



Requirements for CHCs on Charging, Collecting, and Waiving Fees and Co-Pays May 2020

Background

CCHN compiled the following federal, state, and/or other payer requirements that CHCs should follow related to charging and collecting fees and co-pays. This includes any special considerations specific to COVID-19. This is CCHN's understanding, but this should not be considered legal advice.

Summary

- CHCs are required by state and federal regulations to make reasonable efforts to collect payment, co-payments, and fees for the provision of health care but can waive or reduce the fees based on a patient's inability to pay.
- CHCs may waive fees or co-payments owed by patients *on occasion*. However, it should not be done as a regular practice as it violates the federal and state laws and regulations noted below.
- The two primary reasons CHCs should not waive co-pays or fees as a general practice are:
 - Having a common practice of waiving fees and/or co-pays can be seen as trying to entice the patient to seek care at the CHC. As Medicaid and Medicare providers, CHCs never want to engage in practices that can make it seem like they are enticing patients.
 - CHCs are expected to seek reimbursement to cover costs from patients and payors.

Federal and State References to Waiving Fees and Co-pays

Section 330 of the Public Health Service Act

- The requirement to seek reimbursement from patients and payors as outlined in Section 330 of the Public Health Service Act, 42 CFR 51, and 42 CFR 56.303, further detailed in [Chapter 9: Sliding Fee Discount Program](#) and [Chapter 16: Billing and Collections](#) from the Health Center Program Compliance Manual.
 - Note: Chapter 16 indicates that a CHC must follow board-approved policies and associated procedures to waive or reduce fees.

Federal Anti-Kickback Statute and Safe Harbor

- Outlined in [42 USC 1320a-7b\(b\)](#), and Safe Harbors specific to CHCs reiterates requirements to seek fees and copays, while also indicating an understanding that CHCs provide care to low-income individuals who may not always be able to afford to pay fees or-pays and may need to have fees waived

Colorado Criminal Code re Provision of Health Care and Health Benefit Plans

- [C.R.S. 18-13-119](#) outlines in Colorado's criminal code the requirements of health care providers to seek reimbursement for the provision of health care, indicates waiving of any copays or fees of health benefit plans are allowed if:
 - It is not advertised as a standard business practice for the organization.
 - It is done on a case-by-case basis and due to the patient requiring immediate health care but the fee would place undue hardship.

- Care is being provided at a school-based health center, as defined in [C.R.S. 25-20.5-502](#).

Medicare

- [Chapter 13](#) of the Medicare Benefit Policy Manual:
 - Except when coinsurance is statutorily waived, the beneficiary at a CHC must pay the coinsurance amount.
 - Charges for services furnished to Medicare beneficiaries must be the same as the charges for non-Medicare beneficiaries. CHCs may waive the collection of all or part of the copayment, depending on the beneficiary's ability to pay.
 - CHCs must impose coinsurance for virtual communication services (virtual check-ins and Remove Evaluations).

Medicaid

- State rules ([10 C.C.R. 2505-10 8.754](#)) specify that Medicaid clients shall be responsible for co-payments for certain services.
- A provider may not deny services to an individual if they are not able to pay the co-payment amount at the time of service, however, the client remains liable for the co-payment at a later date (8.754.6.B.)
- For any service for which a copayment amount is imposed, the fiscal agent [HCPF] shall deduct the appropriate co-payment amount from the payment to the provider - regardless of whether the provider collects the co-pay from the members. (8.754.6.C.)
- Federal rules ([42 C.F.R. §447.50](#)) permit states to require certain beneficiaries to share in the costs of providing medical assistance, for any services under the state plan. The state plan must specify what amounts of cost-sharing is required. Children and pregnant women are exempt from paying cost-sharing, as well as emergency and preventive services.

Emergency Rules Under COVID-19

Medicaid

Colorado Medicaid will cover testing for COVID-19 without a copay by the member.

