NASW members are seeking reimbursement clarifications when performing psychotherapy services to Medicare Part B beneficiaries who do not wish to use their Medicare benefits. In such situations, a clinical social worker may opt-out of Medicare. Opting out means that the clinical social worker cannot bill Medicare for any services they provide for a two year period. Instead, reimbursement is received from the Medicare beneficiary under the terms of a private contract.

Private Contract
The Balanced Budget Act of 1997, section 4507, defines a private contract as an agreement between a Medicare beneficiary and a clinical social worker or other practitioner who has opted-out of Medicare for two years for all covered services she or he furnishes to Medicare beneficiaries. In the contract, the patient agrees to give up Medicare payment for services furnished by the clinical social worker and pay the clinical social worker without regard to any limits established by the Medicare fee schedule.

A clinical social worker who is a Medicare provider must send an opt-out affidavit to their local Medicare Administrative Contractor (MAC) before entering into a private contract with a Medicare patient. A clinical social worker who is not a Medicare provider can opt-out at any time, while a participating clinical social work Medicare provider must send the affidavit to the carrier 30 days before the beginning of the quarter when their opt-out period will begin. Medicare quarters begin on January 1, April 1, July 1, and October 1.

The private contract must be signed and dated by both the clinical social worker and patient before services are furnished. It must also state without ambiguity that by signing the contract, the patient agrees to the following:

- Gives up all Medicare coverage and payment for services furnished by the clinical social worker for two years.
- Will not bill Medicare nor ask the clinical social worker to bill Medicare.
- Is liable for charges of the clinical social worker without any limits that would otherwise be imposed by Medicare.
- Acknowledges that Medigap will not make payment for services and other supplementary insurers may not pay either.

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To avoid reimbursement problems, clinical social workers who choose to opt out of Medicare should provide services to Medicare beneficiaries only through private contracts.

The private contract should also:
- State the effective and expiration dates of the opt-out period.
- Be signed by the patient and the clinical social worker.
- Be retained by the clinical social worker and made available to the Centers for Medicare and Medicaid Services (CMS) upon request.
- Be renewed for each opt-out period.

The contract becomes invalid if it is entered into by a Medicare beneficiary when she or he is facing an emergency or urgent health situation.

Opting Out
To avoid reimbursement problems, clinical social workers who choose to opt out of Medicare should provide services to Medicare beneficiaries only through private contracts. To have a private contract, the clinical social worker must first opt out of Medicare by filing an affidavit with all MACs to which she or he would submit claims. The affidavit must be filed within 10 days before entering into the first private contract. The affidavit must:
- Provide that the clinical social worker will not submit any claims to Medicare during the two-year period beginning on the date the affidavit is signed.
- Provide that the clinical social worker will not receive any Medicare payment for any services provided to Medicare beneficiaries.
- Identify the clinical social worker’s National Provider Identification number and Medicare provider number.
- Be signed and dated by the clinical social worker.

Emergency Situations
Medicare payment may be made for emergency psychotherapy services performed by an opt-out clinical social worker who has not signed a private contract with the Medicare beneficiary requiring the service. In this circumstance, Medicare will not reimburse for follow-up care. The clinical social worker may request the patient to sign a private contract as a condition for further treatment. If the patient does not sign a private contract with the clinical social worker and no longer requires emergency care, the clinical social worker would then refer the patient to a Medicare provider who would assume care of the patient and bill Medicare for continuing care.

A clinical social worker who decides to opt out of Medicare should do so properly and remain in compliance with the opt-out procedures. Private contracts are null and void when compliance is not met and the clinical social worker will be required to refund CMS any amounts collected in excess of Medicare payment limits.

Chapter 15 of the Medicare Benefit Policy Manual provides additional information about opting out of Medicare and is available online at www.cms.gov/manuals/Downloads/bp102c15.pdf

A sample only opt-out Medicare form is available online at the following Palmetto GBA Medicare link: www.palmettogba.com/Palmetto/Providers/Files/Medicare_OptOut_AffidavitJ1B.pdf/$File/Medicare_OptOut_AffidavitJ1B.pdf
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