

# PUBLICATION

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## ABN Flunks Medicare Test [Ober|Kaler]

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In *Int'l Rehab. Sci. v. Burwell*, No. 08-cv-05442 (W.D. Wash. Feb. 13, 2015), the court found inadequate an advance beneficiary notice (ABN) which stated that "Medicare has not established coverage criteria... or does not cover this item." Although, according to CMS, an ABN should be provided if there is "some genuine *doubt* that Medicare will make payment." CMS requires the ABN to specify "a genuine reason that denial by Medicare is *expected*." MCPM, Ch. 30 § 40.3.6-6.1. Apparently, any doubt regarding coverage must be resolved prior to preparation of the ABN! Also, as this decision notes, providing a beneficiary with an ABN demonstrates the supplier's knowledge of non-coverage, making it impossible to rely on limitation of liability principles to obtain Medicare payment. ABNs continue to be an issue that requires close attention to prevent revenue loss.