

# HOW TO SAY GOODBYE TO MEDICARE

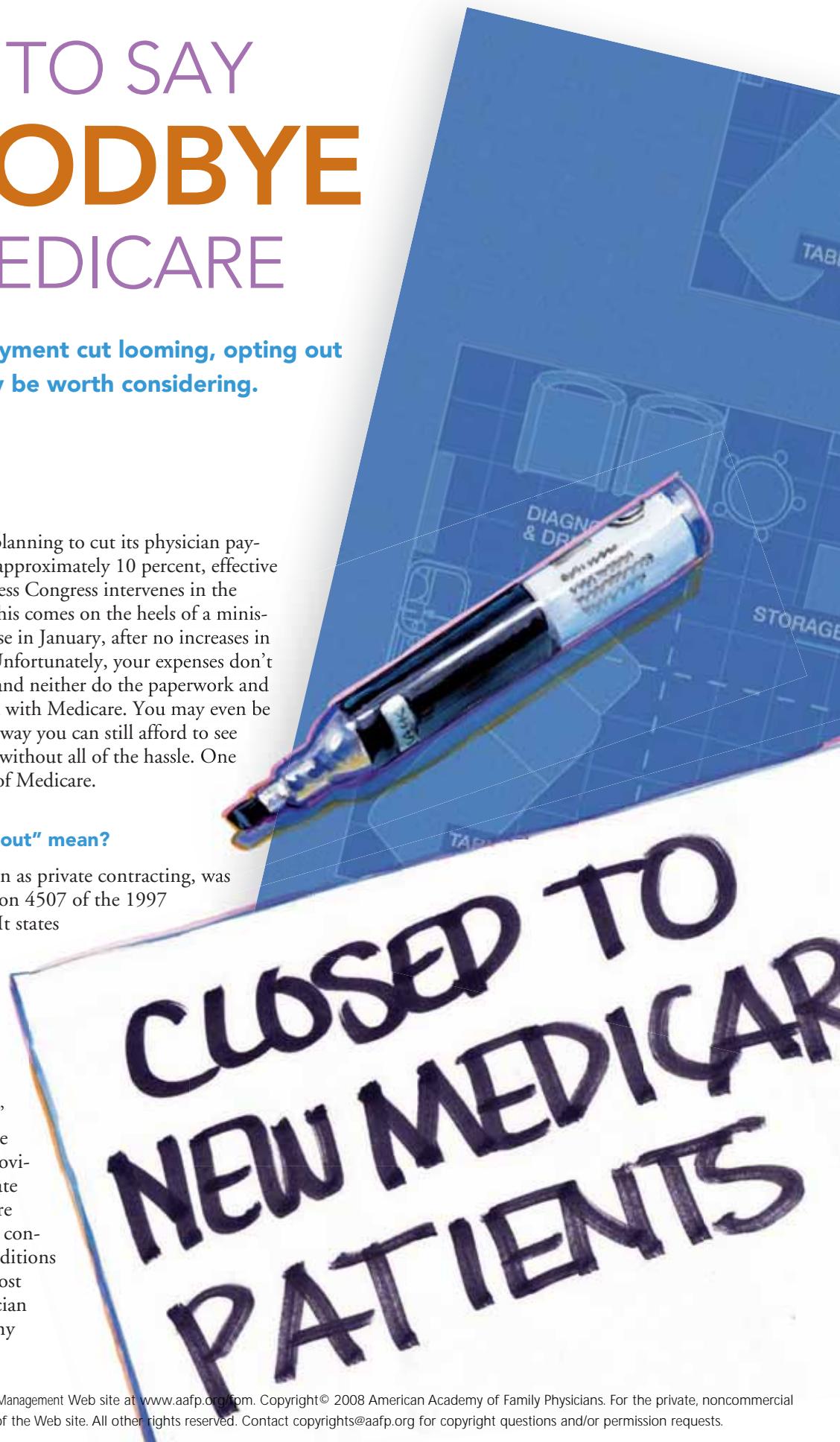
**With another payment cut looming, opting out of Medicare may be worth considering.**

**Kent J. Moore**

**M**edicare is planning to cut its physician payment rate approximately 10 percent, effective July 1, unless Congress intervenes in the interim. This comes on the heels of a minuscule 0.5 percent increase in January, after no increases in either 2006 or 2007. Unfortunately, your expenses don't seem to be decreasing and neither do the paperwork and other hassles associated with Medicare. You may even be wondering if there is a way you can still afford to see Medicare beneficiaries without all of the hassle. One option is to "opt out" of Medicare.

