

Part B Insider (Multispecialty) Coding Alert

Part B Participation: Not Every Practice Is Eligible to 'Opt Out' of the Medicare Program

Determine whether you are eligible to opt out -- and whether you should

Planning to stop seeing Medicare patients? Not so fast, hospital-owned practices.

Despite the fact that Congress overturned the scheduled 2008 and 2009 physician pay cuts, some physicians have had enough with CMS- annual threats to their reimbursement and are considering "opting out" of the program.

But a decision to stop seeing Medicare patients can be a difficult one -- not only might you see a backlash from your patients, but you might also be ineligible to opt out.

Hospital-Owned Practices Beware

Hospitals are not able to opt-out of Medicare because they operate under public accommodation laws, says **Robert Burleigh, CHBME**, president of **Brandywine Healthcare Services** in West Chester, Pa.

"If a hospital owns a medical practice, that practice may not be allowed to limit their Medicare population due to the public accom-modation laws," Burleigh says. "Anyone in a practice owned by a hospital would need legal counsel to determine whether it's exempt from the public accommodation laws," he advises.

Tax-exempt entities: Suppose your practice is owned by a tax-exempt entity, such as a clinic, hospital or health system.

Reality: In this case, you are still unable to opt out of Medicare, says **Beth Anne Jackson, Esq.** with **Thorp Reed & Armstrong, LLP**, in Pittsburgh. "First, as employees of a tax-exempt entity, the physicians themselves typically have no choice of who they do or do not take as patients. Their employment contracts dictate (almost always) that they see patients regardless of ability to pay, let alone what type of insurance they have, in order for the employer to meet the community benefit standard and retain its exemption."

Second, Jackson says, "Even for non-employees, physician groups who have professional service contracts with non-profit hospitals (e.g., radiologists) and even medical directors are often subject to the same type of contractual provision, at least requiring them to remain as participating providers in Medicare."

Consider Whether to Opt Out

If you determine that you are eligible to opt out of Medicare, you should consider whether it would be a wise move for your practice.

"Opting out is realistic for some practices, but not for many," Burleigh says. "If your practice is in an affluent area and your specialty is sought-after, you can opt out and your Medicare patients who can afford to pay will come. But if not, opting out isn't as realistic."

More likely, a practice won't opt out of Medicare completely but may stop accepting new Medicare patients. However, even this method will create new challenges for your practice.

"In Boise, Idaho, you can't really get in with a Medicare physician if you're new," Burleigh says. "In Texas, more than half of all physicians there have dropped Medicare. For practices whose patients are in the 55 to 65 range, as those patients age into 65 and go onto the Medicare program, do you keep them or kick them out?" he asks.

Conform to All Laws

If you plan to opt out, ensure that you don't engage in any

prohibited discrimination (for instance, based on religion or ethnicity), and make sure that you conform to the applicable state-by-state "abandonment" laws if patients are being dismissed from the practice. Restrictions do apply and vary by state, so always check with your state medical society for the rules, Burleigh advises.

Stay tuned: Next week in the Insider, we'll explain how to collect revenue if you opt out of Medicare but you treat a Medicare patient on an emergency basis.