The ABCs of ABNs

Stephanie M. McNear
Manager, National Health Care Regulatory Services Practice
Deloitte & Touche

Margaret Hambleton
System Director, Corporate Compliance and Risk Mgt.
Catholic Healthcare West

Health Care Compliance Association
Annual Compliance Institute
New Orleans, LA - April 28, 2003
Introduction

● Advance Beneficiary Notices:
  – advise beneficiaries, before items or services actually are furnished, when Medicare is likely to deny payment and they will be held liable for payment

● Medicare Patients Only!
Government Focus

- OIG Work Plan 2000 - Physicians
- OIG Work Plan 2001 - Physicians
- OIG Work Plan 2002 - Physicians
Medicare Law
Beneficiary Liability

- **Limitation of Liability (LOL)**
  - For all Part A services and all assigned claims for Part B services
  - Provide for program payment for denied claims in some cases
  - Provides beneficiary indemnification in certain cases
  - Patient doesn’t have to sign ABN to be held liable
Medicare Law Beneficiary Liability

- Refund Requirements (RR)
  - Assigned and unassigned claims for medical equipment and supplies
  - Unassigned claims for physician services
  - Provides physicians and suppliers liable, must make refunds to beneficiaries of any amounts collected
  - Patient must sign ABN to be held liable
ABN Requirements

- **Transmittal AB 02 114 – July 31, 2002**
  - Implementation Date 10/1/02

- **CMS – R-131-G**
  - General use ABN
    - Physicians, practitioners, suppliers, and providers
  - Spanish version

- **CMS – R-131 – L**
  - Use with laboratory tests
  - Spanish version
ADVANCE BENEFICIARY NOTICE (ABN)

NOTE: You need to make a choice about receiving these health care items or services.

We expect that Medicare will not pay for the item(s) or service(s) that are described below. Medicare does not pay for all of your health care costs. Medicare only pays for covered items and services when Medicare rules are met. The fact that Medicare may not pay for a particular item or service does not mean that you should not receive it. There may be a good reason your doctor recommended it. Right now, in your case, Medicare probably will not pay for –

Items or Services:

Because:

The purpose of this form is to help you make an informed choice about whether or not you want to receive these items or services, knowing that you might have to pay for them yourself. Before you make a decision about your options, you should read this entire notice carefully.
- Ask us to explain, if you don’t understand why Medicare probably won’t pay.
- Ask us how much these items or services will cost you (Estimated Cost: $    ), in case you have to pay for them yourself or through other insurance.

PLEASE CHOOSE ONE OPTION. CHECK ONE BOX. SIGN & DATE YOUR CHOICE.

☐ Option 1. YES. I want to receive these items or services.

I understand that Medicare will not decide whether to pay unless I receive these items or services. Please submit my claim to Medicare. I understand that you may bill me for items or services and that I may have to pay the bill while Medicare is making its decision. If Medicare does pay, you will refund to me any payments I made to you that are due to me. If Medicare denies payment, I agree to be personally and fully responsible for payment. That is, I will pay personally, either out of pocket or through any other insurance that I have. I understand I can appeal Medicare’s decision.

☐ Option 2. NO. I have decided not to receive these items or services.

I will not receive these items or services. I understand that you will not be able to submit a claim to Medicare and that I will not be able to appeal your opinion that Medicare won’t pay.

Date

Signature of patient or person acting on patient’s behalf

NOTE: Your health information will be kept confidential. Any information that we collect about you on this form will be kept confidential in our offices. If a claim is submitted to Medicare, your health information on this form may be shared with Medicare. Your health information which Medicare sees will be kept confidential by Medicare.

OMB Approval No. 0938-0566   Form No. CMS-R-131-G   (June 2002)
**ADVANCE BENEFICIARY NOTICE (ABN)**

NOTE: You need to make a choice about receiving these laboratory tests.