## **What does "opting out" mean?**

Opting out, also known as private contracting, was made possible by Section 4507 of the 1997 Balanced Budget Act. It states that nothing in the Medicare law "shall prohibit a physician or practitioner from entering into a private contract with a Medicare beneficiary for any item or service" if certain conditions are met. In essence, the provision clarified that private contracts with Medicare patients are legal if the contracts meet certain conditions specified in the law, most notably that the physician agrees not to submit any



# IF YOU LOSE HALF OF YOUR MEDICARE PATIENTS AND THE REMAINING HALF PAY YOU TWICE AS MUCH AS MEDICARE DID, YOU MIGHT BREAK EVEN.

Medicare claims nor receive any payment from Medicare for items or services provided to any Medicare beneficiary for two years. Note that if you opt out, not only will Medicare and Medicare Advantage plans not pay you, they also will not pay any entity to whom you might reassign your right to receive payment for services, unless the services are for emergency care or urgent care.

## Before opting out

■ It is legal for physicians to opt out of Medicare and enter into private contracts with patients.

■ Be sure to consider financial implications and contractual obligations before opting out.

■ Notifying your patients and colleagues of your intent to opt out is the first step.

**Financial impact.** You will need to review your patient mix, practice costs and payment levels to determine the potential financial impact of opting out. A large percentage of your Medicare patients may decide to take their business elsewhere instead of privately contracting with you. If you are losing money on your Medicare patients, this may not be a problem, especially if opting out enables you to reduce your overhead. Keep in mind that private contracting imposes its own administrative burdens. While you won't have to file claims and appeal denials if you opt out, you will have to enter into a written contract with each Medicare patient who chooses to receive your services, and you'll also have to file and renew affidavits with Medicare every two years regarding your opt-out status.

On the revenue side of the equation, you need to weigh the potential gain in fees paid against the percentage of Medicare patients lost. For example, if you lose half of your Medicare patients and the remaining half pay you twice as much as Medicare did, you might break even. In any case, you should also

## About the Author

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prepare for a short-term drop in revenue and ensure that you have the financial resources to tide you over.

**Contractual obligations.** Your contracts with hospitals, health plans or other entities (e.g., your employer) may require you to be a participating Medicare physician. Opting out of Medicare may therefore jeopardize or violate your contractual obligations and put other aspects of your practice (e.g., credentialing) at risk. Review your contracts to confirm that participation in Medicare is not required and, if it is, the consequences if you choose to opt out.

**Other considerations.** There are a variety of other factors to consider in deciding whether to opt out. For example, is opting out consistent with your practice philosophy? Will it increase your job satisfaction? How will it affect your practice's reputation in the community (i.e., how will non-Medicare patients and potential patients react)? How will this affect the way you market your practice?

## How to opt out

Once you've decided to opt out of Medicare, you'll need to take the following steps:

**1. Notify your patients, colleagues and others.** Send a letter to your patients explaining what opting out means, your reasons for doing so and their options for staying with the practice or finding a new physician. The letter should be sent far enough in advance of opting out that patients have time to make alternative arrangements as needed. A similar letter should also be sent to any colleague or other entity that might be affected by your decision. The list of entities with whom you have a contractual relationship would be a good starting point.

Some patients will misunderstand the private contracting relationship and its implications. Therefore, maintaining and documenting effective lines of communication with

patients before and after you opt out is critical.

**2. Notify Medicare.** You'll need to file an affidavit with each Medicare contractor that has jurisdiction over claims that you have filed or that would have jurisdiction over your claims had you not chosen to opt out. The affidavit must be in writing, be signed by you and include your full name, address and telephone number. You must also include your national provider identifier (NPI), billing number or uniform provider identification number (UPIN), if applicable. If you do not have an NPI or UPIN, you should include your tax identification number. (See the sample affidavit on page 16; it can be downloaded from the online version of this article.)

