QUESTION:  
Can I continue to treat Medicare and Medicaid patients following my departicipation? If so, will I be on a fee-for-service basis with these patients? 

ANSWER:  
MEDICARE  
If you no longer wish to participate with Medicare but intend to continue to treat Medicare patients, you must notify your Medicare carrier that you are changing your status to either (1) non-participating or (2) private contracting.  
As a non-participating physician, you may elect on a claim-by-claim basis whether to accept assignment of the Medicare allowed charge as payment in full (which is reduced to 95 percent of the amount Medicare would pay you if your status remained participating) or to bill a higher amount you set (but cannot be more than 115 percent of the amount Medicare would pay if you chose to accept assignment) and bill and collect from the patient directly. If you decide to change your status to non-participating, then you must do so by December 31, 2012, and the election will remain in effect for all of 2013 with very limited exceptions.  
As a private contracting physician, you will have opted out of Medicare. You would be free to charge Medicare patients any fee you wish and would have to bill and collect directly from the patient. Becoming a private contracting physician is cumbersome. Once you do so, you will not be allowed to submit claims for payment to Medicare for two years (the only exception is for emergency services).  
The first step is to notify your existing Medicare patients that you have decided to no longer participate in Medicare. Next, you must file an “opt-out affidavit” with your Medicare carrier. There are detailed requirements for this affidavit, including that it:  

1. Be in writing and signed by you;  
2. Contain your full name, address NPI, UPIN and/or your TIN numbers and other contact information;  
3. State that during the subsequent two-year period you will provide your services to Medicare beneficiaries only through private contracts with these patients (the requirements of these private contracts are discussed below);  
4. State that you will not submit a claim to Medicare for services provided to a Medicare beneficiary following the effective date of your departicipation, you are required to enter into a written private contract with each such patient. Unlike departicipating from the Medicare program, there are no formal requirements for not participating in the Medicaid program.  
5. State that you understand that you will not receive direct or indirect Medicare payment for your services provided to Medicare beneficiaries; and  
6. Be dated effective the beginning of the next calendar quarter.  

The affidavit must be filed with the Medicare carrier at least 30 days before the beginning of a calendar quarter. Your private contracting status will be effective at the beginning the first calendar quarter following your filing of the affidavit.  
In order to receive payment for services you provide to patients who are Medicare beneficiaries following the effective date of your departicipation, you are required to enter into a written private contract with each such patient. Like the affidavit, there are detailed requirements applicable to this contract, including:  

1. It be in writing and signed be the patient;  
2. A disclosure that the contract will be made available to the Centers for Medicare and Medicaid Services upon request;  
3. That the patient accepts full responsibility for payment for all services provided;  
4. That the patient understands that Medicare fee limits do not apply to your services;  
5. That the patient agrees not to submit a claim to Medicare or ask you to submit a claim to Medicare for payment; and  
6. That the patient understands that he or she has the right to obtain Medicare-covered physician services from other physicians who have not elected to departicipate from the Medicare program.  

For you to remain a private contracting physician this process must be repeated at the end of every two year opt-out period [i.e., a new opt-out affidavit must be submitted to the Medicare carrier(s) and new private contracts with patients who are Medicare beneficiaries must be entered into]. You should contact an experienced health care attorney to ensure you have a properly drafted affidavit and patient contract.
MEDICAID

Unlike departing from the Medicare program, there are no formal requirements for not participating in the Medicaid program. You are free to not expect any new Medicaid patients at any time. There are no affidavits, contracts or other documents that need to be prepared or filed. You may also terminate the physician-patient relationship with existing Medicaid patients without filing any affidavits, contracts or other documents. You may provide your services to patients who are eligible for Medicaid benefits without entering into a written contract with the patients. This assumes, of course, that either the patient has agreed to pay your fee directly or that you are donating your services.

Terminating existing physician-patient relationships should be done with care. Patient abandonment has been discussed in earlier versions of this column. Generally, if you are involved in a protracted course of treatment with a patient and forcing the patient to change physicians would be harmful to the patient, you should first complete the current course of treatment prior to terminating the relationship.

Daniel J. Schulte, JD, MSMS Legal Counsel, is a member of Kerr, Russell and Weber, PLC.

EDITOR’S NOTE:

If you have legal questions you would like answered by MSMS legal counsel in this column, send them to:
Jessy Sielski, Michigan Medicine,
MSMS, 120 West Saginaw Street,
East Lansing, MI 48823,
or at jsielski@msms.org.

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Physician’s Review Organization of Michigan, Inc.

1305 Abbot Road
East Lansing, Michigan 48823
(517) 336-1400
www.peerreviewmi.net
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