

## Fact Sheet

# Medicare's Financial Protections for Consumers: Limits on Balance Billing and Private Contracting by Physicians

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The Medicare program protects consumers by limiting how much physicians and other health professionals can charge Medicare patients. These rules provide important financial protection for Medicare beneficiaries. This fact sheet describes Medicare's billing rules for physician services and related rules for physicians who choose not to accept Medicare payment and instead have "private contracts" with all of their patients who have Medicare.

## Medicare's Limits on Balance Billing by Physicians and Other Health Professionals

The amount a Medicare beneficiary with traditional Medicare may have to pay for a physician's or other health professional's services depends on the provider's level of participation in the Medicare program (see table 1 for an example).<sup>1</sup>

- **Participating providers.** The vast majority of physicians—about 95 percent—are "participating providers," which means they agree to accept Medicare's approved payment amounts as full payment for the Medicare-covered services they provide for all Medicare patients they see.<sup>2</sup> Patients may be billed for any Medicare cost sharing (such as deductibles, copayments, and co-insurance) that applies, but cannot be balance-billed for additional charges. If the patient has supplemental private insurance, it may cover some or all of the cost sharing.
- **Nonparticipating providers who accept Medicare.** A small proportion of physicians—about 4 percent—accept Medicare but are "nonparticipating providers."<sup>3</sup> These providers are allowed to balance-bill patients, but by law the amount they balance-bill cannot exceed 15 percent of the Medicare-approved payment amount for nonparticipating physicians for each service.

**"Balance billing" refers to the practice of charging patients for the difference between a health care provider's fee for medical services and their health insurance's allowed fee amount. When balance billing is allowed, the patient is financially responsible for the balance bill, plus any cost sharing such as deductibles and co-insurance required by the insurance plan. Medicare's current rules limiting balance billing provide important financial protection for consumers.**



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The Medicare-approved payment rates for nonparticipating physicians are 95 percent of the rates for participating physicians (see example in table 1).<sup>4</sup> The Medicare beneficiary is responsible for paying the additional balance billing amount, along with any deductible and standard co-insurance amounts that may apply.

- **Providers who opt out of Medicare and have private contracts with Medicare beneficiaries.** Less than 1 percent of physicians completely opt out of Medicare.<sup>5</sup> These doctors choose not to accept payments from the Medicare program at all. Medicare beneficiaries who want to use these physicians' services must agree to a private contract and pay all of the charges for contracted services.

### Medicare's Limits on Private Contracting

Physicians who enter into private contracts with Medicare beneficiaries must agree, in writing, to

forgo all payment from Medicare for at least two years.<sup>6</sup> Physicians who enter into private contracts must do so for all Medicare beneficiaries they treat and for all Medicare-covered services; they may not pick and choose the patients or services for which they will bill Medicare. These restrictions prevent doctors from choosing patients based on the severity of their illness, reduce the chance of fraudulent billing, and protect patients from high out-of-pocket costs.

### Concierge Care

Physicians are permitted to charge Medicare beneficiaries a membership fee as a condition of accepting a person as a patient, which is often referred to as "concierge" care or "boutique" medicine.<sup>7</sup> Physicians may offer some services or amenities that are not covered by Medicare, such as the promise of same-day appointments, to patients who pay the concierge care membership fee. The fee

**TABLE 1**  
**Example Showing How the Amount a Consumer Pays Depends on The Physician's Level of Participation in Medicare**

	Participating Provider (95% of physicians)	Nonparticipating Provider (4% of physicians)	Provider Who Opt's out of Medicare (< 1% of physicians)
<b>Medicare Payment Amount (Example)</b>	\$100	\$95 (95% of the amount for participating providers)	\$0
<b>Maximum Amount Physician Can Receive</b>	\$100 (Medicare payment amount)	\$109.25 (Medicare payment amount plus additional 15%)	Full amount the physician charges—for example, \$150
<b>Medicare Program Pays</b>	\$80 (80% of Medicare payment amount)	\$76 (80% of Medicare payment amount)	\$0
<b>Patient Cost Sharing<sup>a</sup></b>	\$20 (20% of Medicare payment amount)	\$19 (20% of Medicare payment amount)	\$0
<b>Balance Billing Charge<sup>a</sup></b>	\$0	\$14.25	\$150
<b>Total That Patient Pays</b>	\$20	\$33.25	\$150

<sup>a</sup>Medicare beneficiaries with low incomes and savings who are enrolled in the Qualified Medicare Beneficiary program cannot be charged any Medicare cost sharing or balance billing by Medicare participating and nonparticipating providers. The Medicaid program in the person's state is responsible for paying for beneficiary cost sharing, but the amount may be limited according to state rules.

cannot be used to charge extra for Medicare-covered services. The patient is responsible for the entirety of the fee.

