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## MEDICARE AND MEDICAID

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The U.S. government sponsors several programs designed to provide health insurance for people who meet specific criteria. Medicare provides coverage for medical expenses for people age sixty-five and over and for younger people who qualify for Social Security because of a disability. Medicaid provides benefits for low-income individuals.

Although these programs serve different populations and are funded by different mechanisms, they are both subject to complex federal rules and regulations, which cover everything from who is eligible to receive services to how much physicians can charge for those services. Working with these programs is complicated by the fact that the government does not administer them directly. Rather, it contracts them out to state governments, third-party administrators, and large insurance companies. These administrative arrangements result in a great deal of variation in how specific program policies are interpreted and implemented.

The following presents a brief overview of the Medicare and Medicaid programs and provides tips for achieving compliance with each. It is extremely important to remember that different administrators may have different interpretations of program rules, and that rules may change frequently. If you have specific questions about a program, contact the program administrator in your area directly for assistance.

### **MEDICARE**

Medicare was created in 1965 as part of the Social Security Act. The program was divided into two parts. Part A is hospital insurance and helps to pay for care provided in a hospital, skilled nursing facility, nursing home, or hospice. It covers the room, board, and ancillary charges billed directly by the facility. The covered portion of expenses is based on the number of days the patient has received care. Part A is administered within each state by insurers that have been designated as *Fiscal Intermediaries* (FIs). Part B covers the professional services of physicians and nonphysician healthcare providers and a variety of outpatient services including x-rays, laboratory work, and durable medical equipment. It is administered in each state or part of a state by an insurer that serves as the *Medicare Carrier*. As a psychiatrist, you will almost always be working with Part B. Part A coverage is automatic upon reaching age sixty-five. Part B coverage is voluntary, and beneficiaries are required to pay a monthly premium for coverage. Medicare generally covers 80 percent of allowed medical charges, and the patient is responsible for paying the remaining 20 percent. For most mental health services, however, Medicare only pays 50 percent and the patient is responsible for paying the other 50 percent. It is hoped that this inequity will be remedied as parity for mental health care becomes more and more of a reality.

In 2003, the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) created Medicare Part D, Medicare's outpatient prescription drug benefit, which was implemented on January 1, 2006. The MMA mandated that Part D be managed by private prescription drug

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plans (PDPs), which would negotiate their own contracts with pharmaceutical companies for medications. Medicare beneficiaries must choose between the many plans offered in their states, and in the first months of the benefit, there has been a great deal of confusion about exactly what these plans are offering and how beneficiaries can access this information.

With the advent of Medicare Part D, dual eligible beneficiaries, who have both Medicare and Medicaid, had their drug coverage automatically switched from Medicaid to Part D. Although there were efforts put safeguards in place to provide for their special needs, the transition to the new coverage has created many problems with continuity of care for these beneficiaries, who are often among the most fragile medically. For more information about Part D and how it's working, you can go to [www.MentalHealthPartD](http://www.MentalHealthPartD), the website sponsored by the APA and other mental health physician and advocacy groups.

