

# 42 U.S. Code § 1395a

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## Free choice by patient guaranteed

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### **(a) Basic freedom of choice**

Any individual entitled to insurance benefits under this subchapter may obtain health services from any institution, agency, or person qualified to participate under this subchapter if such institution, agency, or person undertakes to provide him such services.

### **(b) Use of private contracts by medicare beneficiaries**

#### **(1) In general**

Subject to the provisions of this subsection, nothing in this subchapter shall prohibit a physician or practitioner from entering into a private contract with a medicare beneficiary for any item or service—

- (A) for which no claim for payment is to be submitted under this subchapter, and
- (B) for which the physician or practitioner receives—
  - (i) no reimbursement under this subchapter directly or on a capitated basis, and
  - (ii) receives no amount for such item or service from an organization which receives reimbursement for such item or service under this subchapter directly or on a capitated basis.

#### **(2) Beneficiary protections**

##### **(A) In general**

Paragraph (1) shall not apply to any contract unless—

- (i) the contract is in writing and is signed by the medicare beneficiary before any item or service is provided pursuant to the contract;
- (ii) the contract contains the items described in subparagraph (B); and
- (iii) the contract is not entered into at a time when the medicare beneficiary is facing an emergency or urgent health care situation.

##### **(B) Items required to be included in contract**

Any contract to provide items and services to which paragraph (1) applies shall clearly indicate to the medicare beneficiary that by signing such contract the beneficiary—

- (i) agrees not to submit a claim (or to request that the physician or practitioner submit a claim) under this subchapter for such items or services even if such items or services are otherwise covered by this subchapter;
- (ii) agrees to be responsible, whether through insurance or otherwise, for payment of such items or services and understands that no reimbursement will be provided under this subchapter for such items or services;
- (iii) acknowledges that no limits under this subchapter (including the limits under section 1395w-4(g) of this title) apply to amounts that may be charged for such items or services;

(iv) acknowledges that Medigap plans under section 1395ss of this title do not, and other supplemental insurance plans may elect not to, make payments for such items and services because payment is not made under this subchapter; and

(v) acknowledges that the medicare beneficiary has the right to have such items or services provided by other physicians or practitioners for whom payment would be made under this subchapter.

Such contract shall also clearly indicate whether the physician or practitioner is excluded from participation under the medicare program under section 1320a-7 of this title.

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