

# JUSTICE IN AGING

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FIGHTING SENIOR POVERTY THROUGH LAW

## California Balance Billing Protections—What Advocates Need to Know

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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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# Topics

- What is balance billing
- Protections from balance billing
  - Federal Protections for QMBs
  - Federal Protections for duals in Medicare Advantage plans
  - California Protections for duals
- Implications for choice counseling
- What to do if a beneficiary is balance billed

## Providers—who accepts what?

- Accepts Medi-Cal and Medicare
- Accepts Medicare. Generally doesn't accept Medi-Cal but may be willing to see a dual eligible (Medi-Medi)
  - Network provider in a Medicare Advantage plan
  - FFS provider
- Totally opts out of Medicare. Typically concierge or very specialized.

# **What is balance billing?**

## **The low income definition**

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.

## Affected Beneficiaries

- Full benefit dual eligible (FBDE). Includes those who have spent down their share of cost (SOC).
- Qualified Medicare Beneficiaries (QMB). At or below 100% FPL and QMB resource limits.
- In CA most QMBs are also FBDE (QMB Plus) but some are QMB only (higher resources). Many FBDEs are QMBs ( $\leq 100\%$ FPL).

# **In California balance billing protection is broad**

All full benefit dual eligibles are protected.

All QMB-onlys are protected.

Federal law: 42 U.S.C. Sec. 1396a(n)(3)(B) (Sec. 1902(n)(3)(B) of the Social Security Act)

## **Protections apply regardless of how you receive your Medicare and Medi-Cal**

- FBDE and QMB-only in Medicare Advantage
- FBDE and QMB-only in Fee For Service Medicare
  
- FBDE in Medi-Cal managed care
- FBDE in Fee For Service Medi-Cal
  
- FBDE in Cal MediConnect
- FBDE who opt out of Cal MediConnect

# Legal basis for balance billing protection

**Federal law—protects QMBs**

**Federal regulation –protects all FBDEs in Medicare Advantage**

**California law – protects all FBDEs**

# **Federal law--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.

## **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.**

## **California statute— All Duals**

**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

# Examples

## Mickey and Minnie

## Mickey

Mickey lives in Orange County. Mickey has an ear infection and goes to Dr. Aural, an ENT specialist. Mickey tells the doctor's office that he is in FFS Medicare and also shows his Medi-Cal card. Mickey also is a QMB.

The office says Dr. Aural does not take Medi-Cal and will only see Mickey if Mickey signs an agreement to pay charges that Medicare won't pay.

Mickey signs because it has taken him weeks to get this appointment and he needs treatment.

Mickey can't afford to make the co-insurance and is getting collection notices.

**Does Mickey have to pay Dr. Aural?**

**NO!**

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

**Dr. Aural isn't enrolled in Medi-Cal. Does that make a difference?**

**NO!**

*Federal law:* All Medicare providers must conform to the QMB balance billing protections whether or not they accept Medi-Cal.

*State law:* All providers who receive evidence of Medi-Cal coverage may not balance bill.

**How does Mickey get the collection agency to stop calling him ?**

**If Mickey shows proof of Medi-Cal eligibility, the collection agency must stop and must clear his record with credit agencies**

California law places an independent requirement on collection agencies.

**Is there any way Dr. Aural can get paid?**

Yes, maybe.

Dr. Aural can enroll as a crossover-only Medi-Cal provider. It is a simple form.

**BUT**

California Medi-Cal rates are low. Dr. Aural may receive little or nothing.

**Federal QMB protection and California dual eligible protection apply whether or not Medi-Cal pays anything and whether or not Dr. Aural even tries to bill Medicaid.**

# Example of provider payment

|   |              |
|---|--------------|
| <b>Medicare allowed amount for office visit</b> | <b>\$100</b> |
| Medicare pays provider                          | \$80         |
| Medi-Cal allowed amount for office visit        | \$70         |
| Medi-Cal pays provider                          | \$0          |

**Could Dr. Aural have simply turned Mickey away because he was a dual?**

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

## Minnie

Minnie is a full benefit dual eligible with income at 110% FPL, so she is not a QMB. Minnie gets her Medicare benefits through the *Mouska Gold* Medicare Advantage plan.

Minnie has been going to Dr. Primary, her PCP and an in-network provider in *Mouska Gold*, for the last three months. Every time, the front desk charges her a \$20 co-pay before she even sees Dr. Primary.

**Should Dr. Primary be charging Minnie co-pays?**

**NO!**

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

Dr. Primary is also prohibited by California law from collecting from Minnie because she has Medi-Cal.

## **Where should Minnie complain?**

Minnie can contact both Dr. Primary's office and *Mouska Gold*. Both are responsible.

**Can Minnie get a refund of the payments she already made**

Yes. *Mouska Gold* has a responsibility to refund the overpayments.

**What if Dr. Primary refuses to see Minnie any more?**

Complain to *Mouska Gold*. 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.

# **Examples**

## **Thelma and Louise**

## Thelma

Thelma lives in Los Angeles County. She is a full benefit dual eligible and also QMB. Thelma was recently enrolled in one of the Los Angeles Medi-Cal managed care plans. She opted out of Cal Medi-Connect and gets her Medicare through fee for service. Thelma's FFS Medicare doctor, Dr. Eyeful, has been treating her glaucoma for years and not balance billing Thelma.

Now Dr. Eyeful tells Thelma that, because Dr. Eyeful is not in Thelma's Medi-Cal managed care plan's network, things have changed.

Dr. Eyeful starts charging Thelma the amounts Medicare does not cover.

