

Medicare Physician Participation Options for 2008

Congress acted to avert the 10.1% cut in Medicare payment rates that were scheduled to start on January 1, 2008. However, Congress' intervention was last minute—at the end of December 2007—and only provided a six month reprieve from payment cuts. A payment cut slightly larger than 10% will take effect on July 1, 2008 unless Congress takes action to prevent it. ACP will be working to avert the cut as it would have a devastating impact on physicians and their ability to treat Medicare patients. In light of all of this uncertainty, many physicians are wondering if there is anything that they can do to somehow make up for potential losses in revenue. One option that physicians may consider is changing their participation status in Medicare. Some issues with this decision are explored below.

Q: What effect would my decision to become a non-participating physician have on my Medicare patients' out-of-pocket expenses and the total amount that I can bill for a service?

A: Participating physicians are required to accept all Medicare claims on an "assigned" basis, meaning that your Medicare patients are required to pay 20% of Medicare's approved, or "allowed" amount, once the \$100 deductible is satisfied. Participating physicians are prohibited from billing for more than Medicare's approved amount.

Non-participating physicians may submit claims either on an assigned basis or on a non-assigned basis. Medicare pays less for claims submitted by non-participating physicians than claims by participating physicians. Medicare's approved amount for a claim by a non-participating physician is 95% of the amount approved for the same claim by a participating physician. However, non-participating physicians can bill the patient for as much as 115% of Medicare's approved amount (i.e. up to Medicare's "limiting charge" for the service). As a result, your Medicare patients will pay 66.25% more out-of-pocket for a non-assigned claim than they would for an assigned claim that you submit as a participating physician, and the total combined amount you can collect from Medicare and the patient is more than as a participating physician. The following example illustrates why:

Mr. Jones' physician is non-participating and does not accept assignment for this service. The Medicare approved amount for the service the physician furnishes to the beneficiary is \$100. Mr. Jones has already paid his \$100 Part B deductible for the year.

Medicare approved amount of \$100 is reduced by 5% for non participating physicians	\$95
Physician charge to Medicare beneficiary, which is 115% of the Medicare non-participating physician approved amount, known as the limiting charge	\$109.25
Mr. Jones' out-of-pocket cost, which is the difference of what Medicare pays—80% of the non-participating approved amount—and the physician charge of 115% of the non-participating approved amount	\$33.25
Medicare pays Mr. Jones	\$76

Mr. Jones has to pay the physician \$109.25 at the time of the visit. Mr. Jones will get \$76 from Medicare after it processes the claim and he may get reimbursed more money if he has a Medigap policy.

For the same claim by a participating physician, Medicare's approved amount would be \$100, and the beneficiary would pay only 20% of this approved amount, or \$20.00, compared to the \$33.25 that a patient would pay for the same service by a non-participating physician on an

unassigned claim basis. \$33.25 represents a 66.25% increase over the \$20.00 paid out-of-pocket for the same claim by a participating physician. *Therefore, the total amount that the physician can collect for this service (combined amount from Medicare and from the patient) is higher for an unassigned claim by a non-participating physician (\$109.25) than for an assigned claim by a participating physician (\$100).*

Q: If I become non-participating, can I collect the additional amount from the beneficiary at the time of service?

Yes, you can collect the full amount from the patient at the time of the encounter. You are not limited to collecting only the beneficiary co-payment. You can collect up to 115% of the Medicare approved amount for non-assigned claim. Medicare pays the beneficiary directly after it processes the claim. The above example involving Mr. Jones illustrates this concept.

The physician ability to collect the full amount at the time of the encounter for non-assigned claims and the resulting increased beneficiary co-payment gives beneficiaries an incentive to see participating physicians.

Q: Can I still submit assigned claims as a non-participating physician?

A: If you elect to be a non-participating physician, you can choose whether to accept assignment on a case-by-case basis. However, the Medicare approved-amount for non-participating physicians is 95% of the approved-amount for participating physicians. The 5% approved amount reduction applies to both assigned and non-assigned claims submitted by non-participating physicians.

As a non-participating physician, you may choose to submit an assigned claim for services furnished to a beneficiary that cannot afford the higher out-of-pocket expense. The following example illustrates how Medicare handles an assigned claim submitted by a non-participating physician.

