

Advance Beneficiary Notice of Noncoverage – Charging for Services Not Covered by Medicare

March 2010

This whitepaper attempts to describe the advance beneficiary notice of noncoverage that may be utilized when charging patients for services not covered by Medicare. This document is just a summary and the touchstones for compliance are the regulations, laws, and other materials that are maintained by the government. For more information on advance beneficiary notice of noncoverage, you will want to review the ABN manual available at:

<http://www.trailblazerhealth.com/Publications/Training%20Manual/abn.pdf>

What is the Advance Beneficiary Notice of Noncoverage (ABN)?

An ABN is a written notice to patients (who are Medicare beneficiaries) that must be provided to patients *prior to the provision of services* for which Medicare will not pay because the service is *not covered* by the Medicare program.¹ Readers will note that the test has two prongs – 1) Medicare will not pay for the service; and 2) Medicare considers the service to be *not covered*.

There are a number of services for which Medicare will not pay, but are still considered a covered service. Payment for services after hours is a good example to illustrate this point. The CPT codes addressing services after hours are:

99050 - Services provided in the office at times other than regularly scheduled office hours, or days when the office is normally closed (eg, holidays, Saturday or Sunday), in addition to basic service; and

99051 - Service(s) provided in the office during regularly scheduled evening, weekend, or holiday office hours, in addition to basic service.

These codes, although they are entirely legitimate, are not payable separately. If a physician were to bill Medicare using the codes, the contractor would merely “bundle” the payment into the other covered services provided for the day. In other words, as far as Medicare is concerned, availability of physician services

¹ Trailblazer Advance Beneficiary Notice of Noncoverage Manual, Page 2. March 2010.

after hours is a covered service and is paid for within the charge for the medical service itself. No additional payment is made for after-hours availability. Thus, even with an ABN, a physician should not charge a patient for being available to provide a service after-hours.

Physicians should be *extremely* careful in the use of ABNs as charging a beneficiary for services the government considers to be covered (without regard to whether a payment by government is made) is a violation of the terms of participation and social security laws (regardless of whether one is or is not “participating” in the Medicare program). An ABN is not a method to obtain permission to charge for covered services.

When Using an ABN, For Which Services May I Charge Medicare Patients?

Generally, physicians may use an ABN to bill for non-covered services that the Medicare program denies as medically unnecessary. According to Trailblazer, the Medicare contractor in Texas, these services *generally* include:

- Experimental and investigational;
- Not safe and effective;
- Limited coverage based on certain criteria;
- Obsolete tests; and
- The number of services exceeds the norm and no medically necessity is demonstrated for the extra number of services.²

The character of the items above betrays the nature of the dilemma that practices wanting to use the ABN face. **Namely, the circumstances that permit use of an ABN are patient specific, relate to the patient’s diagnosis, and relate to how a particular medical service is intended to be utilized by a practice.** For example, a treatment may be very safe and effective for a particular ailment, but not be shown to be effective to treat another ailment (which *may* lead to the government permitting the use of an ABN). It is for this reason there is no general list to characterize certain treatments as always falling under an exception that permits use of an ABN. Instructions on how to research Medicare services is provided below.

May I Use an ABN to Obtain Payment from my Medicare Patients for Treatment Provided over the Telephone?

Treatment delivered by telephone is a covered service and is generally related to an office visit that has taken place or will take place. However, in some exceptional circumstances, the Medicare beneficiary may be charged, but the specific 2010 CPT code that addresses the particular treatment scenario must be carefully scrutinized. In reviewing the 2010 CPT codes addressing telephone treatment (99441-99443), it can be said to charge a patient all of the following must be met:

² Id.

