



**OIG Policy Regarding Providers, Practitioners, and Suppliers That Waive Beneficiary Cost-Sharing Amounts Attributable to Retroactive Increases in Payment Rates Resulting from the Operation of New Federal Statutes or Regulations**

The purpose of this policy statement is to assure providers, practitioners, and suppliers (collectively, “Providers”) affected by retroactive increases in payment rates resulting from the operation of new Federal statutes or regulations 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.

Occasionally, the operation of new Federal statutes or regulations will result in payment rate increases that apply retroactively during the period from the effective date of those payment rate increases until the date on which the Centers for Medicare & Medicaid Services (CMS) (or the relevant Medicare Administrative Contractor (MAC), fiscal intermediary (FI), or carrier) implements the new, increased payment rates (the “Retroactive Period”).<sup>1</sup> CMS has informed us that, as a result, beneficiary liability for cost-sharing amounts for the affected items and services furnished during the Retroactive Period also increase on a retroactive basis. Thus, beneficiaries are additionally liable for the difference between the beneficiary cost-sharing amount owed under the prior, lower payment rates and the cost-sharing amount owed under the new, increased payment rates for items and services furnished during the Retroactive Period (the “Retroactive Beneficiary Liability”).

We have been asked whether Providers affected by the retroactive payment rate increases that result from the operation of new Federal statutes or regulations are required to collect the Retroactive Beneficiary Liability in order to comply with OIG’s fraud and abuse authorities. Ordinarily, routine waivers of Medicare cost-sharing amounts potentially implicate the Federal anti-kickback statute,<sup>2</sup> the civil monetary penalty and exclusion laws related to kickbacks,<sup>3</sup> and the civil monetary penalty law prohibiting inducements to beneficiaries.<sup>4</sup> Notwithstanding, in the limited circumstances described here, Providers will not be subject to OIG administrative sanctions if they waive Retroactive Beneficiary Liability, subject to the following conditions:

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<sup>1</sup>As a practical matter, CMS’s (or the relevant MAC’s, FI’s, or carrier’s) implementation of the new, increased payment rates resulting from the operation of new Federal statutes or regulations may take time. Until such time as the new, increased payment rates are implemented, some Providers may continue to calculate beneficiary cost-sharing amounts based on the prior, lower payment rates, and the beneficiaries may pay, or be billed for, a lower amount than they actually owe under new Federal statutes or regulations.

<sup>2</sup> Section 1128B(b) of the Social Security Act (the Act), 42 U.S.C. § 1320a-7b(b).

<sup>3</sup> Sections 1128(b)(7), 1128A(a)(7) of the Act, 42 U.S.C. §§ 1320a-7(b)(7), 1320a-7a(a)(7).

<sup>4</sup> Section 1128A(a)(5) of the Act, 42 U.S.C. § 1320a-7a(a)(5).

- This policy statement applies only to waivers of Retroactive Beneficiary Liability owed by beneficiaries for items and services furnished during the Retroactive Period. Once new, increased payment rates are implemented, Providers are expected to calculate and collect cost-sharing amounts for items and services furnished after the Retroactive Period based on the new, increased payment rates.
- This policy statement applies only to waivers of Retroactive Beneficiary Liability, which is the increase in the beneficiary's cost-sharing amount attributable to the commensurate increase in payment rates by operation of new Federal statutes or regulations. This policy does not apply to waivers of beneficiary cost-sharing amounts that were calculated using the prior, lower payment rates.
- This policy statement applies only to waivers of Retroactive Beneficiary Liability if:
  - Providers uniformly offer the waivers to all of their affected beneficiaries (e.g., without regard to the types of items and services furnished to a beneficiary or a beneficiary's diagnosis); and
  - Providers do not offer the waivers as part of any advertisement or solicitation.
- This policy statement does not apply to waivers of Retroactive Beneficiary Liability if the waivers are conditioned in any manner on the provision of 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.<sup>5</sup> Further, nothing in this policy statement affects the operation of CMS's programmatic rules and regulations.*

General guidance about the anti-kickback statute and other fraud and abuse authorities is available on 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.

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<sup>5</sup> 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).