Medicare

The Families First Act, signed into law on March 18, allows for testing for COVID-19 and test-related services for COVID-19, to be provided without coinsurance. See information from CHPA on specific Medicare billing requirements and information on Medicare Advantage plans.

Private Payors

See the end of this document for updates from the Colorado Health Provider Alliance (CHPA) on private payors.

OIG

OIG issued a policy statement to notify physicians and other practitioners that they will *not* be subject to administrative sanctions for reducing or waiving any cost-sharing obligations. "Federal health care program beneficiaries" may owe for telehealth services furnished consistent with the applicable coverage and payment rules. The policy statement is available [here](#). OIG has also issued FAQs related to the Policy Statement (available [here](#)). This document will be updated periodically.

- *FTLF note: This waiver applies to “Federal health care program beneficiaries”. It is unclear whether the policy statement would apply to services billed to federal programs by FQHCs as facilities since it refers to physicians or practitioners*

HRSA

Can health center amend or adjust their sliding fee discount programs and/or billing and collections policies or procedures to respond to logistical or access barriers during the COVID-19 public health emergency? (Added to [BPHC’s COVID-19 Information for Health Centers and Partners](#) 5/6/20)

Health centers are required to continue providing sliding fee discounts and maximizing reimbursement, and they must continue to ensure that no patient is denied service based on inability to pay. However, consistent with [Health Center Program requirements](#), health centers have discretion to amend policies (with board approval) and/or modify operating procedures in response to the COVID-19 public health emergency, as long as such changes are consistent with applicable statutory, regulatory, and policy requirements. This includes the flexibility to adjust policies and operating procedures for billing and collections and/or sliding fee discounts based on the unique circumstances of the health center and patient population served. These flexibilities may include but are not limited to:

- Offering additional billing options or payment methods (for example, payment plans, grace periods, mail-in options for payment) that address the need to limit in-person visits to the health center to reduce exposure for both patients and staff. The health center’s operating procedures for implementing these options or methods must ensure they are accessible to all patients regardless of income level or sliding fee discount pay class.
- Eliminating nominal charges for individuals and families at or below 100% of the Federal Poverty Guidelines.
- Revising the sliding fee discount schedule(s) to enhance effectiveness in reducing financial barriers to care. For example, health centers can adjust the percentages or reduce the amount of the fixed/flat fee used for discounting fees for patients with incomes between 100% and 200% of the Federal Poverty Guidelines.
- Adjusting procedures to assess patient eligibility for sliding fee discounts to accommodate the circumstances of the patient population. For example, the health center may permit self-declaration of income and family size due to the limitations of providing in-person documentation during the COVID-19 public health emergency.
- Expanding the specific circumstances, the health center will consider when waiving or reducing fees or payments due to any patient’s inability to pay.

If health centers are discounting or waiving out of pocket costs, including co-pays for patients who have third-party coverage, such discounts may be subject to legal and contractual restrictions (i.e., any limitations that may be specified by applicable federal or state programs, or private payor contracts).

For more information, see [Health Center Program Sliding Fee Discount Program requirements](#) and [Health Center Program Billing and Collections requirements](#).

Waiving SFS charges for COVID-19 Testing and Evaluation

Guidance from NACH and FTLF: Federal law requires that COVID-19 tests, and evaluation services that lead to an order for such a test, must be free for a person with insurance (i.e., no copays, deductibles, etc. – even if the patient is treated by an out-of-network provider.)

However, the situation with uninsured persons is less clear. Families First created two avenues intended to help make testing & evaluation services free for uninsured persons:

- States now have the option to provide free Medicaid coverage for coronavirus testing for their uninsured residents.
- The law appropriated \$1 billion to the [National Disaster Medical System](#) to reimburse providers for the costs associated with the diagnosis and testing of uninsured individuals.

However, there is no guarantee that state Medicaid programs will choose to take up the option of free testing for uninsured patients, and at present there is no guidance as to which providers will receive funds from the \$1 billion appropriate for this purpose.

