

40.2 – Deemed-Contracting Providers

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42 CFR 422.216(f)

Members of PFFS plans can receive health care services from any provider in the United States, if (1) the provider agrees to accept the plan's terms and conditions of payment

before providing services to the member, and (2) the provider is eligible to provide services under Medicare Part A and Part B. If all of the deeming conditions described below are met, then the provider is deemed to have agreed to accept the PFFS plan's terms and conditions of payment for a member specific to the visit.

A provider that furnishes health care services to a PFFS plan member, except for emergency services, and does not have a signed contract or agreement with the plan is deemed to have a contract with the PFFS plan if the following conditions are met:

- The provider is aware in advance of furnishing health care services that the individual receiving the services is enrolled in a PFFS plan;
- The provider has reasonable access to the plan's terms and conditions of payment in advance of furnishing services (refer to section 50 of this chapter for more information on the PFFS terms and conditions of payment); and
- The provider furnishes services that are covered by the plan.

These providers are considered deemed-contracting providers (or deemed providers).

A provider is aware in advance of an individual's enrollment in a PFFS plan, if a notice of enrollment for the individual was obtained from:

- The individual (e.g., presentation of an enrollment card or other document attesting to enrollment in a PFFS plan);
- CMS;
- A Medicare intermediary, carrier or MAC; or
- The MA organization itself.

A provider has reasonable access to the plan's terms and conditions of payment if the plan makes the terms and conditions accessible through:

- The postal service;
- Electronic mail;
- Fax;
- Telephone; or
- The plan's website.

Announcements in newspapers, journals, magazines, radio, or television are not considered reasonable methods for allowing access to the terms and conditions of payment.

It is the provider's responsibility to call the PFFS plan or visit the plan's website to obtain the plan's terms and conditions of payment. The provider doesn't have to actually read the terms and conditions of payment; instead, if the provider had the opportunity to read them and treats the member, the law deems the provider to have agreed to accept the plan's terms and conditions of payment for that specific visit.

A deemed provider can decide whether or not to accept the PFFS plan's terms and conditions of payment each time the provider sees one of the plan's members. However, the provider cannot change his or her mind about accepting the terms and conditions of payment after providing services to the member. A decision to treat one plan member does not obligate the provider to treat other members of the same PFFS plan, nor does it obligate the provider to accept the same member for treatment at a subsequent visit.

A provider is not required to agree to accept a PFFS plan's terms and conditions of payment or agree to treat a PFFS plan member. If a provider does not agree to accept the plan's terms and conditions of payment or refuses to treat the member, then the member will need to find another provider that will accept the plan's terms and conditions of payment. PFFS plans should assist members to locate another provider in the member's area who will accept the plan's terms and conditions of payment. For example, if there are providers in the area that the PFFS plan knows have accepted its terms and conditions of payment it should identify those providers to its members who are seeking a provider willing to be deemed as possible sources of care.

A provider that decides not to accept the plan's terms and conditions of payment should not provide services to a member, except in emergencies. If the provider nonetheless furnishes non-emergency services, then the provider will become a deemed provider under the plan for that specific visit and be subject to the plan's terms and conditions whether the provider agrees to them or not.

If a member needs emergency care, then it is covered whether a provider agrees to accept the plan's terms and conditions of payment or not. Refer to section 40.3 of this chapter.

Example: If a PFFS plan member shows a provider an enrollment card identifying him or her as a member of a PFFS plan and the provider furnishes non-emergency services to that member, then the provider will be considered a deemed provider. Therefore, it is the provider's responsibility to obtain and review the terms and conditions of payment before providing services, except in the case of emergency services.

Members of full network and partial network (for categories of services for which network providers are available) PFFS plans can receive out-of-network Part A and Part B services from any provider who does not have a signed contract with the plan, as long as the provider agrees to accept the PFFS plan's terms and conditions of payment and

meets the deeming conditions described above. Note that a PFFS plan may establish higher cost sharing amounts for members who receive covered services from deemed (out-of-network) providers instead of network providers.

Members of partial network PFFS plans (for categories of services for which network providers are NOT available) can receive Part A and Part B services from any provider who does not have a signed contract with the plan, as long the provider agrees to accept the PFFS plan's terms and conditions of payment and meets the deeming conditions described above.

Non-network PFFS plans generally operate using deemed providers for all categories of Part A and Part B services.

The payment rules for deemed providers under the three types of PFFS plans are discussed in section 70 of this chapter.