January 20, 2012

Marilyn B. Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Tavenner:

The undersigned organizations are writing to request that the Centers for Medicare and Medicaid Services (CMS) provide written policy guidance regarding how patients enrolled in Medicare may obtain reimbursement for covered services provided by physicians who choose not to enroll in Medicare and bill their patients directly. Materials describing physicians’ Medicare participation options typically describe three alternatives: being a participating physician, being a non-participating physician, or opting out of Medicare and privately contracting with patients who are enrolled in Medicare.

Questions have recently been raised within the physician community about a fourth option, whereby physicians who do not enroll as Medicare providers bill their patients directly at fee levels that are set without regard to Medicare payment rates or limiting charges. Medicare patients pay the physician bills out of pocket and then seek reimbursement from Medicare using form CMS-1490S. The advantages of non-enrolled status are perceived to be that the physician is exempt from Medicare limiting charges and other payment policies and rules in the same manner as an enrolled physician who has opted out of Medicare and has private contracts with their patients. Unlike those who have opted out; however, patients may be reimbursed by Medicare for services received from the non-enrolled physicians.

We have reviewed correspondence via electronic mail in which CMS has provided some information regarding its views of this fourth option. According to this correspondence, it is the view of CMS that the option of having physicians not enroll in Medicare and having beneficiaries submit claims on their own using the form CMS 1490S is not consistent with Medicare law and un-enrolled physicians who engage in this type of practice are subject to penalties.

We remain concerned, however, because electronic mail correspondence does not have the standing or authority accorded official written Administration policy statements, and further questions have been raised about this option and the purpose of form CMS-1490S (“Patient’s Request For Medical Payments”). We, therefore, request that CMS provide written public guidance to the physician community articulating its view of this option, including an explanation of the statutory and regulatory basis. Thank you for your consideration of this request.

Sincerely,

American Medical Association
AMDA – Dedicated to Long Term Care Medicine
American Academy of Facial Plastic and Reconstructive Surgery
New Mexico Medical Society
Medical Society of the State of New York
North Carolina Medical Society
North Dakota Medical Association
Ohio State Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society
South Carolina Medical Association
South Dakota State Medical Association
Tennessee Medical Association
Texas Medical Association
Utah Medical Association
Vermont Medical Society
Medical Society of Virginia
Washington State Medical Association
West Virginia State Medical Association
Wisconsin Medical Society