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| *Dynamic Chiropractic* – May 1, 2016, Vol. 34, Issue 09 |  |

**Misconceptions & Opportunities With Medicare**

***Why DCs can't opt out – and what you can do about it.***

**By Ronald Short, DC, MCS-P**

As I speak around the country on how to properly document Medicare patient encounters, I get questions regarding opting out of Medicare.

There are many misconceptions about opting out of Medicare, including just what it means to opt out. Let's discuss what opting out of Medicare is, what it is not, why chiropractors cannot opt out of Medicare, and what we can do about it.

It generally helps to explain what something is not before going into what it is. This is especially true with opting out of Medicare because there are so many mistaken ideas regarding the subject.

**Opting Out: What It's *Not***

Many doctors think that if they are non-participating in Medicare, they have opted out. This is not true. Participating in Medicare means a doctor who has enrolled in Medicare has signed an agreement stipulating they will accept assignment on all claims for the year. This grants the doctor certain benefits, such as being paid more by Medicare and the ability to bill their full fee for each visit. (*Note*: You will not be paid your full fee, but you can bill it.)

The non-participating doctor has not signed this agreement and can accept assignment on a case-by-case basis. For the record, non-par status does not grant you any special protections from audits or reviews. You are subject to the same laws, rules and regulations to which a participating provider is subject. You also are required to bill the covered service to Medicare whether you are a participating or non-participating doctor.

Some doctors believe that either not enrolling in Medicare or canceling their enrollment would allow them to treat Medicare-eligible patients without needing to follow Medicare rules. They believe this is opting out. It is not. The Social Security Act requires the doctor to submit a claim to Medicare when they treat a Medicare beneficiary.  You cannot submit a claim without being enrolled in Medicare.

Some doctors think they can get around this by giving the patient an ABN and having them choose option 2. (When a Medicare patient chooses option 2 on the ABN, you are relieved from the statutory requirement of filing a claim to Medicare) This will not work because according to the *Medicare Claims Processing Manual*, Chapter 30, Section 50.3, "[P]roviders and suppliers who are not enrolled in Medicare cannot issue the ABN to beneficiaries."

**Opting Out: What It Is**

Now that we have discussed what opting out of Medicare is not, let's discuss what it is. The full term is *opting out of Medicare and treating patients under private contract*. To opt out of Medicare, the doctor must send an affidavit to each Medicare Administrative Contractor with whom they are enrolled stating, in very specific language, that they are opting out of Medicare, will not bill the MAC for services provided to the Medicare beneficiaries they treat and will allow their patients to bill Medicare for the services. The affidavit is effective for two years and can be renewed.

When the Medicare beneficiary comes into your office, you are required to present them with a contract, again containing very specific language and a fee schedule. The beneficiary then agrees to the terms of the contract (including not billing Medicare for any services received in your office) or they do not. Either way, you are not limited by Medicare's rules or fee schedule.

**The Chiropractic Challenge**

Now, that may sound really great to some of you, but there is one small (huge) problem: As chiropractors, we are forbidden by law from opting out of Medicare and treating under private contract. Chapter 15, Section 40.4 of the *Medicare Benefits Policy Manual* states: "The opt out law does not define 'physician' to include chiropractors; therefore, they may not opt out of Medicare and provide services under private contract."

It is really annoying that we were singled out to be excluded this way and you might ask why the national associations have not done something about this. That's a great question. Last year, one of the national associations addressed that question in its monthly journal, stating: "We have chosen not to ask directly for the ability to opt out because lobbying for expansion within the system, while concurrently asking to be let out of the system, would send a mixed message and make it more difficult for us to work with our contacts on Capitol Hill." That's a good point. Congress deals with so many complicated issues at any given time that we need to keep the message as simple as possible.

In the *Medicare General Information, Eligibility, and Entitlement Manual*, Chapter 5, Section 70, it states: "Physician means doctor of medicine, doctor of osteopathy (including osteopathic practitioner), doctor of dental surgery or dental medicine (within the limitations in subsection §70.2), doctor of podiatric medicine (within the limitations in subsection §70.3), or doctor of optometry (within the limitations of subsection §70.5), and, with respect to certain specified treatment, a doctor of chiropractic legally authorized to practice by a State in which he/she performs this function."

This means that in all of Medicare, we are defined as physicians, except for the opt-out section. In fact, at this point in time, the *only* place in the Social Security Act where we are not defined as physicians is in the Opt Out section. Allowing this section to stand means that we, as a profession, have no objection to Congress arbitrarily deciding chiropractors are not physicians. If a future law regarding wellness care, for example, stated that "physicians are allowed to perform wellness care on Medicare beneficiaries, but for the purpose of this law, chiropractors are not defined as physicians," how could we object effectively?

**The Chiropractic Opportunity**

Clearly, this section needs to be changed, and fortunately the American Chiropractic Association is leading the way in an effort that will result in just such a change. Quoting directly from the ACA website:

The American Chiropractic Association (ACA) has launched a major grassroots campaign to enact federal legislation that would achieve full physician status for doctors of chiropractic in Medicare. This initiative would significantly improve the health and wellness of our nation's aging population – and your support is urgently needed.

The National Medicare Equality Petition will raise awareness of how the current Medicare system shortchanges seniors who want and need the essential services provided by doctors of chiropractic (DCs) to stay healthy, pain free and mobile, and how DCs can be a part of the solution for what ails the U.S. health care system.   
  
ACA is encouraging doctors of chiropractic across the country to ask their patients and other chiropractic supporters to sign the petition (links below) and add their names to a growing list of Americans who want rightful access to and full reimbursement for services provided by doctors of chiropractic for themselves or their loved ones who are Medicare patients. The plan is to let signers of the petition have their voice heard in Washington through a series of targeted grassroots campaigns to contact their members of Congress and demand a solution to this problem. The ultimate goal is to create a groundswell of support that Congress cannot ignore.

To sign the petition, [click here](http://www.acatoday.org/equality/doctors). Equality within Medicare is long overdue, but it will take the actions of every doctor of chiropractic in the country and their patients to effect this change.

**Dr. Ronald Short** is a certified medical compliance specialist and a certified professional coder. He has authored numerous books on Medicare including *The Medicare Documentation System*. He also teaches seminars on Medicare, coding, billing, documentation and compliance. You can contact him at [chiromedicare@gmail.com](mailto:chiromedicare@gmail.com) . More information about this and other Medicare topics is available at [www.chiromedicare.net](http://www.chiromedicare.net).