

## Step-by-Step Review of the CMS Email Response on DME Matter

1. CMS staff admits the phrase “nonparticipating physician or nonparticipating supplier” applies broadly under Medicare Part B, including DME suppliers.
2. CMS staff says the limiting charge doesn’t apply because the definition of “physicians’ service” (section 1848(j)(3)) does not include DME.
3. However, the limiting charge provision at section 1848(g) does not reference or incorporate section 1848(j)(3) to define “physicians’ services”.
4. Section 1848(j)(3) says physicians’ services “includes” – and then refers to subparagraphs in section 1861(oo), section 1861(pp), section 1861(nn), and section 1861(s)(15).
5. The phrase “includes” appears intended to make sure that these named subparagraphs are “included” as physicians services but is not exclusive.
6. The limiting charge provision at section 1848(g) does refer to the definition of “nonparticipating physician or nonparticipation supplier or other person” at section 1842(i)(2).
7. Section 1842(i)(2) defines the term broadly to mean "a physician" or "a supplier" that is not a participating physician or supplier.
8. The CMS response treats the 1993 amendments by the Congress that extended the limiting charge to "suppliers" entirely meaningless.
9. The CMS response ignores the agency's own regulations at 42 CFR 414.48 (limits on actual charges of nonparticipating suppliers).
10. The CMS response ignores the statement in the Medicare Carriers Manual that "no longer are services of suppliers...excluded from the limiting charge."