

counted against the number of inpatient care days available to the beneficiary under Medicare Part A.

(b) *Deductibles.* Expenses for Medicare covered services that are paid for by primary payers are credited toward the Medicare Part A and Part B deductibles.

**§ 411.31 Authority to bill primary payers for full charges.**

(a) The fact that Medicare payments are limited to the DRG amount, or the reasonable charge, reasonable cost, capitation or fee schedule rate, does not affect the amount that a primary payer may pay.

(b) With respect to workers' compensation plans, no-fault insurers, and employer group health plans, a provider or supplier may bill its full charges and expect those charges to be paid unless there are limits imposed by laws other than title XVIII of the Act or by agreements with the primary payer.

**§ 411.32 Basis for Medicare secondary payments.**

(a) *Basic rules.* (1) Medicare benefits are secondary to benefits payable by a primary payer even if State law or the primary payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries.

(2) Except as provided in paragraph (b) of this section, Medicare makes secondary payments, within the limits specified in paragraph (c) of this section and in § 411.33, to supplement the primary payment if that payment is less than the charges for the services and, in the case of services paid on other than a reasonable charge basis, less than the gross amount payable by Medicare under § 411.33(e).

(b) *Exception.* Medicare does not make a secondary payment if the provider or supplier is either obligated to accept, or voluntarily accepts, as full payment, a primary payment that is less than its charges.

(c) *General limitation: Failure to file a proper claim.* When a provider or supplier, or a beneficiary who is not physically or mentally incapacitated, receives a reduced primary payment because of failure to file a proper claim,

the Medicare secondary payment may not exceed the amount that would have been payable under § 411.33 if the primary payer had paid on the basis of a proper claim.

The provider, supplier, or beneficiary must inform CMS that a reduced payment was made, and the amount that would have been paid if a proper claim had been filed.

**§ 411.33 Amount of Medicare secondary payment.**

(a) *Services for which CMS pays on a Medicare fee schedule or reasonable charge basis.* The Medicare secondary payment is the lowest of the following:

(1) The actual charge by the supplier (or the amount the supplier is obligated to accept as payment in full if that is less than the charges) minus the amount paid by the primary payer.

(2) The amount that Medicare would pay if the services were not covered by a primary payer.

(3) The higher of the Medicare fee schedule, Medicare reasonable charge, or other amount which would be payable under Medicare (without regard to any applicable Medicare deductible or coinsurance amounts) or the primary payer's allowable charge (without regard to any deductible or co-insurance imposed by the policy or plan) minus the amount actually paid by the primary payer.

(b) *Example:* An individual received treatment from a physician for which the physician charged \$175. The primary payer allowed \$150 of the charge and paid 80 percent of this amount or \$120. The Medicare fee schedule for this treatment is \$125. The individual's Part B deductible had been met. As secondary payer, Medicare pays the lowest of the following amounts:

(1) Excess of actual charge minus the primary payment:  $\$175 - \$120 = \$55$ .

(2) Amount Medicare would pay if the services were not covered by a primary payer:  $.80 \times \$125 = \$100$ .

(3) Primary payer's allowable charge without regard to its coinsurance (since that amount is higher than the Medicare fee schedule in this case) minus amount paid by the primary payer:  $\$150 - \$120 = \$30$ .

The Medicare payment is \$30.

(c)-(d) [Reserved]