
FEHB Program Carrier Letter

All Fee-for-Service Carriers

U.S. Office of Personnel Management
Office of Insurance Programs

Letter No. 1999-050

Date: October 5, 1999

Fee-for-service [44] Experience-rated HMO [--] Community-rated [--]

SUBJECT: Implications of Medicare Anti-Kickback Statute for Coordination of Benefits

We have learned that Medicare reimbursement rates for a few health care markets are higher than rates that some health care providers in preferred provider organization (PPO) networks have agreed to accept from fee-for-service carriers in the Federal Employees Health Benefits (FEHB) Program. Generally, coordination of benefits provisions in FEHB contracts require health plans to limit FEHB contract benefits for services also eligible for coverage by Medicare to amounts that supplement Medicare. When Medicare reimbursement rates exceed the FEHB carrier's negotiated reimbursement for a PPO provider, providers are billing plan enrollees directly for unpaid Medicare deductibles and coinsurance, and enrollees complain to the carrier about unanticipated out-of-pocket costs for PPO services.

Provider decisions to bill Medicare-eligible patients for the difference between PPO and Medicare reimbursement rates apparently relies on an opinion of the Inspector General of the Department of Health and Human Services (HHS) in a case concerning application of the Medicare Anti-kickback statute (Advisory opinion 98-5, posted 4/24/98). This opinion takes the position that arrangements which release both the beneficiary and the secondary insurer from statutory and regulatory obligations to pay Medicare cost sharing can result in prohibited remuneration that may subject a provider and a payer to criminal and civil penalties.

As administrator of the FEHB Program, we defer to HHS interpretations of a law that it administers and we understand a provider's conclusion that contract arrangements with a PPO network fail to override a requirement of Federal law for beneficiary cost-sharing on Medicare benefits. Situations where Medicare reimbursement is high relative to discounted fees health plans negotiate with a PPO network appear to be fairly isolated. But, considering that the FEHB Program functions as supplemental Medigap insurance for retired, Medicare-eligible enrollees, we believe it is reasonable for these enrollees to expect FEHB plans to cover Medicare cost sharing when Medicare is the primary insurer for services the FEHB plan also covers.

Accordingly, when a PPO network with whom you contract bills Medicare as the primary payer for Medicare allowable charges, we expect you to determine plan benefits on the greater of the negotiated PPO fee schedule or the Medicare allowable charge amount. This will ensure that providers do not bill your plan members for Medicare beneficiary cost sharing. If this is not already your practice, you should consider this policy to apply to all prospective claims payments and to all requests for claim reconsideration that you process after the date of this letter.

If you have any questions concerning this letter, please contact Bonnie Rose of my staff at 202/606-0004 or BRROSE@OPM.GOV.

Sincerely,

Frank D. Titus
Assistant Director
for Insurance Programs