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Opinion No. 00-040

"Balance Billing" by Non-Contractual TennCare Providers

QUESTION

May a TennCare provider, which is not under contract with a TennCare managed care organization ("MCO"), bill a TennCare enrollee for the difference between the billed amount and the reimbursement rate from the TennCare MCO?

OPINION

A TennCare provider, which is not under contract with a TennCare MCO, may not bill a TennCare enrollee for the difference between the billed amount for a TennCare covered service and the reimbursement rate from the TennCare MCO. This practice is known as "balance billing" and is explicitly prohibited by federal and state regulations. As a condition of payment, non-contract providers must accept payment from managed care organizations as payment in full, except for applicable deductibles, copayments or special fees.

ANALYSIS

Title XIX of the Social Security Act establishes a medical assistance program, known as Medicaid, under which participating states provide certain care and services to qualified individuals or recipients. 42 U.S.C. §§1396a(a)(10)(A), 1396d(a). In 1993, Tennessee received approval from the Secretary of the United States Department of Health and Human Services to engage in a Medicaid demonstration project in accordance with 42 U.S.C. § 1315. Pursuant to this approval, Tennessee converted its Medicaid program from a system under which recipients chose their providers, whom the State then reimbursed for services, to a managed care system under which recipients must obtain services through a managed care organization ("MCO"). Under the TennCare program, the State pays each MCO a fixed monthly fee, known as a capitation rate, for each enrolled recipient. Tenn. Comp. R. & Regs. chap. 1200-13-12-.07; TennCare Contractor Risk Agreement, Sec. 3-10. In exchange for this fee, the MCO is contractually obligated to provide certain medically necessary services and benefits, including emergency and non-emergency transportation services, to its enrollees. Tenn. Comp. R. & Regs. chap. 1200-13-12-.04; TennCare Contractor Risk Agreement, Sec. 2-3a(1), as amended by amendment 4. The MCO contracts with a limited network

of providers to provide these medically necessary services and benefits to its enrollees. A provider that is not under contract with a TennCare MCO is not required to participate in TennCare, but once a provider chooses to participate by serving TennCare enrollees, the provider must comply with all applicable TennCare regulations. Tenn. Comp. R. & Regs. chap. 1200-13-12-.08(2).

Federal law requires that Medicaid providers must accept State payment, for services rendered, as payment in full, plus any applicable deductible, coinsurance or copayment required to be paid by the recipient. 42 C. F. R. § 447.15. Similarly, state law provides that, as a condition of payment, non-contract providers must accept payment from managed care organizations as payment in full except for applicable deductibles, copayments and special fees. Tenn. Comp. R. & Regs. chap. 1200-13-12-.08(1) and (2)(a). Moreover, if a provider knowingly bills an enrollee and/or his family for a covered service, in total or in part, except as permitted , the Bureau of TennCare may terminate a provider's participation in TennCare. Tenn. Comp. R. & Regs. chap. 1200-13-12-.08(2)(g)(7). Participation by providers in the TennCare program is entirely voluntary. But, once a provider chooses to serve TennCare enrollees, that provider must comply with all applicable federal and state regulations, even if the provider is not under contract with a TennCare MCO.

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