



## Legislative & Regulatory Affairs Bulletin

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**DATE:** July 23, 2010  
**TO:** NYSVARA Board of Directors and Members  
**FROM:** Chris Bitner, Legislative & Regulatory Affairs Committee  
**RE:** NYS Insurance Department Opinion

On June 29, 2010 the New York Insurance Department issued an opinion regarding ambulance services that "operate under the direction of a municipality" and their waiver of co-payments, deductibles, and co-insurance. The opinion makes reference to ambulance services that are operated by municipalities and ambulance services that contract with municipalities.

NYSVARA strongly encourages ambulance services that might fit these circumstances to refer the Insurance Department opinion and any other relevant documentation to their attorneys for review.

A copy of that opinion is attached. Please excuse its appearance; it was received from a member and a better copy is not yet available on the Department's web site.



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David A. Paterson  
Governor

James J. Wrynn  
Superintendent

June 29, 2010

Ms. Amy Cronkhite  
Med3000  
2211 Quarry Drive, Suite E53  
West Lawn, PA 19609

**Re: Municipality Waiver of Ambulance Co-Payment, Co-Insurance or Deductible  
for Residents**

Dear Ms. Cronkhite:

I write in response to your inquiry, which asks whether an ambulance service provider that operates under the direction of a municipality may, without an insurer's knowledge, waive co-payments, co-insurance, or deductibles for the non-Medicare recipients that live in the municipality.

**Question Presented:**

May an ambulance service provider that operates under the direction of a municipality, without an insurer's knowledge, waive co-payments, co-insurance, or deductibles for the non-Medicare recipients that live in the municipality?

**Conclusion:**

No. An ambulance service provider that operates under the direction of municipality may not, without an insurer's knowledge, waive co-payments, co-insurance, or deductibles for the non-Medicare recipients that live in the municipality, because such a waiver may constitute insurance fraud.

**Facts:**

You report that you represent an ambulance service provider that operates under the direction of a municipality. You ask whether the ambulance service provider may waive co-

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payments, co-insurance, or deductibles for the non-Medicare recipients that live in the municipality. You state, that because residents of the municipality pay taxes that indirectly fund the ambulance service, those taxes effectively cover the cost of any co-payment, co-insurance, or deductible that a resident may be required to pay. You point to an opinion issued by the Office of the Inspector General of the U.S. Department of Health and Human Services that pertains to Medicare and states that:

[T]here is a special rule for providers and suppliers that are owned and operated by a State or a political subdivision of a State, such as a municipality or a fire district...that a [State or local government] facility which reduces or waives its charges for patients unable to pay, or charges patients only to the extent of their Medicare and other health insurance coverage, is not viewed as furnishing free services and may therefore receive program payment.  
OIG Advisory Opinion No. 01-11 (July 20, 2001).

You ask whether a similar rule applies under the New York Insurance Law for non-Medicare recipients.

**Analysis:**

Title XVIII of the federal Social Security Act governs Medicare, a federal insurance program. However, the New York Insurance Law governs most commercial insurance contracts, non-profit medical and dental indemnity or health and hospital service corporations (see Insurance Law Article 43); managed care health insurance contracts (see Insurance Law Article 48); and, on a limited basis, the contracts of health maintenance organizations ("HMOs") (see Insurance Law § 1109).

A provider that waives otherwise applicable co-payments, co-insurance, or deductibles, where such waiver would affect the amount the insurer would pay, may be guilty of insurance fraud. A patient may also be guilty if he or she knowingly submits a claim to an insurer when the provider has waived the co-payment, co-insurance, or deductible. Insurance fraud is defined in N.Y. Penal Law § 176.05(2) as:

2. A fraudulent health care insurance act is committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to, or by, an insurer or purported insurer or self-insurer, or any agent thereof, any written statement or other physical evidence as part of, or in support of, an application for the issuance of a health insurance policy, or a policy or contract or other authorization that provides or allows coverage for, membership or enrollment in, or other services of a public or private health plan, or a claim for payment, services or other benefit pursuant to such policy, contract or plan, which he knows to:

(a) contain materially false information concerning any material fact thereto; or

(b) conceal, for the purpose of misleading, information concerning any fact material thereto. Such policy or contract or plan or authorization shall include, but not be limited to, those issued or operating pursuant to any public or governmentally-sponsored or supported plan for health care coverage or services or those otherwise issued or operated by entities authorized pursuant to the public health law . . . (emphasis added).

Furthermore, N.Y. Ins. Law § 403(c) (McKinney 2000) authorizes the Superintendent of Insurance to impose a civil penalty for insurance fraud and provides as follows:

(c) In addition to any criminal liability arising under the provisions of this section, the superintendent shall be empowered to levy a civil penalty not exceeding five thousand dollars and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this chapter, who is found to have: (i) committed a fraudulent insurance act or otherwise violates the provisions of this section; or (ii) knowingly and with intent to defraud files, makes, or assists, solicits or conspires with another to file or make an application for a premium reduction, pursuant to subsection (a) of section two thousand three hundred thirty-six of this chapter, containing any materially false information or which, for the purpose of misleading, conceals information concerning any fact material thereto.

The Office of General Counsel ("OGC") has opined on the matter of a waiver of charges constituting insurance fraud in several different contexts, including with respect to the waiver of: (1) co-insurance by a physician who has no contractual relationship with a managed care health insurer (see OGC Opinion dated April 4, 2003); (2) co-payments by a provider who services patients pursuant to a contract with an insurer (see OGC Opinion dated February 24, 2004); (3) co-payments and/or deductibles in the context of private insurance (see OGC Opinion dated April 8, 2005); and (4) co-payments pursuant to a provider's contract with an HMO (see OGC Opinion dated February 6, 2001).

These opinions recognize that if an insurer is not aware of the amount that a provider is actually charging, then the claim may contain materially false information concerning any material fact thereto. For example, if an individual were insured under a health insurance policy that obligates the insurer to reimburse to the insured 80% of the provider's charge of \$100 (or the usual and customary charge, whichever is less), but the provider only charges the individual \$80 for the physician's services and waives a \$20 co-payment, then the provider's charge is in fact \$80 and the provider is in effect billing the insurer for 100% of the provider's actual charge. However, a health care provider in this circumstance would not be guilty of insurance fraud if the provider were to make the insurer aware of the waiver, since the claim would not contain materially false information concerning a material fact thereto. The provider is expected to make insurers aware of any lower fee in the same manner as it reports its charges for other patients, since this information may affect the calculation of the payment for a service. See OGC Opinion dated April 2, 2008.

We are aware of no law in this state that exempts from the Penal Law or Insurance Law § 403(c) a municipality or an ambulance service that contracts therewith. Accordingly, an

ambulance service provider that operates under the direction of a municipality may not waive co-payments, co-insurance, or deductibles for the non-Medicare recipients that live in the municipality without the insurer's knowledge, because such a business practice may constitute insurance fraud.

Sincerely,



Sapna Maloor  
Senior Attorney



Kevin Saponaro  
Legal Intern