We expect that Medicare will not pay for the laboratory test(s) that are described below. Medicare does not pay for all of your health care costs. Medicare only pays for covered items and services when Medicare rules are met. The fact that Medicare may not pay for a particular item or service does not mean that you should not receive it. There may be a good reason your doctor recommended it. Right now, in your case, Medicare probably will not pay for the laboratory test(s) indicated below for the following reasons:

<table>
<thead>
<tr>
<th>Medicare does not pay for these tests for your condition</th>
<th>Medicare does not pay for these tests as often as this (denied as too frequent)</th>
<th>Medicare does not pay for experimental or research use tests</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this form is to help you make an informed choice about whether or not you want to receive these laboratory tests, knowing that you might have to pay for them yourself. Before you make a decision about your options, you should **read this entire notice carefully**.

- Ask us to explain why Medicare probably won’t pay.
- Ask us how much these laboratory tests will cost you (Estimated Cost: $__________), in case you have to pay for them yourself or through other insurance.

**PLEASE CHOOSE ONE OPTION. CHECK ONE BOX. SIGN & DATE YOUR CHOICE.**

- **Option 1. YES.** I want to receive these laboratory tests.
  I understand that Medicare will not decide whether to pay unless I receive these laboratory tests. Please submit my claim to Medicare. I understand that you may bill me for laboratory tests and that I may have to pay the bill while Medicare is making its decision.
  If Medicare does pay, you will refund to me any payments I made to you that are due to me.
  If Medicare denies payment, I agree to be personally and fully responsible for payment.
  That is, I will pay personally, either out of pocket or through any other insurance that I have.
  I understand I can appeal Medicare’s decision.

- **Option 2. NO.** I have decided not to receive these laboratory tests.
  I will not receive these laboratory tests. I understand that you will not be able to submit a claim to Medicare and that I will not be able to appeal your opinion that Medicare won’t pay.
  I will notify my doctor who ordered these laboratory tests that I did not receive them.

**Date**

**Signature of patient or person acting on patient’s behalf**

**NOTE:** Your health information will be kept confidential. Any information that we collect about you on this form will be kept confidential in our offices. If a claim is submitted to Medicare, your health information on this form may be shared with Medicare. Your health information which Medicare sees will be kept confidential by Medicare.

**CMS Approval No. 0536-0006**  **Form No. CMS-R-101-L**  **(June 2002)**
Basic ABN Requirements

- Reason for Denial

- Routine, Non-Specific Notices – Not Ok
  - Generic
  - Blanket
  - Signed Blanks
Basic ABN Requirements

- **Routine ABN Prohibition Exceptions**
  - Services always denied for medical necessity (acupuncture)
  - Experimental items and services, research and investigational use
  - Frequency limitations
    - Established frequency limitation on coverage or LMRP
  - Medical equipment and supplies
    - No supplier number, unsolicited telephone contact
Basic ABN Requirements

Determining Beneficiary Liability

- Beneficiary’s allegation of “did not know of liability” is acceptable unless evidence to contrary
  - Proper delivery of an ABN
  - i.e., denial notice within last 12 months
  - Beneficiary admits to knowing payment would be denied
    - ABN not furnished, beneficiary liable under LOL if have proof of knowledge
Basic ABN Requirements

- ABN Delivery – Physician/Supplier Responsibility (appropriate staff)
  - Hand delivered
  - Beneficiary (authorized person) has received and understands notice
  - Written in lay language
  - Original kept by physician/supplier
  - Copy to beneficiary
Basic ABN Requirements

- **ABN Delivery (Con’t)**
  - ABN copy sent to facility that bills Medicare
    - i.e., blood test specimen sent to and billed by lab
  - Legible duplicates, fax, electronically scanned, or photocopies okay
  - Telephone notice
    - Content of telephone contact can be verified and is undisputed
    - Written notice immediately delivered in person
    - Beneficiary signed the written notice accepting responsibility for payment.
Basic ABN Requirements

- ABN Delivery (Con’t)
  - Beneficiary’s questions completely answered
  - Beneficiary notified in advance of receiving medical service
    - Not coerced by last minute delivery where patient believes has no choice and is committed
      - I.e., being placed in CAT scanner
    - Examination room, draw station DME sales room are okay
Basic ABN Requirements