A non-participating physician agrees to submit an assigned claim for a service furnished to Mrs. Green. The Medicare non-participating physician approved amount for the service is \$95. Mrs. has already paid her \$100 Part B deductible for the year.

Medicare approved of \$100 is reduced by 5% for non participating physicians	\$95
Medicare pays the physician 80% of the non-participating approved amount	\$76
Mrs. Green's out-of-pocket cost	\$19

Q: Is the additional amount that I can collect from patients as non-participating physicians worth the increased cost of collection?

A: You (and every other) physician must make this decision based on your situation. As a non-participating physician, you can charge beneficiaries 9.25% more than a participating physician for a non-assigned claim. If you were to collect the full limiting charge from every patient, the increase in revenue would nearly make up for the scheduled 10.1% cut. However, you must weigh your ability to increase charges by 9.25% against the cost you will incur collecting the money from patients on-site or billing them for the amount after the encounter (with a likely increase in bad debts). Also, you will need to consider how your Medicare patients will react to increased charges that will result from your decision not to participate.

Q: Are there advantages for my patients if I become a non-participating physician?

A: Even though beneficiaries may pay more out-of-pocket if you elect non-participating status, some internists may conclude that this is the only way that they are able to continue to see their current Medicare patients. Otherwise, they may conclude that they would have to take other cost-cutting steps to offset the reduced Medicare payments, such as limiting how many beneficiaries they can see or trimming staff payroll by laying-off employees. If you elect to become a non-participating physician, it will be important to explain to your patients that that Congressionally-mandated cuts in Medicare payments forced you to take this step, and that by doing so, you avoided other measures that you felt would not be in the best interests of your existing Medicare patients. Keep in mind that some of your existing Medicare patients could decide to leave your practice and go to a participating physician.

Q: How do I find out what my approved amounts and limiting charges will be in 2008?

A: You should have received a "Dear Doctor" letter from your carrier that includes the 2008 Medicare approved amounts in December of 2007. This letter reflected the payment rates that would have taken effect January 1, 2008 if Congress had not acted in late December 2007. Medicare Part B Carriers and Medicare Administrative Contractors make the payment information that reflects the Congress' action to replace the 10.1% cut with a 0.5% increase—payment rates that will be in effect through June 30, 2008--available on their websites. Medicare pays different amounts for services in different geographic areas.

Q: How do I tell CMS that I wish to change my participation status?

A: Physicians typically must decide whether to be a Medicare participating physician by December 31 of the prior year, which in this case would be December 31, 2007. However, CMS has extended the period during which a physician can change his or her participation status until February 15, 2008. If you are currently a Medicare participating physician and you decide to become non-participating, you need to notify your carrier or Medicare administrative contractor of your status change in writing by February 15, 2008. No specific form is required. If you wish to switch from non-participating to participating, you need to submit form CMS-460 to their Part B carrier or Medicare administrative contractor. The form is available at <http://www.cms.hhs.gov/cmsforms/downloads/cms460.pdf>.

We do not yet know if CMS will establish a participation election period that pertains to the second half of 2008. If CMS allows physicians to change their participation status for the period beginning July 1, you could elect to become Medicare non-participating if Congress fails to act and the scheduled payment cut of more than 10% is going to take effect. When this guidance from CMS is released, ACP will place the information available.

Q: Do I have any other recourse in responding to the expected 2008 Medicare payment cut?

A: You have the option to opt-out of Medicare to contract privately with patients. Entering into a private contract prohibits you from billing Medicare for services that you provide to any beneficiary for two years, except in the case of an emergency. A physician may not opt out of Medicare for some patients, but must do so for all beneficiaries.

Medicare will pay for medically necessary services such as laboratory tests and x-rays that are ordered by a physician who has opted out of Medicare provided that the physician has a valid National Provider Identification (NPI) number.

Medicare beneficiaries who agree to see physicians who have opted out of Medicare must sign a contract that clearly states that the patient is responsible for all bills and that no claims will be submitted to Medicare. Opting out of Medicare would require all of your Medicare patients to pay cash out-of-pocket for services that they receive.