

**MAR 15 2012***Administrator*
Washington, DC 20201

James L. Madara, M.D.
Chief Executive Officer
American Medical Association
25 Massachusetts Avenue NW., Suite 600
Washington, DC 20001

RECEIVED**MAR 20 2012**

JAMES L. MADARA, MD
EXECUTIVE VICE PRESIDENT, CEO

Dear Dr. Madara:

Thank you for your letter requesting clarification regarding the policy for Medicare covered services furnished by physicians who do not enroll in Medicare. We appreciate your bringing this issue to our attention.

Medicare requires that physicians and other providers enroll in Medicare, and obtain a billing number and national provider identifier in order to bill for services furnished to Medicare beneficiaries. A provider or supplier must be enrolled in the Medicare program to receive a Medicare payment for covered items or services—whether directly from Medicare or from the beneficiary who is, in turn, reimbursed by Medicare. See the Code of Federal Regulations (CFR) title 42, part 424, beginning at section 500 for the regulations regarding establishing and maintaining Medicare billing privileges.

A physician who enrolls in Medicare may choose annually to be either a “participating” or “non-participating” physician for a forthcoming year. Participating physicians sign an agreement to accept assignment for all covered items and services furnished to Medicare beneficiaries during the forthcoming year. As of January 2011, about 97 percent of physicians were participating physicians, and they accounted for about 93 percent of Medicare physician payments.

Physicians who enroll in Medicare but do not enter into a participating physician agreement, i.e., non-participating physicians, can choose whether or not to accept assignment on a claim-by-claim basis. If a non-participating physician accepts assignment for a particular claim, Medicare pays the physician directly, and the physician accepts the Medicare payment amount as payment in full, except for cost-sharing amounts. If a non-participating physician does not accept assignment, Medicare pays the beneficiary directly, and the beneficiary is responsible for paying the physician. A non-participating physician who does not accept assignment may bill the beneficiary up to the limiting charge amount.

A physician may also choose to opt-out of Medicare and furnish all services to Medicare beneficiaries under private contracts. A private contract is a written agreement between a physician and a beneficiary before a service is furnished. The amount of payment is determined by the physician and beneficiary, and the Medicare claim submission, assignment, and limiting charge rules do not apply. Medicare does not make payment to either the beneficiary, or the

physician, if a service is furnished under a private contract. A physician who chooses to opt out files an affidavit with Medicare agreeing to opt out of Medicare for a period of 2 years. The opt-out applies to all beneficiaries for whom the physician furnishes Medicare covered services. Part 405, subpart D of 42 CFR contains the regulations regarding private contracts.

With the exception of physicians who opt-out of Medicare, when a physician furnishes a service that is covered by Medicare, the claim submission provision of section 1848(g)(4) of the Social Security Act (the Act) applies. If a physician furnishes a covered service to a beneficiary, the physician is required to complete a claim form and submit it to Medicare on behalf of the beneficiary. This requirement applies even when a physician is not enrolled in Medicare. Penalties can be applied for not following this statutory requirement.

Form CMS-1490S is used to protect a beneficiary's right to a determination (see section 1869(a) of the Act) in situations where a physician refuses to submit a claim for a covered service on behalf of the beneficiary. If a beneficiary receives a Medicare covered service from a physician who does not submit a claim on behalf of the beneficiary, the beneficiary is supposed to notify the contractor in writing of the situation, and submit a claim using Form CMS-1490S. Medicare payment for the service is then made directly to the beneficiary (i.e., on an unassigned basis). However, because Medicare contractors are encouraged to educate physicians about submitting claims, CMS-1490S forms are rarely used.

I appreciate your interest in this important issue as we work toward our mutual goal of strengthening the Medicare program for all beneficiaries. Please share this response with the other organizations that cosigned your letter.

Sincerely,

A handwritten signature in black ink that reads "Marilyn Tavenner". The signature is written in a cursive style with a large, sweeping initial "M".

Marilyn Tavenner
Acting Administrator