

January 20, 2012

Marilyn B. Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Tavenner:

The undersigned organizations are writing to request that the Centers for Medicare and Medicaid Services (CMS) provide written policy guidance regarding how patients enrolled in Medicare may obtain reimbursement for covered services provided by physicians who choose not to enroll in Medicare and bill their patients directly. Materials describing physicians' Medicare participation options typically describe three alternatives: being a participating physician, being a non-participating physician, or opting out of Medicare and privately contracting with patients who are enrolled in Medicare.

Questions have recently been raised within the physician community about a fourth option, whereby physicians who do not enroll as Medicare providers bill their patients directly at fee levels that are set without regard to Medicare payment rates or limiting charges. Medicare patients pay the physician bills out of pocket and then seek reimbursement from Medicare using form CMS-1490S. The advantages of non-enrolled status are perceived to be that the physician is exempt from Medicare limiting charges and other payment policies and rules in the same manner as an enrolled physician who has opted out of Medicare and has private contracts with their patients. Unlike those who have opted out; however, patients may be reimbursed by Medicare for services received from the non-enrolled physicians.

We have reviewed correspondence via electronic mail in which CMS has provided some information regarding its views of this fourth option. According to this correspondence, it is the view of CMS that the option of having physicians not enroll in Medicare and having beneficiaries submit claims on their own using the form CMS 1490S is not consistent with Medicare law and un-enrolled physicians who engage in this type of practice are subject to penalties.

We remain concerned, however, because electronic mail correspondence does not have the standing or authority accorded official written Administration policy statements, and further questions have been raised about this option and the purpose of form CMS-1490S ("Patient's Request For Medical Payments"). We, therefore, request that CMS provide written public guidance to the physician community articulating its view of this option, including an explanation of the statutory and regulatory basis. Thank you for your consideration of this request.

Sincerely,

American Medical Association
AMDA – Dedicated to Long Term Care Medicine
American Academy of Facial Plastic and Reconstructive Surgery

American Academy of Home Care Physicians
American Academy of Ophthalmology
American Academy of Otolaryngology – Head and Neck Surgery
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American Association of Physicians of Indian Origin
American College of Osteopathic Surgeons
American College of Radiology
American Congress of Obstetricians and Gynecologists
American Gastroenterological Association
American Osteopathic Academy of Orthopedics
American Psychiatric Association
American Society for Gastrointestinal Endoscopy
American Society for Reproductive Medicine
American Society of Cataract and Refractive Surgery
American Society of Plastic Surgeons
American Urological Association
College of American Pathologists
Congress of Neurological Surgeons
Heart Rhythm Society
Infectious Diseases Society of America

Medical Association of the State of Alabama
Alaska State Medical Association
Arizona Medical Association
Arkansas Medical Society
California Medical Association
Colorado Medical Society
Connecticut State Medical Society
Medical Society of Delaware
Medical Society of the District of Columbia
Florida Medical Association Inc
Medical Association of Georgia
Hawaii Medical Association
Idaho Medical Association
Illinois State Medical Society
Indiana State Medical Association
Iowa Medical Society
Kansas Medical Society
Kentucky Medical Association
Louisiana State Medical Society
Maine Medical Association
MedChi, The Maryland State Medical Society
Massachusetts Medical Society
Michigan State Medical Society
Minnesota Medical Association
Mississippi State Medical Association
Montana Medical Association
Nebraska Medical Association
Nevada State Medical Association
Medical Society of New Jersey

New Mexico Medical Society
Medical Society of the State of New York
North Carolina Medical Society
North Dakota Medical Association
Ohio State Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society
South Carolina Medical Association
South Dakota State Medical Association
Tennessee Medical Association
Texas Medical Association
Utah Medical Association
Vermont Medical Society
Medical Society of Virginia
Washington State Medical Association
West Virginia State Medical Association
Wisconsin Medical Society