



OIG Policy Regarding Providers, Practitioners, and Suppliers That Waive Retroactive Beneficiary Cost-Sharing Amounts Attributable to Increased Payment Rates Under the Medicare Improvements for Patients and Providers Act of 2008

The purpose of this policy statement is to assure providers, practitioners, and suppliers (collectively, “Providers”)¹ affected by retroactive increases in payment rates under the Medicare Improvements for Patients and Providers Act of 2008 (“MIPPA”)² that they will not be subject to Office of Inspector General (“OIG”) administrative sanctions if they waive Retroactive Beneficiary Liability (as defined below), subject to the conditions noted in this policy statement.

MIPPA, enacted by Congress on July 15, 2008,³ includes increased payment rates for certain items and services related to:

- the physician fee schedule;⁴
- durable medical equipment, prosthetics, orthotics, and supplies (“DMEPOS”) (in the ten competitive bidding areas for the specific items for which competitive bidding was temporarily implemented);⁵
- brachytherapy sources and therapeutic radiopharmaceuticals under the outpatient prospective payment system;⁶ and
- the ambulance fee schedule.⁷

Under MIPPA, these payment rate increases apply retroactively to July 1, 2008. We have been informed by the Centers for Medicare & Medicaid Services (“CMS”) that, as a result, beneficiary liability for cost-sharing amounts for the affected items and services also increased on a retroactive basis. Thus, beneficiaries who already paid, or were billed for, cost-sharing amounts based on lower payment rates temporarily in effect since July 1, 2008, are liable for additional cost-sharing amounts under the increased MIPPA payment rates (the “Retroactive Beneficiary Liability”).⁸

¹ This policy statement applies only to Providers that are impacted by the increased MIPPA payment rates. Specifically, with respect to DMEPOS suppliers, this policy statement only applies to those DMEPOS suppliers in the ten regions that were designated for competitive bidding, and then only to beneficiary liability related to the specific items to which competitive bidding would have applied.

² MIPPA, P.L. No. 110-275.

³ Id.

⁴ See id. at § 131(a).

⁵ See id. at § 154.

⁶ See id. at § 142.

⁷ See id. at § 146.

⁸ Generally speaking, the Retroactive Beneficiary Liability will be 20 percent of the payment rate increase.

We have been asked whether Providers affected by the MIPPA payment rate increases are required to bill for or collect the Retroactive Beneficiary Liability in order to comply with the OIG's fraud and abuse authorities. Ordinarily, routine waivers of Medicare cost-sharing amounts potentially implicate the Federal anti-kickback statute,⁹ the civil monetary penalty and exclusion laws related to kickbacks,¹⁰ and the civil monetary penalty law prohibiting inducements to beneficiaries.¹¹ Notwithstanding, in these limited circumstances, Providers will not be subject to OIG administrative sanctions if they waive Retroactive Beneficiary Liability, subject to the conditions noted below.

- This policy statement applies to waivers of Retroactive Beneficiary Liability owed by beneficiaries only for the period from July 1, 2008, until the date on which CMS (or the relevant carrier or intermediary) implements the increased payment rates applicable to the particular Provider.¹² Once new payment rates are implemented, Providers are expected to calculate cost-sharing amounts based on the new payment rates.
- This policy statement applies only to Retroactive Beneficiary Liability, which is the increase in the beneficiary's cost-sharing obligation attributable to the increase in payment rates under MIPPA. This policy does not apply to waivers of beneficiary cost-sharing amounts that were calculated using the lower payment rates temporarily in effect since July 1, 2008.
- This policy statement does not apply to waivers of Retroactive Beneficiary Liability if the waivers are conditioned in any manner on the provision of future items, supplies, or services.

Nothing in this policy statement requires Providers to waive Retroactive Beneficiary Liability.

*Importantly, nothing in this policy statement affects the ability of a Provider to waive any cost-sharing amounts on the basis of a good-faith, individualized determination of a beneficiary's financial need.*¹³

⁹ Section 1128B(b) of the Social Security Act (the "Act"), 42 U.S.C. § 1320a-7b(b).

¹⁰ Sections 1128(b)(7), 1128A(a)(7) of the Act, 42 U.S.C. §§ 1320a-7(b)(7), 1320a-7a(a)(7).

¹¹ Section 1128A(a)(5) of the Act, 42 U.S.C. § 1320a-7a(a)(5).

¹² Although MIPPA was enacted on July 15, 2008, as a practical matter, the revised payment rates will take time to be implemented by CMS (or the relevant contractors and intermediaries). We are informed by CMS that the exact implementation dates may vary by benefit, contractor, and intermediary. Until such time as the new payment rates are implemented, some Providers may continue to calculate beneficiary cost-sharing obligations based on the prior, temporary payment rates, and the beneficiaries may pay, or be billed for, a lower amount than they actually owe under MIPPA.

¹³ There is an important exception to the general prohibition against waiving Medicare cost-sharing amounts for financial hardship situations. Specifically, under the fraud and abuse laws, Medicare cost-sharing amounts may be waived as long as: (i) the waiver is not offered as part of any advertisement or solicitation; (ii) the party offering the waiver does not routinely waive cost-sharing amounts; and (iii) the party waives the cost-sharing amounts after determining in good faith that the beneficiary is in financial need or reasonable collection efforts have failed. Section 1128A(i)(6)(A) of the Act, 42 U.S.C. § 1320a-7a(i)(6)(A).

General guidance about the anti-kickback statute and other fraud and abuse authorities is available on the OIG's Web site at <http://oig.hhs.gov/>. This guidance includes the "Special Fraud Alert: Routine Waivers of Copayments or Deductibles Under Medicare Part B;" the "Special Advisory Bulletin: Offering Gifts and Other Inducements to Beneficiaries;" safe harbor regulations (and the "preamble" discussions that include explanatory information); compliance program guidance documents for various industry sectors; and OIG advisory opinions.

Questions regarding this policy statement may be directed to James Cannatti, Associate Counsel, Office of Counsel to the Inspector General, at 202-619-0335.

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Date