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### **The Aware Advocate**

#### *Opting Out of Medicare for LCSWs*

Here is an expanded version of information on opting out of Medicare, requested by several CSWA members.

As you know, all LCSWs are required by CMS to opt-in or opt-out of being a Medicare provider. Though all LCSWs are eligible to be a Medicare provider, until an LCSW "opts in", the LCSW cannot be reimbursed by Medicare. Technically, if a Medicare beneficiary wants to be treated by an LCSW and the LCSW has not opted out, the LCSW is liable for sanction. If an LCSW has opted-in to Medicare as a provider, the LCSW is responsible for seeing or providing a referral for every beneficiary who want the LCSW's services. Any LCSW who remains in 'limbo' as not opted-in or opted-out can potentially be sanctioned by CMS if a complaint is filed.

For information on opting in to Medicare go to the the CSWA Website ([www.clinicalsocialworkassociation.org](http://www.clinicalsocialworkassociation.org)) under "Clinical Practice". There is a link to the Medicare application, called PECOS.

"Opting out" of Medicare for LCSWs is more complicated, as there is no form available to do so and contracts with individual patients must be signed. Here are the three things which must be completed to opt out of Medicare: (1) inform Medicare that you are opting-out of being a provider (see template below); (2) contracting with each Medicare beneficiary you see at the first visit that neither of you will bill Medicare for any services that you as an LCSW provide (see template below); and (3) inform Medicare every two years that you are opting out to maintain your opt-out status. The information below has been adapted from legal documents created by the Association of American Physicians and Surgeons [[http://www.aapsonline.org/index.php/article/opt\\_out\\_medicare/](http://www.aapsonline.org/index.php/article/opt_out_medicare/)] .

### *First Steps*

Any LCSW who has opted-in to Medicare should notify patients and the regional carrier at least 30 days prior to opting-out of Medicare that you plan to do so. The LCSW should file a copy of an affidavit with each regional carrier that has jurisdiction over the claims that the LCSW would otherwise file with Medicare, no later than 10 days after entering into first private contract.

According to CMS, "Participating physicians and practitioners may opt out if they file an affidavit that meets the criteria and which is received by the carrier 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., January 1, April 1, July 1, October 1)." [From CMS Benefit Policy Manual (Rev. 147, 08-26-11) Sec. 40.17]

### *Next Step: Contract with Patient*

An LCSW opting-out as a Medicare provider will need a patient contract with patients who are Medicare Part B beneficiaries. This contract will acknowledge that the LCSW and the patient will not submit a Medicare claim for the LCSW's services and that the patient understands that no Medicare reimbursement will be provided.

File a copy of the following letter with "each carrier that has jurisdiction over the claims that the physician or practitioner would otherwise file with Medicare," no later than 10 days after entering into first private contract with a Medicare patient after LCSW opts-out. The letter must be sent to the regional Medicare carrier that covers the state where the LCSW practices. Here is a list of Medicare regional carriers by state ([http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/downloads/contact\\_list.pdf](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/downloads/contact_list.pdf)). A template that includes the affidavit information needed to opt out follows:

Date

[Name, License Title]  
[Practice Address]  
[Practice Phone Number]  
[Practice Email Address]

[Regional Carrier Name and Address]

To Whom it May Concern:

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 [Licensed Clinical Social Worker or other title] in the state of \_\_\_\_\_. My address is at \_\_\_\_\_, my telephone number is \_\_\_\_\_, and my national provider identifier (NPI) 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. *[N.B.: Your personal NPI number must be used, not a corporate NPI number. Persons opt out, not corporations.]*

2. I have entered 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 services that I furnish to Medicare Beneficiaries during the Opt-Out period in compliance 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. 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 services that I furnish to Medicare Beneficiaries with whom I have privately contracted. 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.

5. A copy of this affidavit is being filed with [the name of your state Medicare carrier], 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 signed. *[N.B. For LCSWs already participating in Medicare: My Medicare Part B Participation agreement terminates on the effective date of this affidavit.]*

Sincerely,  
[LCSW name]  
[LCSW signature]  
[Date]

*Contract with Patient who is a Medicare Beneficiary*

Below please find a template that includes all the information required for a private contract with a patient who is a Medicare beneficiary with an LCSW who has opted-out of Medicare. This contract should be signed prior to rendering any services to a patient who is a Medicare Part B beneficiary if the LCSW has opted-out of Medicare:

Date

[Name, degree, license]  
[Street address]  
[Phone number]  
[Email address]

To Whom It May Concern:

This agreement is between [Your Name and Title] ("LCSW"), whose principal place of business is \_\_\_\_\_, and the 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. The LCSW has informed the Patient that the LCSW has opted out of the Medicare program as of [date when affidavit submitted] for a period of two years, and is not allowed to participate in Medicare Part B under Sections 1128, 1156, or 1892 or any other section of the Social Security Act until the affidavit expires.

The LCSW agrees to provide the following services to Patient (the "Services"):

- \* Diagnosis of behavioral health conditions
- \* Psychotherapy services
- \* Counseling services
- \* Casework services
- \* Family therapy services
- \* Care coordination services
- \* Group therapy services

*[N.B. The LCSW should add or subtract services which the LCSW may provide to a patient from the above list.]*

In exchange for the Services, the Patient agrees to make payments to the LCSW pursuant to the Attached Fee Schedule. Patient also agrees, understands and expressly acknowledges the following:

- \* The Patient agrees not to submit a claim (or to request that LCSW submit a

claim) to the Medicare program with respect to these Services.

- \* The Patient is not currently in an emergency or urgent health care situation.
- \* The Patient acknowledges that supplemental Medicare plans will not provide payment or reimbursement for the Services because payment is not made under the Medicare program.
- \* The Patient acknowledges that he has a right, as a Medicare beneficiary, to obtain Medicare-covered items and services from other practitioners who have not opted-out of Medicare, and that the Patient is not required to enter into private contracts that apply to other Medicare-covered services provided by other practitioners who have not opted-out.
- \* The Patient agrees to be responsible to make payment in full for the Services, and acknowledges that the LCSW will not submit a Medicare claim for the Services and that no Medicare reimbursement will be provided.
- \* The Patient understands that Medicare payment will not be made for any services furnished by the LCSW that would have otherwise been covered by Medicare if there were no private contract.
- \* The Patient acknowledges that a copy of this contract has been made available to the Patient.

Executed on [date] by [Patient name] and [LCSW name]  
[Patient signature] [LCSW signature]

*[N.B.: Keep a copy of any contracts in case CMS asks to review the contract. CMS requires that this contract be re-executed every two years.]*

### *Final Step*

Send a new affidavit to the regional Medicare carrier every two years to maintain opt-out status.

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