

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



NEW products from the Medicare Learning Network® (MLN)

- **“[Transitional Care Management Services](#),”** Fact Sheet, ICN 908682, Downloadable only.

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Opting out of Medicare and/or Electing to Order and Certify Items and Services to Medicare Beneficiaries

Note: This article was revised on September 14, 2015, to eliminate references to a 2-year opt-out period for residents. The references to the 2-year opt-out period for other providers was removed in a prior revision. All other information is unchanged.

Provider Types Affected

This MLN Matters® Special Edition is intended for physicians and non-physician practitioners who opt out of Medicare and/or elect to order and refer services to Medicare beneficiaries and who would otherwise submit claims to Medicare contractors (carriers and Medicare Administrative Contractors (A/B MACs) for services to Medicare beneficiaries.

What You Need to Know

This MLN Matters® Special Edition Article informs physicians and non-physician practitioners who wish to opt-out of Medicare of the need to provide certain information in a written Affidavit to their Medicare contractor (Medicare Carrier or Medicare Administrative Contractor (MAC)). Make sure that your billing staffs are aware of this information.

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Background

Physicians and practitioners who do not wish to enroll in the Medicare program may “opt-out” of Medicare. This means that neither the physician, nor the beneficiary submits the bill to Medicare for services rendered. Instead, the beneficiary pays the physician out-of-pocket and neither party is reimbursed by Medicare. A private contract is signed between the physician and the beneficiary that states, that neither one can receive payment from Medicare for the services that were performed. The physician or practitioner must submit an affidavit to Medicare expressing his/her decision to opt-out of the program. The following shows physicians and other practitioners who are permitted by statute to opt-out of the Medicare program:

- Physicians who are:
 - Doctors of medicine or osteopathy;
 - Doctors of dental surgery or dental medicine;
 - Doctors of podiatry; or
 - Doctors of optometry; and
 - Who are legally authorized to practice dentistry, podiatry, optometry, medicine, or surgery by the State in which such function or action is performed.
- Practitioners who are:
 - Physician assistants;
 - Nurse practitioners;
 - Clinical nurse specialists;
 - Certified registered nurse anesthetists;
 - Certified nurse midwives;
 - Clinical psychologists;
 - Clinical social workers; or
 - Registered dietitians or nutrition professionals; and
 - Legally authorized to practice by the State and otherwise meet Medicare requirements.

Filing an Affidavit to Opt-out

Physicians and non-physician practitioners who want to opt-out must file a written affidavit with Medicare in which they agree to opt-out of Medicare and to meet certain other criteria.

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- In general, the law requires that during the opt out period, physicians and non-physician practitioners who have filed affidavits opting out of Medicare must sign private contracts with all Medicare beneficiaries to whom they furnish services that would otherwise be covered by Medicare, except those who are in need of emergency or urgently needed care.
 - They cannot sign such contracts with beneficiaries in need of emergency or urgent care services.
 - Moreover, physicians and non-physician practitioners who opt-out cannot choose to opt-out of Medicare for some Medicare beneficiaries but not others; or for some services and not others.
- The Centers for Medicare & Medicaid Services (CMS) does not have a standard affidavit form, however, many MACs have a form available on their website. To locate your MAC's website, refer to http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/Downloads/contact_list.pdf on the CMS website. Otherwise, those physicians and practitioners who wish to opt-out must provide the information mentioned in writing to the MAC within their service jurisdiction. Currently there is not an option to submit an opt-out affidavit online.
 - The affidavit must be in writing and signed by the physician/non-physician practitioner.
 - It must include various statements to which the physician/non-physician practitioner must agree; for example, the physician/non-physician practitioner must agree not to submit claims to Medicare for any services furnished during the opt-out period, except for emergency or urgent care services furnished to beneficiaries with whom the physician/non-physician practitioner has not previously entered into a private contract.
 - It must identify the physician/non-physician practitioner sufficiently so that the Medicare contractor can ensure that no payment is made to the physician/non-physician practitioner during the opt-out period.
 - It must be filed with all Medicare contractors who have jurisdiction over the claims the physician/non-physician practitioner would have otherwise filed with Medicare and must be filed no later than 10 days after entering into the first private contract to which the affidavit applies.

The following specific information must be included in the affidavit:

- The physician/non-physician practitioner's legal name;
- Medicare specialty;

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- Taxpayer Identification Number (TIN) (Social Security Number (SSN)) (required if a National Payer Identifier (NPI) has not been assigned);
- Address (If the address in the affidavit is a P.O. Box, the Medicare contractor may request a different address);
- Telephone number;
- Medicare Billing ID/Provider Transaction Number (PTAN) (if the provider was previously enrolled and one had been assigned); and
- NPI (only if one has been assigned).