- The telephone treatment is:
 - provided by a physician;
 - provided to an established patient, parent, or guardian;
 - not originating from a related E/M service provided within the previous 7 days **nor** leading to an E/M service or procedure within at the soonest available appointment (or 24 hours, whichever is later); and
 - includes a medical discussion of at least 5-10 minutes (higher level coding is permitted for longer conversations).³

If these elements are *not* met, then the treatment provided by telephone is bundled into the office visit that occurred before the telephone conversation or that will occur after the conversation and **the patient may not be charged**. The patient may be charged when all elements are met. In essence, a charge is appropriate only when the treatment provided by telephone is not related to a previous office visit or will not require an office visit in the future.

Interestingly, an ABN is not *required* for billings related to qualifying telephone services. According to the government, “Although an ABN is not required, we would strongly encourage providers to issue the voluntary ‘Notice of Exclusion from Medicare Benefits (NEMB)’ so patients can make informed decisions in these situations.”⁴ Further, “the ABN can be issued voluntarily in place of the NEMB.”⁵

May I Use an ABN to Obtain Payment from my Medicare Patients for Treatment Provided over the Internet or other Advanced Communication?

Treatment delivered by the internet is a covered service and is generally related to an office visit that has taken place. In some exceptional circumstances, an ABN may be utilized for internet treatment, but the specific CPT code that addresses the particular treatment scenario must be carefully scrutinized.⁶ When one reviews the 2010 CPT code 99444 addressing internet treatment, it can be said to use an ABN all of the following must be met:

- The internet service is:
 - provided by a physician;
 - provided to an established patient, parent, or guardian; and
 - not originating from a related E/M service provided within the previous 7 days, and the practice is using the Internet or similar electronic communications network.

Physicians should be mindful that the Texas Medical Board (TMB) regulates the practice of medicine and maintains regulations regarding internet treatment. For example, when this article went to press, the relevant TMB regulations likely

³ AMA CPT 2010.

⁴ CMS Manual System, Transmittal 1423

⁵ Trailblazer Advance Beneficiary Notice of Noncoverage Manual, Page 3. March 2010.

⁶ AMA CPT 2010.

prohibit treatment over the internet for new patients. Physicians should review those regulations, which may be found at <http://www.tmb.state.tx.us>.

Traditional Medicare no longer pays for consultation codes. May I now charge the patient for these consultation codes?

“Physicians who bill a consultation after January 1, 2010, will have the claim returned with a message indicating that Medicare uses another code for the service. To receive payment for the E/M service, the claim should be resubmitted using the appropriate E/M code...Although CMS has eliminated the use of the CPT consultation codes for payment of E/M services furnished to Medicare fee-for-service patients, those E/M services themselves continue to be covered services if they are medically reasonable and necessary and, therefore, an ABN is not applicable. Furthermore, the patient may not be billed for the E/M service instead of Medicare.”

Blanket Use of ABN

I want to just use a blanket ABN that all of my Medicare patients will sign, just so I am able to charge when I do not receive payment. Is that permitted?

No. According to the government, ABNs must “be specific to a date of service, thus ‘blanket’ ABNs are not allowed.”

How to Obtain and Execute an ABN

What are the acceptable methods of obtaining a properly executed ABN?

Of course, an ABN may be obtained in-person. When there is not an in-person contact then the ABN may be acquired through facsimile, e-mail, or over the telephone. For telephone ABNs, the contact “...must [be] followed immediately by either a hand-delivered, mailed, or faxed notice.”⁷

While waiting for the signed notice to be returned, the physician must maintain a copy of the unsigned notice on file. If the patient does not return a signed notice, the contact and the attempts to obtain a signed notice must be maintained.⁸

“A minimum of two copies, including the original must be made so the beneficiary and provider each have one. Beneficiaries should be given a copy of the signed and dated ABN immediately and the provider should retain the original copy with the patient’s records.

The ABN must not exceed one page in length; however, attachments are permitted for listing additional items and services.”⁹

⁷ Trailblazer Advance Beneficiary Notice of Noncoverage Manual, Page 5.

⁸ Id.

⁹ Id.

Retention of ABNs

An ABN must be maintained for no less than 5 years “from the discharge/completion of delivery of care....”¹⁰

Bright Line for Use of ABN

Above this paper says that non-covered services lend themselves to the use of ABNs. Is there a list of these non-covered codes?