### **Key Medicare Part B Information**

- For outpatient mental health care (unless it's a diagnostic service, or treatment for a patient with Alzheimers or an Alzheimers-like dementia), the Medicare payment is reduced to 50 percent of the allowed amount; the patient is responsible for the other 50 percent. (The Medicare payment for inpatient mental health care is made at the normal 80 percent of the fee-schedule amount.)
- If a patient has a Medigap policy (supplemental insurance to Medicare), that insurance may pick up the patient's entire copay or some part of it, depending on the particular policy.
- Physicians may choose to be either *participating* or *nonparticipating* Medicare providers. Participating providers must "accept assignment," which means they are responsible for filing the claims for treatment to Medicare patients and are paid the Medicare-allowed fee (minus the patient copay) directly by their Medicare Carrier. Nonparticipating providers can choose to accept assignment on a case by case basis or can choose to be paid the Medicare-allowed amount by their patients, *but the physician is still responsible for filing the claims with the Carrier* so the patient will be reimbursed. When nonparticipating providers do accept assignment they are paid 5 percent less than the Medicare-allowed amount.
- You can only "opt out" of Medicare by filing an affidavit with your Medicare Carrier that states you will not see *any* patients under Medicare for a period of at least two years. Once you have opted out, Medicare allows for private contracting between a physician and a Medicare beneficiary. See below for details.
- Although private contracting is allowed for physicians who opt out of Medicare entirely, a physician who sees any patients under Medicare cannot negotiate fees above the Medicare allowed amount. (Beneficiaries can request that you not file their claims with Medicare, but you are still limited to charging the Medicare allowed amount for your services.)
- The best way to keep on top of the changes in the Medicare program is to call your local Medicare Carrier and request that you be placed on its mailing list. Carriers are required to

notify physicians of all changes to program rules, coverage guidelines, and fees. A list of Medicare Carriers is provided in Appendix AA.

- If you have specific questions, submit them in writing to your Medicare Carrier medical director; this may be a more efficient means of getting an accurate response than calling the Carrier's provider relations office.

### **Opting Out and Private Contracting Under Medicare**

Since January 1, 1998, federal law has permitted a physician to opt out of Medicare altogether and enter into private contracts with Medicare patients that allow the provision of physician services entirely outside of Medicare. Payment for these services is to be negotiated between the physician and patient and is not limited by the Medicare fee schedule.

A nonparticipating physician may opt out of Medicare at any time. A participating physician may opt out if he/she terminates the Medicare part B participation agreement and submits the required affidavit to the Medicare carrier at least thirty days before the first day of the next calendar quarter. The affidavit must show an effective date of the first of that quarter. See Appendix Z for opt out affidavit and private contract templates. More complete information about opting out can be found on the APA website, [www.psych.org](http://www.psych.org), under the heading Psychiatric Practice.

The law requires that the private contract with the patient stipulate that the patient agrees in writing that she will not submit any claims to Medicare and will not ask the physician to submit any claims. The patient also acknowledges that Medigap plans (and possibly other supplemental plans as well) will not make payments for services rendered by the contracting physician; agrees to be fully responsible for payment to the contracting physician for services rendered; and acknowledges that Medicare's fee schedule amounts and charge limits do not apply to the contracting physician. Physicians must use a contract that meets Centers for Medicare and Medicaid Services (CMS) regulatory requirements and have it signed by the patient or his legal representative. (The contract provided in Appendix Z meets these requirements.)

Although a patient may agree to a private contract with one or more physicians, a physician who opts out of Medicare may not see *any* Medicare patients except under private contracts for two years.

State law may affect private contracts and physicians should check with their insurance commissioner, APA district branch, and/or a local attorney.

The templates in Appendix Z meet current CMS requirements according to a review by the APA's legal counsel.

### **MEDICAID**

Like Medicare, the Medicaid program was created under the Social Security Act of 1965. Medicaid, however, is a joint federal-state program, with funding coming from both sources. Medicaid is an entitlement program that provides medical assistance to families and certain individuals with low incomes. The federal government sets broad guidelines for the Medicaid

program, but each state determines its own eligibility standards, scope of services, and payment rates.

### **Key Medicaid Information**

- Because the program covers low-income individuals, Medicaid recipients typically have nominal, if any, copayments for services.
- Prescription drugs are not a required Medicaid benefit but are covered under most programs. Medicaid beneficiaries who also have Medicare, dual eligibles, receive their drugs through Medicare Part D.
- For dual eligibles, Medicare is the primary insurer and should be billed first.
- Medicaid reimbursement rates are typically significantly lower than usual and customary fees, and are often lower than managed care and Medicare fees.
- Due to the extreme variance inherent in the program structure, specific questions about program services and fees should be directed to the Medical Assistance office in your state.