

On May 5<sup>th</sup> the Department of Health and Human Services issued Interim Final Rules regarding the issue of whether opted out physicians will be able to order DME and Home Health items under the new Health Care Act. The proposed Final Rules, which will almost certainly become final in the first week of July, declare that even opted out physicians are deemed “enrolled” in Medicare for purposes of the statute by providing an exception for these physicians and administratively creates a special exception. Here is what HHS says about this:

“Under section 1802(b) of the Act and the implementing regulations at 42 CFR 405.400 et seq., physicians and non-physician practitioners can opt out of the Medicare program and enter into private contracts with Medicare beneficiaries. By entering into these types of contracts, these suppliers do not bill the Medicare program for services that they furnish to Medicare beneficiaries. We require that physicians and eligible professionals who have properly filed an appropriate affidavit with a Medicare contractor in order to opt out of the Medicare program be required to be identified in claims by their names and their NPIs if they order or refer covered items or services for Medicare beneficiaries. **We are creating an exception to the requirement that ordering and referring suppliers be required to have an approved enrollment record in PECOS for those physicians and non-physician practitioners who have validly opted out of the Medicare program. Therefore, physicians and non-physician practitioners who have validly opted out of Medicare are eligible to order and refer covered items and services for Medicare beneficiaries.** If they have properly completed the appropriate affidavit in order to opt out of Medicare, they will have records in PECOS that contain their NPIs and that indicate that they have validly opted out of the Medicare program. In January 2009, there were approximately 10,000 physicians and eligible professionals who had opted out of the Medicare program. Compared to the more than 800,000 enrolled physicians and eligible professionals, there are relatively few physicians and eligible professionals who have opted out of Medicare. Accordingly, the physicians or eligible professional that opted out must meet the following: A currently enrolled physician or eligible professional who does not have an enrollment record in PECOS is required to establish an enrollment record in PECOS so that he or she can order and refer covered items or services for Medicare beneficiaries. A physician or eligible professional who has validly opted out of the Medicare program will have a valid opt-out record in PECOS and is not required to submit an enrollment application. A physician or eligible professional who is employed by the Public Health Service, the Department of Defense, or the Department of Veterans Affairs is required to have an approved enrollment record in PECOS in order to order and refer covered items and services for Medicare beneficiaries, even though he or she would not be submitting claims to Medicare for services furnished to Medicare beneficiaries. We require, therefore, that these physicians and eligible professionals enroll in Medicare solely to order and refer (and not to be paid for services furnished to Medicare beneficiaries).”

Note that all the physicians placing these orders will need NPIs.

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