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Physician FAQs:

The "Medicare Patient Empowerment Act"

What would the "Medicare Patient Empowerment Act" achieve?
The "Medicare Patient Empowerment Act" would establish a Medicare payment option for patients and physicians (and practitioners) to freely contract, without penalty, for Medicare fee-for-service physician and practitioner services, while allowing Medicare patients to use their Medicare benefits and allowing physicians to bill the patient for all amounts not covered by Medicare. Physicians and practitioners could continue to elect Medicare participating (PAR) or non-participating (non-PAR) status for other patients they treat.

Why is this legislation needed?
For over a decade, physicians have been threatened with huge cuts in Medicare payment rates due to the flawed Medicare physician payment formula, the sustainable growth rate (SGR), only for Congress to act at the 11th hour with a temporary patch that grows the problem and increases the cost of a permanent solution. From 2003 through 2011, Congress acted 13 times to avert steep Medicare physician payment cuts. In several instances the scheduled payment cut had already become effective and the temporary legislative fix was applied retroactively, creating serious administrative billing difficulties and cash flow problems for physician practices. Moreover, the Centers for Medicare & Medicaid Services recently acknowledged that Medicare pays less than half of direct costs for practice expenses (clinical staff, and medical equipment and supplies) for all physicians' services.

Existing Medicare underpayments, coupled with the threat of continued steep payment cuts, present serious access to care and choice of physician problems because fewer physicians will be able to afford to furnish services to Medicare patients. With baby boomers entering Medicare, alternative solutions to the physician payment problem are critical. If solutions are not found, new—and even current—Medicare patients will not be able to find a physician to treat them.

Access to care and freedom to choose a physician have been key hallmarks of the Medicare program, and now these tenets may disappear. A new approach, such as the "freedom to contract" approach taken in this legislation, would:

- Provide patients with more choice of physicians
- Increase the number of physicians who will continue to accept Medicare patients
- Help address physician shortages by attracting physicians into the medical profession
- Help preserve our Medicare program, along with patient-centered care, for our elderly and disabled patients

How would the patient and physician contracting arrangement work?
Under the legislation, Medicare patients would have access to the physician of their choice and could contract with their physician outside of the Medicare program, without being denied their Medicare benefits. The contract would specify the payment due for services the physician provides to the patient, and the patient would be responsible for paying the physician the amount specified for each service, either up front or at periodic intervals, as agreed to under the contract. Unlike current Medicare private contracting law, however, patients would continue to have access to their Medicare benefits, and would receive the Medicare-allowed payment for each service. Medicare balance billing limits would not apply to any additional amounts due under the contract.

Who would be responsible for submitting claims to Medicare for the physicians' services furnished under the contract?
Upon agreement by the patient and the physician, the contract would specify whether the patient would file claims with Medicare or whether the physician would file the claims on the patient's behalf.

Would this legislation allow patients to assign Medicare payment to their physician for services furnished under the contract?
Yes. The legislation would allow the patient to assign Medicare payment to the physician regardless of who files the claim, and this assignment would be specified in the contract. The patient would then be responsible for any amounts not paid by Medicare.

Would physicians be required to "opt out" of Medicare for all patients if the physician enters into a contract with a patient?
No. If a physician contracts with a patient, the physician would only "opt out" of Medicare for that patient. The physician, however, could continue as a Medicare PAR or non-PAR physician with respect to other patients.

How much would Medicare pay patients for the physicians' services?
Medicare claims would be paid directly to the beneficiary (or as assigned to the physician) in the amount that would apply to a Medicare participating (PAR) physician or practitioner in the Medicare payment area where the physician or practitioner resides. Payments would not be adjusted to reflect any incentive/penalty payments that might otherwise apply relating to the Physician Quality Reporting System (PQRS), electronic prescribing, health information technology or cost-quality payment modifier programs.

If a physician contracts with a patient, will Medicare requirements apply to the physician as if the physician were a Medicare PAR or non-participating (non-PAR) physician since the patient may receive Medicare benefits and/or assign Medicare payment to the physician under the contract?
No. If a physician contracts with a patient, the physician is not considered a Medicare PAR or non-PAR physician, and therefore Medicare requirements would not apply to the physician for purposes of services furnished under the contract. (If the physician is a PAR or non-PAR physician for other patients, the physician would have to comply with Medicare requirements for services furnished to those patients.)

Would the legislation ensure that patients can contract on a level playing field? Are patient protections included in the legislation?
Yes, patient protections to promote a level playing field are included in the bill. For example, contracts could not be entered into when a patient is facing an "emergency medical condition" or "urgent health care situation." Nor could low-income Medicare and Medicaid dual-eligible patients enter into a contract with their physician. Additional patient protections would require: 1) a written, signed contract that specifies the physician fees before services are furnished and the patient would be held harmless for any amounts billed in excess of the fees specified in the contract; and 2) indicating in the contract whether the physician is excluded from participation under Medicare.

Patients could not enter into a contract with a physician when facing an "emergency medical condition" or "urgent health care situation." What would constitute an "emergency medical condition" or an "urgent health care situation"?
The legislation defines these terms consistent with definitions that are already part of Medicare policy. The term "emergency medical condition" is defined as "a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in: 1) serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of the woman or her unborn child; 2) serious impairment to bodily functions; or 3) serious dysfunction of any bodily organ or part. The term "urgent health care situation" is defined as "services furnished to an individual who requires services to be furnished within 12 hours in order to avoid the likely onset of an emergency medical condition."

Can emergency or urgent care services be covered under the contract if the contract is entered into before a patient faces any emergency or urgent health care situation?
Yes. As long as the contract is entered into before an emergency or urgent health care situation arises, the contract would cover all services furnished by the physician as long as the contract meets all other requirements, including the specification of payment that is due for the physicians' services, including emergency and urgent health care services.

If payment for services established under the contract are more than the Medicare-allowed payment, can Medicare or state law prohibit or limit amounts that can be balance billed?
No. Medicare balance billing limits would not

apply to amounts billed under the contract and the legislation would also pre-empt state laws that prohibit or limit balance billing.

How would this legislation help or benefit a physician who is employed by a hospital or large health system?

The Medicare Patient Empowerment Act clearly offers potential benefits for physicians in private practice and their patients. However, depending on the unique structure and employment agreements between individual physicians and their hospital or health system, there may be various legal and regulatory barriers that prevent these physicians and their patients from deriving the full benefits of the MPEA. As the legislation moves through the legislative and regulatory implementation process, the AMA will advocate for solutions that provide the means for employed physicians to enter into personal contracts with patients.

How is this legislation different from existing Medicare law?

The legislation differs from existing Medicare law in three key respects:

1) Existing Medicare private contracting law requires a physician to "opt out" of Medicare for all patients for two years if even one patient enters into a private contract with a physician. Under this legislation, the physician would "opt out" of Medicare only with regard to the patient with whom the physician has a contract. The physician could continue to participate in Medicare with regard to other patients.

2) Existing Medicare private contracting law disadvantages Medicare patients who enter into a private contract with a physician because the patient is denied all Medicare benefits, despite having paid into the program for many years. This legislation would allow the patient to continue receiving their Medicare benefits under a contracting arrangement with a physician.

3) Existing Medicare balance billing law strictly limits the amount that a physician can balance bill a patient for charges that are greater than what Medicare pays for a service. Under this legislation, federal and state balance billing limits would not apply.

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