There is no bright line for covered versus non-covered services in Medicare and there is no single list that will contain the codes for which a practice may always use an ABN to bill patients. According to the government, “[t]here are many scenarios (ICD-9/CPT code combinations) that will determine if a code is covered or not.”

The following links will aid a practice in the careful process of evaluating whether a service is covered or non-covered – these databases should be searched for an accurate analysis:

The local coverage determination searchable database [Local Coverage Determination \(LCD\) policies](http://www.trailblazerhealth.com/Tools/LCDs.aspx?DomainID=1) (which is best searched by CPT Code) (<http://www.trailblazerhealth.com/Tools/LCDs.aspx?DomainID=1>); and

CMS Maintains the [National Coverage Determination \(NCD\) policies](http://www.cms.hhs.gov/mcd/index_list.asp?list_type=ncd) database (which is best searched using a descriptive word from the CPT definition) (http://www.cms.hhs.gov/mcd/index_list.asp?list_type=ncd).

Finally, TrailBlazer, the local Medicare contractor in Texas, does have a LCD titled, [Non-Covered Services](http://www.trailblazerhealth.com/Tools/LCDs.aspx?DomainID=1&ID=2949) (<http://www.trailblazerhealth.com/Tools/LCDs.aspx?DomainID=1&ID=2949>).

This LCD contains explanations regarding non-covered services and also lists some codes for services considered investigational, unproven or experimental, or not medically necessary.

Conclusion

The ABN is a tool that will permit physicians to bill Medicare beneficiaries for certain noncovered services. Yet, this tool has only very limited use. Many services which are not paid by government are actually considered *covered services* but are bundled into previously provided payments (or payments to be made in the future). Blanket use of ABNs is not permitted. It is only after careful research that a practice may conclude that a particular service for a particular patient will qualify for an ABN.

¹⁰ Id. page 9.

NOTICE: This information is provided as general guidance on billing, coding and reimbursement issues. Your specific facts may affect the general information provided and may modify how to specifically bill for a service. This is not a substitute for the advice of an attorney. Although TMA has attempted to present materials that are accurate and useful, some material may be outdated and TMA shall not be liable to anyone for any inaccuracy, error or omission, regardless of cause, or for any damages resulting therefrom. Certain links and attachments are maintained by third parties. TMA has no control over this information, or the goods or services provided by such third parties. TMA shall have no liability for any use or reliance of a user on the information provided by third parties.

(B) Patient Name:

(C) Identification Number:

NOTE: If Medicare doesn't pay for (D)_____ below, you may have to pay.

Medicare does not pay for everything, even some care that you or your health care provider have good reason to think you need. We expect Medicare may not pay for the (D)_____ below.

(D)	(E) Reason Medicare May Not Pay:	(F) Estimated Cost:

- Read this notice, so you can make an informed decision about your care.
- Ask us any questions that you may have after you finish reading.
- Choose an option below about whether to receive the **(D)** _____ listed above.

Note: If you choose Option 1 or 2, we may help you to use any other insurance that you might have, but Medicare cannot require us to do this.

(G) OPTIONS: Check only one box. We cannot choose a box for you.

☐ **OPTION 1.** I want the (D)_____ listed above. You may ask to be paid now, but I also want Medicare billed for an official decision on payment, which is sent to me on a Medicare Summary Notice (MSN). I understand that if Medicare doesn't pay, I am responsible for payment, but **I can appeal to Medicare** by following the directions on the MSN. If Medicare does pay, you will refund any payments I made to you, less co-pays or deductibles.

☐ **OPTION 2.** I want the (D)_____ listed above, but do not bill Medicare. You may ask to be paid now as I am responsible for payment. **I cannot appeal if Medicare is not billed.**

☐ **OPTION 3.** I don't want the (D)_____ listed above. I understand with this choice I am **not** responsible for payment, and **I cannot appeal to see if Medicare would pay.**

This notice gives our opinion, not an official Medicare decision. If you have other questions on this notice or Medicare billing, call **1-800-MEDICARE** (1-800-633-4227/TTY: 1-877-486-2048).

