- Resources and assistance:
    - » Health Insurance Counseling and Advocacy Programs (HICAP); for free, unbiased Medicare information; agencies are in all counties in California (1-800-434-0222)
    - » SHIP Technical Assistance, Find Your Local SHIP
    - » California Health Advocates
    - » Justice in Aging Improper Billing Toolkit

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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