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# Staying Well Within the Law

A newsletter on the current legal issues facing today's health care industry

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## Is Opting Out of Medicare an Option for Your Practice?

By Anne E. Jorgensen



The topic of health care costs arises everywhere you turn lately. The most well-known and used government payor plan is currently Medicare, but the federal government is continually seeking ways to curtail the rising costs of the program. The easiest way for the government to trim expenses is to cut reimbursement rates for providers, which it has done consistently over the years. Additional reductions in Medicare reimbursement rates are expected, leaving many physicians questioning whether participation in the Medicare program is becoming cost-prohibitive and if continued participation is in their best interest.

For many physicians, participation in Medicare is a no-brainer because either the type of practice they have established or the demographics within the area they practice mandate such participation. However, a growing number of physicians, including both general practitioners and specialists, have considered dropping out of the program or have dropped out of it by "opting out."

Opting out of the Medicare program means that for a period of two years, which is the duration of the opt-out, a physician is not permitted to participate in the Medicare program and may only treat patients who are Medicare beneficiaries if those patients enter into a private contract

with the physician. This private contract permits the physician to bill the patient directly for services provided without being restricted by the billing limitations currently in place for physicians who participate in Medicare.

Any physician may opt out of participating in Medicare if he or she chooses by following a set of specific steps that are governed by rules, regulations and laws:

- A non-participating physician must inform his or her patients that he or she is opting out of Medicare.
- Following such notification, the physician must file with the Medicare Administrative Contractor in the area (which in Pennsylvania is Highmark Medicare Services) an affidavit that contains specific information that complies with applicable laws and regulations.
- Only after submitting the affidavit would the physician be permitted to enter into those private contracts that would permit the physician to continue to provide treatment for Medicare beneficiaries and bill those patients directly.
- The private contracts must also meet certain regulations to be valid.
- Both the affidavit and private contract expire every two years and must be resigned in order for the practitioner to maintain his or her opt-out status.

This process is important as a failure to properly opt out or maintain an opt-out could result in improper billing or filing of claims by the physician, resulting in an assessment of penalties against the physician.

Ultimately the decision of whether to participate or opt out of the Medicare program is up to each individual physician, but it should not be taken lightly. One practitioner who opts out of Medicare may see a decrease in income due to a loss of patient volume while another sees an increase in income due to the ability to bill without Medicare limitations. With the unpredictability of what will happen with health care reimbursement, risks are everywhere, not only within the Medicare program. Prior to making any decisions regarding opting out, a physician should be sure to gather all of the information needed to properly analyze the impact of the decision on his or her practice. If the decision is made to opt out of Medicare, the physician should be aware of the process involved and get help when needed to ensure that the opt-out is properly executed.

For more information about this topic, please contact Anne E. Jorgensen at 610.458.4950 or [ajorgensen@foxrothschild.com](mailto:ajorgensen@foxrothschild.com).

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