If you are a Medicare participating physician, the Medicare carrier must receive the affidavit at least 30 days before the first day of the next calendar quarter showing an effective date of the first day in that quarter (i.e., Jan. 1, April 1, July 1 or Oct. 1).

**3. Privately contract with the Medicare patients you continue to care for.** Medicare patients who elect to receive care from you other than on an urgent care or emergency basis must sign a private contract before you can treat them. The contract should be written in large, legible type. You should keep a signed copy in your files and provide the patient with a signed copy. (See the sample contract on page 17; it can be downloaded from the online version of this article.)

You'll need to sign contracts with all Medicare beneficiaries you see, including those in Medicare Advantage plans and those you see in settings where you have otherwise reassigned your rights to receive Medicare payments. Again, the only exception is for Medicare patients who need emergency or urgent care services. In this situation, append modifier -GJ, "Opt out" physician or practitioner emergency or urgent service," to any codes you are billing to indicate the service was provided by an opt-out physician providing emergency or urgent care.

**4. Initiate appropriate office procedures.** Once you've executed your affidavit(s) and any private contracts, you need to establish office procedures to ensure that you comply with the opt-out rules. For example, you will need to implement procedures to identify Medicare patients and ensure that they are notified of the opt-out decision as well as

remind them of payment arrangements when making appointments.

In a practice that includes some doctors who opt out and others who do not, procedures must be developed to identify the status of each patient with respect to each physician and ensure appropriate handling of his or her services.

Finally, you should implement procedures to ensure that you never file a claim for services for an opt-out physician who has a private contract with a Medicare patient. The exception for emergency and urgent care should be used with caution.

**5. Mark your calendar to renew your opt-out status.** Your final step is to mark your calendar to remind you to send in a new affidavit every two years to maintain your opt-out status. Failure to renew your opt-out affidavit will mean you are entering into private contracts with patients without Medicare's blessing; these contracts will be deemed null and void and you have to submit claims for all of those services retroactively.

If, after two years of opting out, you choose to re-enroll in Medicare, you will need to complete a new Medicare physician enrollment form, just as you would if you were new to the program.

### Other thoughts

If you choose to opt out of Medicare, it's important that you do so properly and remain in compliance with the opt-out conditions. Otherwise your private contracts are null and void.

Note that you have 90 days after the effective date of opting out to change your mind and return to Medicare as if you had never left. Just notify the same carriers to whom you sent your affidavit(s) and refund any money you received from private contracts.

For more detailed information on opting out of Medicare, consult Section 40 of Chapter 15 of the Medicare Benefit Policy Manual at <http://www.cms.hhs.gov/manuals/downloads/bp102c15.pdf>.

*Editor's note: This is an updated version of an article that was published in our "Getting Paid" department in November/December 2003.* **FPM**

Send comments to [fpmedit@aafp.org](mailto:fpmedit@aafp.org).

**You must notify Medicare of your decision to opt out by filing an affidavit with each Medicare contractor that has jurisdiction over your claims.**

**To privately contract with Medicare patients, you must sign a contract with each Medicare beneficiary you see.**

**To continue your opt-out status, you must sign a new affidavit every two years.**

## MEDICARE OPT-OUT NOTICE

Medicare contractor address:

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Attn: Provider Enrollment

I, \_\_\_\_\_, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I am a physician licensed to practice medicine in the state of \_\_\_\_\_. My address is \_\_\_\_\_, my telephone number is \_\_\_\_\_,

my national provider identifier or uniform provider identification number is \_\_\_\_\_. I promise that, for a period of two years beginning on the date that this affidavit is signed (the "Opt-Out Period"), I will be bound by the terms of both this affidavit and the private contracts that I enter into pursuant to this affidavit. I acknowledge that any Part B participation agreement that I have signed terminates on the effective date of this affidavit.

2. I have entered or intend to enter into a private contract with a patient who is a beneficiary of Medicare ("Medicare Beneficiary") pursuant to Section 4507 of the Balanced Budget Act of 1997 for the provision of medical services covered by Medicare Part B. Regardless of any payment arrangements I may make, this affidavit applies to all Medicare-covered items and services that I furnish to Medicare Beneficiaries during the Opt-Out Period, except for emergency or urgent care services furnished to Beneficiaries with whom I had not previously privately contracted. I will not ask a Medicare Beneficiary who has not entered into a private contract and who requires emergency or urgent care services to enter into a private contract with respect to receiving such services, and I will comply with 42 C.F.R. § 405.440 for such services.