Assuming that a state declines to offer free testing to all uninsured residents, this raises the question of whether CHCs should charge their standard fees (adjusted by SFS, as appropriate) for uninsured patients for COVID-19 evaluation and testing, or waive these fees. NACHC has checked with FTLF for a definitive answer to this question. In short, CHCs are permitted – but not currently required – to waive SFS for COVID-related evaluation and testing.

To ensure compliance, it is advisable that the CHC:

- have a board resolution authorizing the management to establish an emergency process for the duration of the emergency under which the CHC will waive the fees for uninsured patients, and
- establish an emergency waiver policy/procedure (or amend its current waiver policy/procedure) allowing patients to "sign" (either directly or through a notation to the file if a patient is being seen solely through electronic/telephonic means, with a follow-up signature at a later date) a self-attestation that either (1) the patient earns an income at or below 100% of the FPG; or (2) due to the current crisis, the patient is unable to pay for services, which in turn the CHC can use to verify the specific circumstances necessary to waive or reduce the patient's fee consistent with Chapter 16.

Above all, it is important to follow the board-approved policies and procedures and to ensure that they reflect what is being done in practice.

Information on what Colorado is doing from CCHN: Colorado Medicaid is covering COVID testing for people who are uninsured, but they still need to apply for COVID testing coverage. People can apply through the [PEAK Medicaid application](#) or paper application to have COVID testing covered. This includes people who are not eligible for Medicaid due to age or income, but it does require that people are lawfully present. Colorado started this program on April 5.

April 9, 2020

Medicare Advantage and Commercial Payer Information: Many payers are making daily changes to both coverage of services and reimbursement during the COVID-19 pandemic. For the most current information by payer, please see the information and/or links below. For additional questions contact Rosario Morales: Rosario@chpanetwork.com or Brandi Nottingham: Brandi@chpanetwork.com

Anthem: Anthem has expanded services to include telehealth and telephonic visits, prescription coverage, and some member cost-shares. Please visit the following website for additional details and billing information. <https://providernews.anthem.com/colorado>

Bright Health: Bright Health has made updates to expand telehealth services, allow early medication refills, and provide non-emergency transportation. Please visit the following website for additional details and billing information. <https://brihealthplan.com/covid-19>

Cigna: Cigna has expanded and updated it's medical billing guidelines for telehealth back to March 2nd, and can start billing on April 6th. Please see the attached Cigna COVID-19 Billing Update. Please visit the following website for additional details and billing information. <https://static.cigna.com/assets/chcp/resourceLibrary/medicalResourcesList/medicalDoingBusinessWithCigna/medicalDbwcCOVID-19.html?elqTrackId=8eaa70d147644cf592810b2bafec1359&elq=53b43be530654fed9d4ea7757dfd1484&elqaid=23551&elqat=1&elqCampaignId=21997>

Cigna Has also updated its Behavioral Health telehealth guidance to allow for both telemedicine sessions and telephonic sessions. Please visit the following website for additional details and billing information. <https://static.cigna.com/assets/chcp/resourceLibrary/behavioralResources/doingBusinessWithCigna/cbhDbwcCOVID-19.html>

Humana: Humana has expanded telehealth service scope and reimbursement rules. See the three attached Humana Provider updates. Please visit the following website for additional details and billing information. <https://www.humana.com/provider/coronavirus>

Oscar Health: Oscar Health has expanded services to include some telehealth, DME, prior authorization, and prescription refills. Please visit the following website for additional details and billing information. <https://www.hioscar.com/covid19/providers>

Rocky Mountain Health Plan: RMHP has expanded services to include telehealth, early prescription refills, preauthorization suspension, and waiving some cost-sharing. Please visit the following website for additional details and billing information. <https://www.rmhp.org/i-am-a-provider/covid-19-resources>

United Health Care: United Healthcare has expanded services to include telehealth and telephonic visits, prescription coverage, and some member cost-shares. Please visit the following website for additional details and billing information. <https://www.uhcprovider.com/en/resource-library/news/Novel-Coronavirus-COVID-19.html>