



TRICARE
MANAGEMENT ACTIVITY

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
HEALTH AFFAIRS

16401 EAST CENTRETECH PARKWAY
AURORA, COLORADO 80011-9056

OGC-AC

August 11, 2005

Lawrence R. Huntoon, M.D., Ph.D., F.A.A.N.
P.O. Box 39
Lake View, NY 14085

Dear Dr. Huntoon:

I am replying to your letter dated June 21, 2005, which was addressed to the Office of the Assistant Secretary of Defense (Health Affairs.) In your letter you advised that you were opening up a new third-party fee practice in the Buffalo, New York area. In your letter you asked whether the TRICARE program had any prohibitions against private contracting, that is entering a written private contract between patient and physician for providing care directly to patients with no third party interference. The contract would provide that no claims would be filed by either physician or patient and no fee restrictions or other restrictions would apply.

I am providing a general response to your questions concerning the payment provisions of the TRICARE program. I recommend that you obtain legal counsel to address specific questions and to provide advice on any limitations that may be imposed by New York state law.

The TRICARE program is a successor name to the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS"). CHAMPUS was a program created by the Dependents' Medical Care Act of 1956, Pub. L. 84-569, 70 Stat. 250 (1956) to authorize contracts for the provision of civilian medical care to dependents of active duty members. It was later expanded to include retirees, their dependents and survivors.

TRICARE is not insurance. As a government entitlement program it has many similarities to other entitlement programs, such as Medicare and Medicaid. By statute it is required to follow the reimbursement policies similar to Medicare. In the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106, section 731), Congress addressed the "maximum allowable payments to individual health-care providers under CHAMPUS." Congress included the following:

The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to establish limitations (similar to the limitations established under title XVIII of the Social Security Act (42

U.S.C. 1395 et seq.)) on beneficiary liability for charges of an individual health care professional (or other noninstitutional health care providers). (This section is now codified at 10 U.S.C. 1079(h) (4)).

TRICARE limits payments to non-participating physicians to the Medicare limiting charge, which is currently 115% of the TRICARE Maximum Allowable Charge. A TRICARE beneficiary may request a waiver of the limitations on billing if the beneficiary is willing to pay the non-participating provider his/her billed charges. However, in order to obtain a waiver the beneficiary must submit a signed statement to the contractor that reflects that he/she is aware that the provider is billing above the 115% limit, but that he/she feels strongly about using that provider and agrees to pay the additional money. There is no prescribed format for such an agreement. However, if disputes arise concerning the terms of such agreements they are referred to the TRICARE Office of Program Integrity for review.

Payment for services provided to active duty service members is provided under different statutory authority, Title 10 USC 1074(c) (1). Under its implementing regulations, found at 32 CFR 199.16(d) (1), all amounts due to a provider for services provided an active duty service member are paid by the program. Regulations, found at 32 CFR 199.16(d) (5), prohibit providers from billing active duty service members more than the TRICARE allowed amount. Active duty members have no authority to waive the balance billing limitations.

You should be aware that on March 31, 2004, the Office of the Inspector General (OIG), Department of Health and Human Services issued an OIG Alert advising that a physician violated his assignment agreement with Medicare when he presented a "Personal Health Care Medical Care Contract" to his patients, including Medicare beneficiaries, asking patients to pay an annual fee of \$600. The physician characterized the services to be provided under the contract as "not covered" by Medicare. The OIG concluded that because some of the contracted services were already covered and reimbursable by Medicare that the contract presented to the patients constituted a request for payment for covered services, other than coinsurance or deductible, and was therefore a violation of the physician's assignment agreement. The physician agreed to pay a settlement amount to the OIG to resolve the allegations and agreed to stop offering the contracts to his patients. The OIG Alert advises that non-participating physicians may also be subject to penalties and exclusion for overcharging beneficiaries for covered services, regardless of whether the provider accepts assignment for a given service. If the provider does not accept assignment the provider's reimbursement is limited to the Medicare "limiting charge."

Similarly, if a physician entered into a contract with a TRICARE patient that included payment for services that are covered under the TRICARE program it could raise the same potential violations under TRICARE as were alleged in the Medicare case. This could potentially raise the possibility of an exclusion from the TRICARE program. An exclusion from the TRICARE program means that a provider will also be excluded from other federal programs, including Medicare and Medicaid.

I may be contacted at (303) 676-3705 if you require any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Helen Hilton".

Helen Hilton
Assistant General Counsel