

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