

Is it Time to Opt Out of Medicare?

With the new federal health reform law, and recent announcements dramatically increasing the number of audits that Medicare will be conducting, through its vigilante “auditors”, is it time to consider opting out of Medicare?

In order to answer that question you first need to know your options. Most physicians are participating providers with Medicare. That allows them to accept assignment and receive payments directly from Medicare. An alternative is to change to non-participating status. The advantage of this is that you can charge your patients additional fees, up to the Medicare limiting charge. However, Medicare will reduce the amount it pays you directly by five (5%) and, except on a case-by-case basis, you will not be permitted to accept assignment. That means that your patients will receive the check from Medicare for your services, and you will have to rely upon your patients to either endorse the check over to you, or to pay you directly for the care you rendered.

For those physicians who believe that changing from participating to non-participating status will eliminate the ability of the government to audit your charges, no such luck. As long as your bill is submitted to Medicare, from any source, you are subject to audit.

A third option is to completely opt-out of Medicare. The rules associated with this process are somewhat complicated. By opting out neither you nor your patient will receive any Medicare reimbursement. Because no Medicare monies will be involved there should be no audits, but there can still be compliance issues with respect to whether or not you followed the complicated opt-out requirements.

By opting out, a physician is not required to submit claims to Medicare on behalf of his patients, and is not restricted to the limits on charges for Medicare covered services. However, you cannot opt-out selectively. If you opt-out, even for one patient, you have elected to completely opt-out for two years.

In order to opt-out, you need to enter into private contracts with Medicare beneficiaries. These contracts require Medicare beneficiaries to agree to give up Medicare payments for services furnished by the physician and to pay the physician without regard to any limits that would otherwise apply to what the physician could charge.

There are a number of very specific items that these private contracts must include. Among other things, the contracts must:

- * Be in writing;
- * Clearly state whether the physician is excluded from Medicare under certain provisions of the Social Security Act;
- * State that the beneficiary (or his legal representative) accepts full responsibility for payment of the physician’s charges for all services furnished by the physician;
- * State that the beneficiary understands that Medicare limiting charges do not apply to what the physician may charge for items or services provided;
- * State that the beneficiary agrees not to submit a claim to Medicare or ask the physician to submit a claim to Medicare;
- * State the beneficiary understands that Medicare payment will not be made for any items or services furnished by the physician that would have otherwise been covered by

- Medicare if there were no private contract;
- * State that the beneficiary enters into the contract with the knowledge that he has the right to obtain Medicare-covered items and services from physicians who have not opted out of Medicare, and that the beneficiary is not compelled to enter into private contracts that apply to other Medicare covered services furnished by other physicians or practitioners who have opted out;
 - * Be signed by the beneficiary and the physician.

In addition to entering into a private agreement, the physician must file an affidavit notifying all Medicare carriers to which he would submit claims, advising each that he has opted out of Medicare.

Physicians thinking about opting out should first consider the above requirements and weigh the potential benefits of opting out for their practice. If, after careful consideration, the physician decides to pursue opting out, he or she should contact a healthcare attorney to address all of the very specific requirements necessary to effectuate that decision.