

## CMS's Updated Advance Beneficiary Notice of Noncoverage (ABN) is in Effect

**By Lesley R. Arca**

As of January 1, 2021, providers must use the updated instructions and form Advance Beneficiary Notice of Noncoverage (ABN), Form CMS-R-131. The changes address beneficiaries who are dually enrolled in Medicare and Medicaid through the Qualified Medicare Beneficiary (QMB) Program and/or Medicaid ("dual-eligible beneficiaries").

The ABN is issued by providers (including independent laboratories, home health agencies, and hospices), physicians, practitioners, and suppliers to Original Medicare (fee-for-service or FFS) beneficiaries in situations where Medicare traditionally pays for an item or services, but payment is expected to be denied in a specific instance. The ABN is issued to transfer potential financial liability to the Medicare beneficiary in these instances.

For dual eligible beneficiaries, under the Option 1 Box on the ABN, providers must strike certain language with a single line to leave the words "I want Medicare billed for an official decision on payment, which is sent to me on a Medicare Summary Notice (MSN)" so that the ABN can be submitted for Medicare adjudication. CMS made these updates because, under the prior form's instructions, providers would inform dual-eligible beneficiaries that they would be responsible for paying the claim if Medicare denied the claim. Under the new instructions, if Medicare denies the claim, the dual-eligible beneficiaries can cross the claim over to Medicaid or allow the provider to submit the claim for adjudication based on the beneficiary's Medicaid coverage and payment policy. Based on its determination of the dual-eligible beneficiary's coverage, Medicaid will issue a Remittance Advice.

Once a dual-eligible beneficiary's claim is adjudicated by both Medicare and Medicaid, providers may only charge the beneficiary if:

- (1) the beneficiary has QMB coverage without full Medicaid coverage; or
- (2) the beneficiary has full Medicaid coverage and Medicaid denies the claim (or will not pay because the provider does not participate in Medicaid). Depending on state law, the ABN could allow the provider to shift financial liability to the beneficiary under Medicare policy.

The new ABN form and instructions expire June 30, 2023, after which they will be subject to another public comment and reapproval process.

Providers should confirm that they are using the correct version of the ABN form and instructions available [here](#). To be sure, the left portion of the ABN's footer states, "Form CMS-R-131 (Exp. 06/30/2023)."

In the event that you desire further information and assistance regarding this topic, please consult the following individuals at Roetzel.

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