



## Private Contracting/Opting-out of Medicare – JA6081

**Note:** This job aid was revised to remove a website link that was no longer active.

Related CR Release Date: June 27, 2008 **Revised**

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Implementation Date: September 29, 2008

Key Words	MM6081, CR6081, R92BP, Opting, Private, Opt-out
Contractors Affected	<ul style="list-style-type: none"> <li>• Medicare Carriers</li> <li>• Part A/B Medicare Administrative Contractors (A/B MACs)</li> </ul>
Provider Types Affected	Physicians and practitioners who opted-out of Medicare and continue to bill Medicare Carriers or A/B MACs for services to Medicare beneficiaries



- The Centers for Medicare & Medicaid Services (CMS) has updated the *Medicare Benefit Policy Manual*, Chapter 15, Sections 40.5, 40.6, 40.9, 40.11, 40.13, 40.20, 40.26, and 40.35.
- The added sections clarify that the consequences for failure on the part of a physician or practitioner to maintain opt-out apply, regardless of whether or when a carrier/MAC notifies a physician or practitioner of the failure to maintain opt-out.
- A new paragraph was also added to clarify that in situations where a violation is not discovered by the carrier/MAC during the 2 year opt-out period when the violation actually occurred, **then the requirements are applicable from the date that the first violation for failure to maintain opt-out occurred until the end of the opt-out period during which the violation occurred** (unless the physician or practitioner makes good faith efforts to restore opt-out conditions, for example, by refunding the amounts in excess of the charge limits to beneficiaries with whom he or she did not sign a private contract).

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- Failure on the part of a physician or practitioner to maintain opt-out will result in the following scenarios (unless the physician or practitioner takes good faith efforts, within 45 days of any notice from the carrier/MAC that the physician or practitioner failed to maintain opt-out, or within 45 days of the physician's or practitioner's discovery of the failure to maintain opt-out, **whichever is earlier, to correct his or her violations**):

#### A. Failure to Maintain Opt-Out

A physician/practitioner fails to maintain opt-out if during the opt-out period one of the following occurs:

- The physician/practitioner has filed an affidavit in accordance with §40.9 and has signed private contracts in accordance with §40.8 ("Requirements of a Private Contract"), but the physician/practitioner knowingly and willfully submits a claim for Medicare payment (except as provided in §40.28: "Emergency and Urgent Care Situations") or the physician/practitioner receives Medicare payment directly or indirectly for Medicare-covered services furnished to a Medicare beneficiary (except as provided in §40.28); or
- The physician/practitioner fails to enter into private contracts with Medicare beneficiaries for the purpose of furnishing items and services that would otherwise be covered by Medicare, or enters into private contracts that fail to meet the specifications of §40.8; or
- The physician/practitioner fails to comply with the provisions of §40.28 regarding billing for emergency care services or urgent care services; or
- The physician/practitioner fails to retain a copy of each private contract that the physician/practitioner has entered into for the duration of the opt-out period for which the contracts are applicable or fails to permit CMS to inspect them upon request.

Provider Needs to Know...

#### B. Violation Discovered by the Carrier During the 2-year Opt-out Period

- If a physician/practitioner fails to maintain opt-out in accordance with the provisions outlined above (Section A) and fails to demonstrate within 45 days of a notice from the carrier that the physician/practitioner has made good faith efforts to maintain opt-out (including by refunding amounts in excess of the charge limits to the beneficiaries with whom the physician/practitioner did not sign a private contract), the following will result effective 46 days after the date of the notice, but only for the remainder of the opt-out period:
    - All of the private contracts between the physician/practitioner and Medicare beneficiaries are deemed null and void.
    - The physician's or practitioner's opt-out of Medicare is nullified.
    - The physician or practitioner must submit claims to Medicare for all Medicare covered items and services furnished to Medicare beneficiaries.
    - The physician or practitioner or beneficiary will not receive Medicare payment on Medicare claims for the remainder of the opt-out period, except as stated above.
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- The physician or practitioner is subject to the limiting charge provisions as stated in §40.10.
- The practitioner may not reassign any claim except as provided in the *Medicare Claims Processing Manual*, Chapter 1, "General Billing Requirements," §30.2.13.
- The practitioner may neither bill nor collect any amount from the beneficiary except for applicable deductible and coinsurance amounts.
- The physician or practitioner may not attempt to once more meet the criteria for properly opting out until the 2-year opt-out period expires.

**C. Violation not Discovered by the Carrier During the 2-year Opt-out Period**

- In situations where a violation of Section A is not discovered by the carrier during the 2-year opt-out period when the violation actually occurred, the requirements of Section B (above) are applicable from the date that the first violation of Section A (above) occurred until the end of the opt-out period during which the violation occurred.

**NOTE:** For a physician/practitioner who has never enrolled in the Medicare program and wishes to opt-out of Medicare, the physician/practitioner must provide the carrier or A/B MAC with a National Provider Identifier (NPI).

**Background**

- Section 4507 of the balanced Budget Act of 1997 amended Section 1802 of the Social Security Act (the Act) to permit certain physicians and practitioners to opt-out of Medicare if certain conditions were met, and to provide through private contracts services that would otherwise be covered by Medicare.
- Under these private contracts, the mandatory claims submission and limiting charge rules of Section 1848(g) of the Act would not apply. The amendments to Section 1802 of the Act, which were effective on January 1, 1998, made the provisions of the Medicare statute that would ordinarily preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits inapplicable if the conditions necessary for an effective "opt-out" are met.

Operational Impact N/A

Reference  
Materials

The related MLN Matters® article can be found at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM6081.pdf> on the CMS website.

The official instruction, Change Request (CR) 6081, regarding this change may be viewed at <http://www.cms.hhs.gov/Transmittals/downloads/R92BP.pdf> on the CMS website.

The sections of Chapter 15 revised by CR6081 are attached.

For specific information about Chapter 15, Sections 8 and 28, providers should refer to <http://www.cms.hhs.gov/Manuals/downloads/bp102c15.pdf> on the CMS website.

For more information about the general billing requirements, providers should refer to <http://www.cms.hhs.gov/manuals/downloads/clm104c01.pdf> on the CMS website.

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