Physicians/non-physician practitioners who have never enrolled in Medicare are not required to enroll in Medicare before they can opt-out of Medicare.

A nonparticipating physician or practitioner may opt-out of Medicare at any time and the effective date of the affidavit record must comply with the following:

- The opt-out period begins the date the affidavit is signed, provided the affidavit is filed within 10 days after he or she signs his or her first private contract with a Medicare beneficiary.
- Physicians or practitioners that opt out in multiple contractor jurisdictions are required to file a separate affidavit with each contractor. If the physician or practitioner does not timely file all required affidavits, the opt-out period begins when the last such affidavit is filed. Any private contract entered into before the last required affidavit is filed becomes effective upon the filing of the last required affidavit. The furnishing of any items or services to a Medicare beneficiary under such contract before the last required affidavit is filed is subject to standard Medicare rules.

If the physician or non-physician practitioner had been enrolled in Medicare and had signed a Part B participation agreement and is now opting out, the participation agreement terminates at the same time the enrollment terminates. If an enrolled physician/non-physician practitioner is opting out, the existing enrollment record will be automatically ended. The effective date of the opt-out affidavit shall comply with the following:

- A participating physician may properly opt-out of Medicare at the beginning of any calendar quarter, provided that the affidavit is submitted to the participating physician's Medicare contractor at least 30 days before the beginning of the selected calendar quarter.
- A private contract entered into before the beginning of the selected calendar quarter becomes effective at the beginning of the selected calendar quarter and the furnishing of any items or services to a Medicare beneficiary under such contract before the beginning of the selected calendar quarter is subject to standard Medicare rules.

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Opt-Out Providers Who May Order and Certify Items and Services

There are differences between providers who are permitted to opt-out and providers who opt-out and elect to order and certify items and services. The following physicians and non-physician practitioners are permitted to order and certify:

- Physicians (doctor of medicine or osteopathy, doctor of dental medicine, doctor of dental surgery, doctor of podiatric medicine, doctor of optometry, optometrists) may only order and certify DMEPOS products/services and laboratory and X-Ray services payable under Medicare Part B);
- Physician Assistants;
- Clinical Nurse Specialists;
- Nurse Practitioners;
- Clinical Psychologists;
- Interns, Residents, and Fellows;
- Certified Nurse Midwives; and
- Clinical Social Workers.

CMS emphasizes that generally Medicare will only reimburse for specific items or services when those items or services are ordered or certified by providers or suppliers authorized by Medicare statute and regulation to do so. The denial will be based on the fact that neither statute nor regulation allows coverage of certain services when ordered or certified by the identified supplier or provider specialty.

CMS would like to highlight the following limitations:

- Chiropractors are not eligible to order supplies or services for Medicare beneficiaries. All services ordered by a chiropractor will be denied.
- Home Health Agency (HHA) services may only be ordered or certified by a Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), or Doctor of Podiatric Medicine (DPM). Claims for HHA services ordered by any other practitioner specialty will be denied.
- Optometrists may only order and certify DMEPOS products/services, and laboratory and X-Ray services payable under Medicare Part B.
- Residents who have provisional licenses from the State and are permitted to enroll in Medicare are also eligible to opt-out of Medicare. However, the opted out resident may only furnish under private contracts the types of services that he or she is specifically authorized to furnish under State law at the direction of his or her teaching institution. Although the opt-out option is available, CMS encourages

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licensed residents to enroll via the CMS-855O since their employment arrangement could change.

If an opt-out provider elects to order and certify services, Medicare contractors must develop for the following information through an additional information request:

- An NPI (if one is not contained on the affidavit voluntarily);
- Confirmation if an Office of Inspector General (OIG) exclusion exists (if not contained on the Affidavit);
- Date of Birth; and
- Social Security Number (if not contained on the Affidavit).

If the above information is not obtained, the opt-out provider will not be able to order and certify services. If the opt-out provider refuses to report the information listed immediately above, then the opt-out provider cannot order and certify, but the failure to report this additional information does not affect the provider's right to opt out of Medicare.

The Medicare contractor must ask the opt-out physician or non-physician practitioner if he or she has been excluded by the OIG and may specifically ask for a copy of the private contract he or she uses in order to ascertain whether he or she has been excluded from the Medicare program.

Additional Information

You may want to review MLN Matters® Article MM8100, entitled "Effect of Beneficiary Agreements Not to Use Medicare Coverage and When Payment May be Made to a Beneficiary for Service of an Opt-Out Physician/Practitioner," which is available at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/mm8100.pdf> on the CMS website.

The official Medicare requirements for opting out are in the Chapter 15, Section 40, of the "Medicare Benefit Policy Manual" and that section is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf> on the CMS website.

If you have any questions, please contact your carrier or MAC at their toll-free number, which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html> on the CMS website.

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