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February 5, 2009

Use of the Revised Advanced Beneficiary Notice of Noncoverage (ABN) Becomes Mandatory on March 1, 2009

Beginning March 1, 2009, the ABN-G (Form CMS-R-131-G) and the ABN-L (Form CMS-R-131-L) will no longer be valid. Instead, providers, physicians, practitioners, suppliers, and laboratories ("Notifiers") are required to use the revised Advanced Beneficiary Notice of Noncoverage (ABN) (Form CMS-R-131), released by Medicare on March 3, 2008, for all situations where a Notifier believes Medicare will deny payment.

Key changes in the new ABN form include:

- a new title: "Advance Beneficiary Notice of Noncoverage" (formerly, "Advance Beneficiary Notice")
- a mandatory field for cost estimates of the items/services at issue¹
- a new beneficiary option under which an individual may choose to receive an item/service and pay for it out-of-pocket rather than have a claim submitted to Medicare

- the new form may also be used in place of the voluntarily issued Notice of Exclusion from Medicare Benefits (NEMB) form (used when an item or service is statutorily excluded and never covered by Medicare)
- providers, physicians, practitioners, suppliers and laboratories, must use the revised form for all situations where Medicare payment is expected to be denied (combines the ABN-G and ABN-L)

The ABN is a mandatory notice given, in advance of the provision of a healthcare item or service, to Medicare beneficiaries when a Notifier believes that an item or service may be denied by Medicare as not reasonable and necessary; or because the item or service constitutes custodial care. If a valid ABN is not properly delivered, the provider may not shift financial liability for such items or services to the beneficiary should Medicare deny the claim. In addition to being

¹ In formulating a cost estimate, providers are required to make a good faith effort to insert a reasonable estimate for all of the items or services listed. The estimate must be within \$100 or 25% of the actual costs. It is best to overestimate than to underestimate these costs.

CLIENT ADVISORY

HANCOCK, DANIEL, JOHNSON & NAGLE, P.C.



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financially responsible for the claim, failure to properly deliver a valid ABN may subject the Notifier to sanctions.

Medicare has issued detailed instructions for completing the new ABN and comprehensive standards for its delivery and implementation. The following is not intended as a substitute for careful review of the Form Instructions or standards set forth in the Medicare Claims Processing Manual, Chapter 30 – Financial Liability Protections, but summarily outlines the requirements for delivery of a valid ABN:²

- A properly completed ABN should always be given to a Medicare beneficiary when there is good reason to suspect that Medicare will not pay for a particular item or service for a specific patient.³
- The ABN must be provided to the patient before the items or services are furnished.
- The ABN must be hand-delivered to the beneficiary or his/her authorized representative.
- The ABN must be verbally reviewed with the beneficiary or his/her authorized representative and any questions raised during that review must be answered before it is signed.
- The beneficiary or his/her authorized representative must be able to comprehend the contents of the notice.⁴
- The ABN must be delivered far enough in advance that the beneficiary or representative has time to consider the options and make an informed decision.
- The ABN must be completed in its entirety and signed and dated by the beneficiary or his/her authorized representative.

- A copy of the completed and signed ABN must be provided to the beneficiary or his/her authorized representative and the original placed in the beneficiary's medical record.
- An ABN should not be given to a beneficiary unless there is some genuine doubt regarding the likelihood of Medicare payment. Giving an ABN for all claims or services is not an acceptable practice.
- ABNs are never required in emergency or urgent care situations.

Only limited modifications may be made to the standard ABN form. For example, the header should be personalized with the healthcare entity's name, address, and phone number (logo); information may be pre-printed in the "Items," "Services" and "Reason Medicare May Not Pay" sections of the form; and the labels (A) through (J) accompanying each blank may be removed prior to completion. Except as specifically allowed by the Form Instructions, the ABN must be reproduced on a single page and the format and font of the form should not be altered.

Compliance with the new ABN Form Instructions and the new standards contained in the Medicare Claims Processing Manual is necessary to protect against financial liability for non-covered services provided to Medicare beneficiaries. Prior to March 1, 2009, all Notifiers (healthcare providers) should ensure that they have implemented the new ABN and that their operational policies and procedures comply with the new ABN standards. For more information on the new ABN form

²This is merely a summary of the requirements. Detailed review of the Form Instructions and the Medicare Claims Processing Manual is necessary to ensure Medicare compliance.

³CMS-R-131 (3/08) may also be issued voluntarily for care that is statutorily excluded and never covered by Medicare. This is a recent change in the ABN requirements allowing the issuance of an ABN in place of the Notice of Exclusion from Medicare Benefits (NEMB) form.

⁴The ABN is available in English and Spanish. Notifiers must use the appropriate version based on the language the beneficiary best understands. Information added to the Spanish form should be printed in Spanish.



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and standards or to request a review of your policies and procedures for compliance, please contact Mary C. Malone or Michelle E. Hogan at (804) 967-9604 or by email mmalone@hdjn.com or mhogan@hdjn.com. Additional

information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.

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