3. I hereby confirm that I will not submit, nor permit any entity acting on my behalf to submit, a claim to Medicare for any Medicare Part B item or service provided to any Medicare Beneficiary during the Opt-Out Period, except for items or services provided in an emergency or urgent care situation for which I am required to submit a claim under Medicare on behalf of a Medicare Beneficiary, and I will provide Medicare-covered services to Medicare Beneficiaries only through private contracts that satisfy 42 C.F.R. § 405.415 for such services.

4. I hereby confirm that I will not receive any direct or indirect Medicare payment for Medicare Part B items or services that I furnish to Medicare Beneficiaries with whom I have privately contracted, whether as an individual, as an employee of an organization, as a partner in a partnership, under a reassignment of benefits, or as payment for a service furnished to a Medicare Beneficiary under a Medicare Advantage plan, during the Opt-Out Period, except for items or services provided in an emergency or urgent care situation. I acknowledge that, during the Opt-Out Period, my services are not covered under Medicare Part B and that no Medicare Part B payment may be made to any entity for my services, directly or on a capitated basis, except for items or services provided in an emergency or urgent care situation.

5. A copy of this affidavit is being filed with \_\_\_\_\_, the designated agent of the Secretary of the Department of Health and Human Services, no later than 10 days after the first contract to which this affidavit applies is entered into.

Executed on \_\_\_\_\_ [date] by \_\_\_\_\_ [Physician name]

\_\_\_\_\_ [Physician signature]

## PRIVATE CONTRACT WITH MEDICARE BENEFICIARY

This agreement is between Dr. \_\_\_\_\_ ("Physician"), whose principal place of business is \_\_\_\_\_, and patient \_\_\_\_\_ ("Patient"), who resides at \_\_\_\_\_ and is a Medicare Part B beneficiary seeking services covered under Medicare Part B pursuant to Section 4507 of the Balanced Budget Act of 1997. Physician has informed Patient that Physician has opted out of the Medicare program effective on \_\_\_\_/\_\_\_\_/\_\_\_\_ for a period of at least two years and is not excluded from participating in Medicare Part B under Sections 1128, 1156, or 1892 or any other section of the Social Security Act.

Physician agrees to provide the following medical services to Patient (the "Services"): Evaluation & Management, Consultation and Professional Component Services.

In exchange for the Services, the Patient agrees to make payments to Physician pursuant to the Fee Schedule: \$\_\_\_\_/\_\_\_\_ minutes (or any portion thereof) of physician time.

Patient also agrees, understands and expressly acknowledges the following:

- Patient agrees not to submit a claim (or to request that Physician submit a claim) to the Medicare program with respect to the Services, even if covered by Medicare Part B.
- Patient is not currently in an emergency or urgent health care situation.
- Patient acknowledges that neither Medicare's fee limitations nor any other Medicare reimbursement regulations apply to charges for the Services.
- Patient acknowledges that MediGap plans will not provide payment or reimbursement for the Services because payment is not made under the Medicare program, and other supplemental insurance plans may likewise deny reimbursement.
- Patient acknowledges that he or she has a right, as a Medicare beneficiary, to obtain Medicare-covered items and services from physicians and practitioners who have not opted out of Medicare, and that the patient is not compelled to enter into private contracts that apply to other Medicare-covered services furnished by other physicians or practitioners who have not opted out.
- Patient agrees to be responsible to make payment in full for the Services and acknowledges that Physician will not submit a Medicare claim for the Services and that no Medicare reimbursement will be provided.
- Patient understands that Medicare payment will not be made for any items or services furnished by the physician that would have otherwise been covered by Medicare if there were no private contract and a proper Medicare claim were submitted.
- Patient acknowledges that a copy of this contract has been made available to him or her.
- Patient agrees to reimburse Physician for any costs and reasonable attorney fees that result from violation of this Agreement by Patient or his beneficiaries.

Executed on \_\_\_\_\_ [date] by:

\_\_\_\_\_ [Patient name] \_\_\_\_\_ [Physician name]

\_\_\_\_\_ [Patient signature] \_\_\_\_\_ [Physician signature]