- ABN Delivery (Con’t)
  - MD draws blood specimen and sends to lab w/o ABN:
    - Lab may contact beneficiary and give ABN without violating timely rule so long as testing not begun (…as long as not charged??)
  - Exception for Repetitive Notices:
    - Single ABN covering an extended course of treatment acceptable as long as all items/services identified.
    - Limit to one year
Basic ABN Requirements

- Failure to meet ABN standards:
  - Expose MD/supplier may be held liable for denied charges
  - Can’t collect from beneficiary and may have to make refunds
  - Face sanctions for failing to make refunds
  - Not providing ABNs could imply intent to induce referrals for other Medicare paid services
Use of GA, GY and GZ Billing Modifiers

Transmittal B-01-58  September 25, 2001
In effect – January 1, 2002

● GY Modifier (Optional)
  – Must use to indicate item or service is statutorily excluded or does not meet the definition of any Medicare benefit
Use of GA, GY and GZ Billing Modifiers

- **GZ Modifier (Optional)**
  - Must use to indicate they expect Medicare will deny item or service as not reasonable and necessary and HAVE NOT gotten a signed ABN

- **GA Modifier**
  - Must be used to indicate they expect Medicare will deny a service as not reasonable and necessary and DO HAVE a signed ABN
ABN Implementation Tool Kit

- Senior Leadership Support Memo
- ABN Implementation Team Process Guidelines
- Employee Education
- Physician/Office Staff Education Letter
- Patient Education Pamphlet
- Policy and Procedure
- ABN Test/Service List
ABN Implementation

- Senior Leadership Support Memo
  - Provided to Senior Team
  - Provides Background
  - Provides Direction and Outlines Expectations
  - Identifies Leads for Implementation
  Accountability
ABN Implementation Team / Process

- Departments Affected
  - Laboratory, Pharmacy, Respiratory
  - Rehab, other therapies, Radiology, ER
  - Oncology, Business Services, Admitting
  - Medical Records, Dialysis, SNF
  - Clinics, Physician Offices, Others?
ABN Implementation Team / Process

- Create Implementation Team from Impacted Departments
- Develop Implementation Process (Manual process or vendor supported software)
- Provide Education
  - Staff, MDs
  - Face to face training, memos, newsletters
- Establish Monitoring System to Evaluate Compliance
- Report Compliance to Senior Management
Staff Education

- Background and Government Focus
- Explanation of ABNs and Process
  - ABN forms
  - Process flows for visual guide
  - Test / services listing subject to ABN use
Physician / Office Staff Education

- Meeting or Memo
  - Background and government Focus
  - Explanation of ABNs and process
  - ABN forms
  - Stress importance of providing diagnosis information
  - Process flows for visual guide
  - Contact information

- Monitor MD ABN use, provide feedback

- Provide additional education if warranted
Patient Education

- **Explanatory Pamphlet**
  - What happens when a MD orders a service
  - What happens if Medicare doesn’t pay for test/service
  - Tests/services Medicare may not pay for – examples:
    - Routine physical exams, frequency of services, investigational, etc.
Patient Education

- Explanatory Pamphlet
  - Patient responsibility
  - Frequently asked questions
    - If Medicare won’t pay, why does MD order?
    - Does signed ABN affect Medicare’s decision to pay?
    - How much will services cost?
    - Will “Medigap” insurance policies pay for services?
ABN Policy and Procedure

- State the Facility ABN Policy and Purpose
- Describe Documentation Requirements
- Lay Out the Procedure in Detail
  - Determining when to use ABN
  - How to complete form
  - Patient signature and copies
  - Patient refusal to sign
  - Flow of ABN through system
Summary

- Government Focus
- Medicare Beneficiary Liability Provisions
- ABN Requirements and Use
- ABN Billing Modifiers
- ABN Implementation
- Useful Tools
where to get more information

  - cms.hhs.gov/medlearn/refabn.asp
  - cms.hhs.gov/manuals/pm_trans/ab02114.pdf
  - cms.hhs.gov/manuals/pm_trans/B0158.pdf