**Does it matter that Dr. Eyeful is not part of the network of Thelma's Medi-Cal plan?**

No. Some doctors mistakenly think they must drop patients because the doctor is not part of patient's Medi-Cal plan's network. Dr. Eyeful will still be paid by Medicare. She does not need to be part of Thelma's Medi-Cal plan's network.

Can Dr. Eyeful start charging Thelma co-insurance?

**NO!**

Because Thelma is a QMB, she is protected by federal law. As a dual eligible, she is also protected by state law. Thelma's protections as have not changed just because she now receives her Medi-Cal benefit through managed care.

### **Louise**

Thelma's neighbor, Louise, is a dual eligible with an \$800 share of cost. She gets her Medicare through fee for service. Louise's health care costs vary. She does not routinely spend down to meet her share of cost.

Louise sees Dr. First in early July. By then she has met about \$150 of her share of cost.

The Medicare allowed amount for her visit is \$100. Medicare pays Dr. First \$80. The Medi-Cal approved amount for Dr. First's visit is \$70 so Dr. First will get nothing from Medi-Cal.

**Can Dr. First charge Louise the remaining \$20?**

**Yes!**

Louise is not yet a dual eligible for the month. She still has several hundred dollars that she must spend down in July. She must pay her share of cost. Balance billing protections have not yet kicked in.

On July 28, Louise visits Dr. Last. She has had some medical procedures, and bought new glasses, which were expensive and not covered at all by Medicare. As a result, she recently met her share of cost.

The Medicare approved amount for Dr. Last's services is \$200. Medicare pays \$160. The Medi-Cal approved amount is \$170.

## **What can Dr. Last charge Louise?**

Nothing! Louise is now a full benefit dual eligible. Even though she is not a QMB, she is protected by the California statute.

## **Can Dr. Last get any payment from Medi-Cal?**

Yes, if Dr. Last enrolls in Medi-Cal for crossover claims and submits the claim, Dr. Last can get \$10 from Medi-Cal.

**EVEN IF DR. LAST DOES NOT BOTHER TO BILL MEDI-CAL, HE CANNOT BILL LOUISE AT ALL.**

# **Balance Billing and Enrollment Counseling**

## Issues to Consider

Providers who accept Medi-Cal, including providers in D-SNP networks generally understand balance billing rules and do not try to violate them.

Fee for service Medicare-only providers must comply with balance billing requirements but have the choice of refusing to see a dual. Many, however, do accept dual patients.

All Medicare Advantage providers are prohibited from discriminating against dual patients. **They cannot charge copays and cannot refuse to see duals or QMBs.**

Big education gaps exist for both beneficiaries and providers and their billing staff.

## Filling the education gap

**Educating beneficiaries** about their status and about their rights.

**Educating providers** and their front office staff and billing departments about balance billing protections.

### Resources:

Medicare Learning Network bulletin: [www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf](http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf)

CMS FAQs: [www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/MedicareMedicaidGeneralInformation.html](http://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/MedicareMedicaidGeneralInformation.html)

Justice in Aging fact sheet: [http://justiceinaging.org/wp-content/uploads/2015/05/2RE\\_Balance-Billing-in-California.pdf](http://justiceinaging.org/wp-content/uploads/2015/05/2RE_Balance-Billing-in-California.pdf)

# Steps to Take When Balance Billing Occurs

1. Tell the beneficiary – DO NOT PAY THE BILL!!
2. Make sure the provider knows that the individual is a dual or a QMB.
3. Educate the provider about balance billing protections.  
Use <http://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.
6. Contact us. [GBurke@justiceinaging.org](mailto:GBurke@justiceinaging.org)

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## **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)

**Medicare Managed Care regulations:** 42 CFR 422.270

**CMS State Medicaid Manual,** Section 3490.14

**CMS Managed Care Manual,** Ch. 4 at 10.6

**CMS Medicare Learning Network MLN Matters,** SE 1128, March 28, 2014

[www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf](http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1128.pdf)

**CMS Medicare Learning Network MLN Matters** (Nov. 2014) [www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Medicare\\_Beneficiaries\\_Dual\\_Eligibles\\_At\\_a\\_Glance.pdf](http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Medicare_Beneficiaries_Dual_Eligibles_At_a_Glance.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](http://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/MedicareMedicaidGeneralInformation.html).

## State Sources

**California Balance Billing Statute:** Cal. Welf. & Inst. Code § 14019.4

**California Crossover Provider application form** [http://files.medi-cal.ca.gov/pubsdoco/Publications/masters-other/provappsenroll/Crossover\\_only.pdf](http://files.medi-cal.ca.gov/pubsdoco/Publications/masters-other/provappsenroll/Crossover_only.pdf)

**DHCS FAQs re Crossover claims:** [http://files.medi-cal.ca.gov/pubsdoco/hipaa/hipaaqa\\_5010\\_crossovers.asp](http://files.medi-cal.ca.gov/pubsdoco/hipaa/hipaaqa_5010_crossovers.asp)

**CalDuals Physician Toolkit: How to Submit Crossover Claims:**  
[http://www.calduals.org/wp-content/uploads/2015/05/PhysToolkit\\_Crossover-Claims.pdf](http://www.calduals.org/wp-content/uploads/2015/05/PhysToolkit_Crossover-Claims.pdf)

**Justice in Aging Balance Billing fact sheet:** [http://justiceinaging.org/wp-content/uploads/2015/05/2RE\\_Balance-Billing-in-California.pdf](http://justiceinaging.org/wp-content/uploads/2015/05/2RE_Balance-Billing-in-California.pdf)

### Companion webinar -federal protections

**Protecting Dual Eligibles from Balance Billing -What Advocates Need to Know** (video and slides)

<http://justiceinaging.org/webinar-protecting-dual-eligibles-from-balance-billing-what-advocates-need-to-know/>

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