### **Additional Protections for Low-Income Beneficiaries**

Additional protections apply to Medicare beneficiaries with low incomes and limited savings who are enrolled in the Qualified Medicare Beneficiary (QMB) program. Beneficiaries enrolled in the QMB program do not have to pay Medicare cost sharing (deductibles, copayments, and co-insurance) and Medicare participating and nonparticipating physicians are not allowed to bill them for Medicare cost sharing or balance billing amounts.<sup>8</sup> The Medicaid program in the beneficiary's state is responsible for paying for cost-sharing expenses. The amount paid for cost sharing, however, may be limited according to state rules.<sup>9</sup> If it is, the physician is not allowed to bill the beneficiary for the difference.

### **Medicare Beneficiaries Have Good Access to Physician Services**

Advocates of weakening Medicare's balance billing and private contracting protections for consumers have suggested that these rules make it difficult for Medicare patients to find doctors who accept Medicare. Research indicates, however, that Medicare beneficiaries have good access to physician services, similar to or better than privately insured people ages 50–64.<sup>10</sup> A 2016 report from the Medicare Payment Advisory Commission found that most Medicare beneficiaries report

that they never have to wait longer than they want to get an appointment. In 2015, 82 percent of Medicare beneficiaries age 65 or older needing an appointment for illness or injury during the previous 12 months reported that they never had to wait longer than they wanted, as did 72 percent of those seeking an appointment for routine care.<sup>11</sup> While some people with Medicare, like some people with private insurance, do encounter difficulties obtaining physician services, allowing physicians to charge Medicare beneficiaries higher amounts in balance bills or through more private contracts will not solve these problems. As noted above, almost all physicians see Medicare patients and accept Medicare insurance.

### **Medicare's Rules for Balance Billing and Private Contracting Are Important Financial Protections for Beneficiaries**

Half of all beneficiaries in traditional Medicare already spend more than 18 percent of their income on premiums and other medical expenses.<sup>12</sup> Without Medicare's consumer protections, Medicare beneficiaries would likely face higher out-of-pocket costs from balance billing and private contracts. Higher payments would be difficult for many beneficiaries to absorb. Higher payments would likely lead to more limited access to physicians for many beneficiaries, as well as greater financial distress, especially for people with high health care needs. Patients would also experience considerable uncertainty about how much services would cost, which could cause some to forgo necessary care and others to incur unexpected, unaffordable out-of-pocket costs.

- 1 The balance billing limits described in this section apply to the majority of Medicare beneficiaries, about 70 percent, who are enrolled in traditional Medicare. For Medicare beneficiaries who are enrolled in private Medicare Advantage health plans, balance billing is prohibited for Medicare-covered services, except in the case of private fee-for-service plans. Cristina Boccuti, “Paying a Visit to the Doctor: Current Financial Protections for Medicare Patients Receiving Physician Services,” Issue Brief, Kaiser Family Foundation, Washington, DC, November 2016. However, Medicare Advantage enrollees who use out-of-network services in nonemergency situations may not have any coverage or may be liable for out-of-network cost sharing, depending on the rules of their plan. Karen Pollitz, “Surprise Medical Bills,” Issue Brief, Kaiser Family Foundation, Washington, DC, March 2016.
- 2 Boccuti, “Paying a Visit to the Doctor.”
- 3 Medicare Payment Advisory Commission, “Report to the Congress” (Washington, DC: Medicare Payment Advisory Commission, March 2016).
- 4 Centers for Medicare and Medicaid Services, “Lower Costs with Assignment,” accessed January 13, 2017, <https://www.medicare.gov/your-medicare-costs/part-a-costs/assignment/costs-and-assignment.html>.
- 5 Medicare Payment Advisory Commission, *Report*.
- 6 Boccuti, “Paying a Visit to the Doctor.”
- 7 Centers for Medicare and Medicaid Services, “Concierge Care,” accessed January 13, 2017, <https://www.medicare.gov/coverage/concierge-care.html>.
- 8 Medicare Interactive.org, “QMB Balance Billing,” accessed January 13, 2017, <https://www.medicareinteractive.org/get-answers/programs-for-people-with-limited-income/medicare-savings-programs-qmb-slmb-qi/qmb-balance-billing>.
- 9 Federal law allows states to cap their contributions to Medicare co-insurance based on Medicaid’s payment rates, which are usually lower than Medicare’s payment rates for the same service. Medicaid and CHIP Payment and Access Commission (MACPAC), “Medicaid Coverage of Premiums and Cost Sharing for Low-Income Medicare Beneficiaries,” in *Report to Congress on Medicaid and CHIP* (Washington, DC: MACPAC, March 2013), Chapter 4, <https://www.macpac.gov/publication/ch-4-medicare-coverage-of-premiums-and-cost-sharing-for-low-income-medicare-beneficiaries/>.
- 10 Medicare Payment Advisory Commission, *Report*.
- 11 Medicare Payment Advisory Commission, *Report*.
- 12 Claire Noel-Miller, “Medicare Beneficiaries’ Out-of-Pocket Spending for Health Care,” *Insight on the Issues* 108, AARP Public Policy Institute, Washington, DC, October 2015.

Fact Sheet 340, January 2017

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