

CMS Response to Public Comments Received for CMS-2019-0121

The Centers for Medicare and Medicaid Services (CMS) received several comments from the public for CMS-2019-0121. This is the reconciliation of the comment.

Comment: The Center for Medicare Advocacy would like to express support for the modifications to the instructions to the ABN that would be explicit in stating that providers may not bill dually eligible beneficiaries before their claim has gone through both Medicare and Medicaid.

Response: CMS appreciates your support regarding the changes to the ABN form instructions.

Comment: The Medicare Rights Center welcomes and appreciates the additional special guidance CMS included in the instructions for the ABN pertaining to individuals dually eligible for Medicare and Medicaid and those enrolled in the QMB program.

The Medicare Rights Center encourages CMS to ensure that beneficiaries have meaningful access to the information contained in ABNs by providing the form in the 17 languages in which the SSA routinely makes materials available. In addition, CMS should remind providers of their obligation to ensure access to interpreter services when appropriate.

Response: CMS appreciates your support regarding the changes to the ABN form instructions. CMS instructs providers, suppliers, and beneficiaries to contact 1-800-Medicare or email AltFormatRequest@cms.hhs.gov for alternative formats of the form. This information is located on the ABN form at the bottom. CMS also provides our forms in large print format. These forms may be located on the ABN website:

<https://www.cms.gov/Medicare/Medicare-General-Information/BNI/ABN.html>

Comment: The Justice in Aging welcomes the additional special guidance in the form instructions for dual eligible and commend CMS for including guidance specific to dual eligible in the PRA submission. This additional language helps to clarify for providers who work with dual eligible that they cannot collect for covered services and explicitly delineates the limited circumstances under which such payment is appropriate. They also appreciate the inclusion of recognizing potential protections in state law as well.

The Justice in Aging also appreciates the revised burden estimate. Accurate and properly completed ABNs protect both providers and beneficiaries. Including Medicare Part B providers in the burden analysis more accurately reflects the large swath of providers and beneficiaries who benefit from improved clarity in the forms.

Although the supporting statement provides some language indicating the limited circumstances under which an ABN is issued, we were surprised to find that the form instructions themselves do not remind providers under most circumstances, ABNS are not to be issued on a routine basis as explained in the MLN on Medicare Advance Notices of Noncoverage, ICN 006266. We believe this MLN contains helpful reminders about both the frequency of and prohibitions on ABN issuance that are important to include in the form instructions for providers.

The Justice of Aging asks CMS to ensure that ABNs, as standard documents that affect beneficiary payment responsibilities, translate the form to the 17 language in which the SSA routinely makes materials available- English and Spanish are insufficient- and include guidance to providers that reminds them of their obligation to ensure access to interpreter services when appropriate.

Similarly, under the section “Completing the Notice,” the instructions direct providers to use 12-point font, but in our experience, older adults find 14 and 16-point font more legible, so we encourage CMS to direct providers to use a font size that older adults will not strain to comprehend.

Response: CMS appreciates your support regarding the changes to the ABN form instructions. CMS has more instructions regarding the ABN and when it should or should not be issued. That instruction is located in the public online Medicare Claims Processing Manual. The link for that online manual may be found at:

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c30.pdf>

CMS also provides, as mentioned, MLN articles that are routinely updated as well as interactive online tutorials regarding the ABN.

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