Signing below means that you have received and understand this notice. You also receive a copy.

(I) Signature:	(J) Date:
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According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0566. The time required to complete this information collection is estimated to average 7 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Baltimore, Maryland 21244-1850.

Form CMS-R-131 (03/08)

Form Approved OMB No. 0938-0566

(A) Notificante(s):

(B) Nombre del paciente:

(C) Número de identificación:

NOTIFICACIÓN PREVIA DE NO-COBERTURA AL BENEFICIARIO (ABN)

NOTA: Si Medicare no paga (D) _____ a continuación, usted deberá pagar. Medicare no paga todo, incluso ciertos servicios que, según usted o su médico, están justificados. Prevemos que Medicare no pagará (D) _____ a continuación.

(D) _____	(E) Razón por la que no está cubierto por Medicare:	(F) Costo estimado:

LO QUE USTED NECESITA HACER AHORA:

- Lea la presente notificación, de manera que pueda tomar una decisión fundamentada sobre la atención que recibe.
- Háganos toda pregunta que pueda tener después de que termine de leer.
- Escoja una opción a continuación sobre si desea recibir (D) _____ mencionado anteriormente.

Nota: Si escoge la opción 1 ó 2, podemos ayudarlo a usar cualquier otro seguro que tal vez tenga, pero Medicare no puede exigirnos que lo hagamos.

G) OPCIONES: Sírvase marcar un recuadro solamente. No podemos escoger un recuadro por usted.

☐ **OPCIÓN 1.** Quiero (D) _____ mencionado anteriormente. Puede cobrarme ahora, pero también deseo que se cobre a Medicare a fin de que se expida una decisión oficial sobre el pago, la cual se me enviará en el Resumen de Medicare (MSN). Entiendo que si Medicare no paga, soy responsable por el pago, pero **puedo apelar a Medicare** según las instrucciones en el MSN. Si Medicare paga, se me reembolsarán los pagos que he realizado, menos los copagos o deducibles.

☐ **OPCIÓN 2.** Quiero (D) _____ mencionado anteriormente, pero que no se cobre a Medicare. Puede solicitar que se le pague ahora dado que soy responsable por el pago.

No tengo derecho a apelar si no se le cobra a Medicare.

☐ **OPCIÓN 3.** No quiero (D) _____ mencionado anteriormente. Entiendo que con esta opción no soy responsable por el pago y **no puedo apelar para determinar si pagaría Medicare.**

(H) Información adicional:

En esta notificación se da a conocer nuestra opinión, no la de Medicare. Si tiene otras preguntas sobre la presente notificación o el cobro a Medicare, llame al **1-800-MEDICARE** (1-800-633-4227/TTY: 1-877-486-2048).

Al firmar abajo usted indica que ha recibido y comprende la presente notificación. También se le entrega una copia.

(I) Firma:

(J) Fecha:

De conformidad con la Ley de reducción de los trámites burocráticos de 1995, nadie estará obligado a responder en todo pedido para recabar información a menos que se identifique con un número de control OMB válido. El número de control OMB válido para esta recolección de información es 0938-0566. El tiempo necesario para completar esta solicitud de información se calcula, en promedio, 7 minutos por respuesta, incluido el tiempo para revisar las instrucciones, buscar en fuentes de datos existentes, recabar los datos necesarios y llenar y revisar los datos recogidos. Si tiene comentarios sobre la precisión del cálculo del tiempo o sugerencias para mejorar el presente formulario, sírvase escribir a: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Baltimore, Maryland 21244-1850.

Formulario CMS-R-131 (03/08)**Formulario aprobado OMB N° 0938-0566**

¹¹ ABN Forms available at http://www.cms.hhs.gov/BNI/02_ABN.asp#TopOfPage [last accessed March 3, 2010].