

Question: Can a laboratory refuse to provide a laboratory test for a Medicare beneficiary residing in the demonstration area? What if a beneficiary goes to a laboratory that is a non-winning laboratory under the demonstration?

Answer: There are mechanisms under the demonstration for a non-winning laboratory to receive payment for services included in the demonstration that are provided to Medicare FFS beneficiaries residing in the demonstration area. A non-winning laboratory can continue to collect or receive specimens serving as a reference laboratory under the demonstration, and bill Medicare through a referring laboratory for services it provides in the demonstration area.

A laboratory that is enrolled as a Medicare supplier cannot legally refuse to provide services to a beneficiary based on payment. In other words, a participating Medicare supplier (also known as a supplier who accepts assignment) has agreed that it will accept Medicare payment as payment in full. (See Medicare Claims Processing Manual, 30.3.3.) Since assignment is mandatory for clinical laboratories, these laboratories could not refuse – as a general matter – to treat all Medicare beneficiaries in a service area because the laboratory fee schedule in that area (whether competitively set or not) does not provide high enough payment. (see question & answer 10 of the Bidder's Conference Follow-up document).

Thus, for example, a laboratory acting as a passive laboratory could not refuse to treat all FFS beneficiaries in the demonstration area due to an unwillingness to accept the competitively set fee schedule. That said, this would not prohibit a non-winning laboratory from failing to provide services to the beneficiary or sending their specimen elsewhere, if a physician inadvertently refers a beneficiary to a non-winning laboratory and there is no agreement between the non-winning laboratory and a winning or passive laboratory to bill Medicare directly.

A directory of laboratories that Medicare FFS beneficiaries (or their specimens) can be sent to under demonstration will be shared with persons authorized to order clinical laboratory tests and beneficiaries themselves. CMS and our contractors will provide educational materials and reach out to health care providers, so that the likelihood of a beneficiary or their specimen going to a non-winning laboratory will be minimal. In addition, there is a toll-free help line (1-866-613-3948) established for beneficiaries, physicians, or laboratories to call for information about the demonstration. CMS will also post the directory on the demonstration website, and provide demonstration fact sheets for beneficiaries, beneficiary advocate groups, physicians, and laboratories.

If, for some reason, the person ordering the laboratory test(s) refers the beneficiary to a non-winning laboratory, and the non-winning laboratory direct-bills the Medicare program, the fiscal intermediary or carrier will send a notice to both the physician and the laboratory advising them that the laboratory in question is a non-winning laboratory and providing the physician with a list of laboratories participating in the demonstration. Since a laboratory test cannot be performed without an order from an authorized person, this education of health care providers will prove vital in ensuring that beneficiaries are not misdirected to non-winning laboratories.

For additional information, please see the following links:

Questions and Answers:

http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/MMA302b_Follow_Up_Bidder_Conference.pdf

FAQ's from the Bidder's Package:

http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/MMA302b_Appendix_A.pdf

Project web page:

<http://www.cms.hhs.gov/DemoProjectsEvalRpts/MD/itemdetail.asp?filterType=dual,%20data&filterValue=Upcoming%20Demonstrations&filterByDID=2&sortByDID=3&sortOrder=ascending&itemID=CMS1198949&intNumPerPage=10%20>