

Medicare Billing Transparency Rights

ACEP supports your right to have access to Medicare billings made in your name utilizing your individual NPI and/or group TIN, and federal law exists that supports this right in many situations. Below is a simple primer organized by employment types or payment arrangements that can help empower you in securing such access.

NOTE: *The following information is a summary of relevant existing provisions in federal law. It is not intended to provide legal advice or opinion, nor is it specific to any facts or individual and therefore should not be used or relied upon without the advice of retained legal counsel.*

I. Physician is Directly Employed

The emergency physician is a direct employee of an academic medical center or health system hospital, or a government entity; the physician is paid a salary, and the hospital does the billing and keeps the money collected to offset the salaries and other expenses incurred (*i.e.*, insurance, taxes, benefits).

Relevant Federal Law: The regulation [42 CFR § 424.80](#) governs reassignment of benefits in Medicare Part B, based on employer-employee relationships and contractual arrangements. It requires that the employer or other entity that is billing for the physician **give the physician unrestricted access to claims**. Denial of the right and access to these claims would be grounds for CMS to revoke the billing entity's right to bill Medicare.

Specifically, it states: the supplier who furnishes the service has unrestricted access to claims submitted by an entity for services provided by that supplier. This paragraph applies irrespective of whether the supplier is an employee or whether the service is provided under a contractual arrangement. If an entity refuses to provide, upon request, the billing information to the supplier performing the service, the entity's right to receive reassigned benefits may be revoked under §424.82(c)(3).

It also states that the billing entity (whether employer or contractor) and the physician providing the service are jointly and severally liable for any overpayment. In other words, this means that you are personally liable for all Medicare billings in your name, even if you are not the one who is actually billing Medicare directly for your services.

II. Physician has Ownership in a Democratic Group

Under this arrangement, the physician group does not reassign benefits, but does outsource its billing functions to a Revenue Cycle Management (RCM) entity, with Medicare reimbursement checks coming back to the group.

Relevant Federal Law: There is no federal regulation or CMS guidance that addresses data rights under this employment model, but since the physicians in question own the practice, it would seem they have an absolute right to review or audit claims being submitted on their behalf.

III. Physician is Independent Contractor to a Group

Under this arrangement, the emergency physician is hired as an independent contractor to a group practice which bills for his/her services under a group number and pays the emergency physician based on a mutually agreed-upon arrangement such as an hourly rate, payment for individual work RVUs, a percentage of collections or some combination of a fixed rate, RVUs and percentage of collections. The physician reassigns benefits to the group.

The group has either complete ownership by outside entities, or a hybrid approach of shared ownership by such entities with some percentage of physicians in the group.

Relevant Federal Law: As above, [42 CFR § 424.80](#) applies equally to this situation. Therefore, by law, the physician who has reassigned their benefits pursuant to a contractual arrangement has the right to see claims submitted on his/her behalf and denial of the right would be grounds for CMS to revoke the billing entity's right to bill Medicare.

IV. Physician is a Locum Tenens

Under this arrangement, the emergency physician works for a set rate per hour or day but may also get a productivity bonus based on RVU generation.

Relevant Federal Law: In the case of a locum tenens physician, the claim is actually submitted in the name of the physician they are *replacing*. Typically, in a locum tenens arrangement, no reassignment of benefits is necessary, and therefore [42 CFR § 424.80](#) would not apply to the locum tenens physician. However, it *would* continue to apply to the physician the locum tenens is replacing if that physician is an employee or independent contractor of the billing entity. If the locum tenens physician wanted access to their claims, they would generally need to negotiate this into their locum's contract, but the locum's physician has no liability under the certification because it is not his or her name on the submitted claim.

NOTE: With Rights Comes Responsibility

Along with your right to access Medicare billings made in your name, comes a responsibility to be accountable for the accuracy of all that information and the medical necessity of the service(s) you provided, which is acknowledged as part of the certification that is submitted with every claim. Any submission of a claim that is not accurate runs the risk of incurring liability for the certifying physician under the federal False Claims Act. Because the physician's name is on the claim and certification, the responsibility for ensuring accuracy exists regardless of who did the actual billing on your behalf or which of the above models your employment falls under (with the exception of a locum's arrangement).

Potential liability under the False Claims Act exists for any Medicare claim filed under a participating physician's name, even in the absence of actual knowledge of the substance of the claims. Enforcement of the False Claims Act carries significant penalties that can be both civil and criminal and generally are not covered under malpractice insurance policies. In addition, liability can lead to enforcement actions under the Civil Money Penalties Law, including monetary fines and other penalties (including exclusion from federal healthcare program participation).