Opt-Out is a term used in regulation (42 CFR 405) , but the term is not used in the Social Security law that authorizes the Opt-Out capability (Sec. 1802)

Before the regulations regarding opting-out can be changed, the law that authorizes the regulations must be changed.

Title 42: Public Health
PART 405—FEDERAL HEALTH INSURANCE FOR THE AG

The Title of the Regulations that define rules associated with Opting Out is called "Private Contracts"

Subpart D—Private Contracts

Contents

The authority to issue regulations regarding opting out is based upon Sec. 1802 of the Social Security Act

AUTHORITY: Secs. 1102, **1802**, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395a, and 1395hh).

SOURCE: 63 FR 58901, Nov. 2, 1998, unless otherwise noted.

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§405.400 Definitions.

For purposes of this subpart, the following definitions apply:

Beneficiary means an individual who is enrolled in Part B of Medicare.

Emergency care services means inpatient or outpatient hospital services that are necessary to prevent death or serious impairment of the danger to life or health, require use of the most furnish those services.

Legal repres ined by applicable State law, has the legal au or practitioner on behalf of the beneficiary.

The definition of what "Opt-Out" means is in the regulations, it is NOT in the Social Security Act

***Opt-out* means the status of meeting the conditions specified in §405.410.**

Opt-out period means, with re a 2-year period beginning as applicable, and ea cancels opt-out in a

The Doctor of Chiropractic is excluded from opting out in Medicare in Regulation here based upon Sec. 1802(b)(5)(B) of the Social Security Act. Before the regulation can be changed, the Social Security Act must changed.

Participating physici agreement to participat

***Physician* means a doctor of medicine; doctor of osteopathy; doctor of dental surgery or of dental medicine; doctor of podiatric medicine; or doctor of optometr**y who is legally authorized to practice medicine, osteopathy, dental surgery, dental medicine, podiatric medicine, or optometry by the State in which he performs such function and who is acting within the scope of his license when he perfor

Practitioner means certified registered nurs worker, registered dietitian in that capacity by each St

The use of a private contract is exactly how one "opts out".

***Private contract* means a document that meets the criteria specified in §405.415.**

Properly opt-out means to complete, without defect, the requirements for opt-out as specified in §405.410.

Properly terminate opt-out means to complete, without defect, the requirements for terminating opt-out as specified in §405.445.

Urgent care services means services furnished to an individual who requires services to be furnished within 12 hours in order to avoid the likely onset of an emergency medical condition.

[63 FR 58901, Nov. 2, 1998, as amended at 69 FR 1116, Jan. 7, 2004; 71 FR 69782, Dec. 1, 2006; 79 FR 68001, Nov. 13, 2014; 80 FR 71370, Nov. 16, 2015]

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§405.405 General rules.

(a) A physician or practitioner may enter into one or more private contracts with Medicare beneficiaries for the purpose of furnishing items or services that would otherwise be covered by Medicare, provided the conditions of this subpart are met.

(b) A physician or practitioner who enters into at least one private contract with a Medicare beneficiary under the conditions of this subpart, and who submits one or more affidavits in accordance with this subpart, opts out of Medicare for the opt-out period described in §405.400 unless the opt-out is terminated early according to §405.445.

(c) Both the private contracts described in paragraph (a) of this section and the physician's or practitioner's opt-out described in paragraph (b) of this section are null and void if the physician or practitioner fails to properly opt-out in accordance with the conditions of this subpart.

(d) Both the private contracts described in paragraph (a) of this section and the physician's or practitioner's opt-out described in paragraph (b) of this section are null and void for the remainder of the opt-out period if the physician or practitioner fails to remain in compliance with the conditions of this subpart during the opt-out period.

(e) Services furnished under private contracts meeting the requirements of this subpart are not covered services under Medicare, and no Medicare payment will be made for such services either directly or indirectly, except as permitted in accordance with §405.435(c).

[63 FR 58901, Nov. 2, 1998, as amended at 80 FR 71370, Nov. 16, 2015]

It is this Sec. of the Social Security Act that authorizes the regulations that govern opting out.

Section 1802 of the Social Security

FREE CHOICE BY PATIENT GUARANT

SEC. 1802. [42 U.S.C. 1395a] (a) BASIC FREEDOM OF CHOICE.—**Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide him such services**.

(b) **USE OF PRIVATE CONTRACTS BY MEDICARE BENEFICIARIES**.—

(1) IN GENERAL.—Subject to the provisions of this subsection**, nothing in this title shall prohibit a physician or practitioner from entering into a private contract with a medicare beneficiary** for any item or service—

(A) for which no claim for payment is to be submitted under this title, and

(B) for which the physician or practitioner receives—

(i) no reimbursement for this title directly or on a capitated basis, and

In the Social Security Act the word “Opt Out” is NOT used.
The entering of a private contract IS how you “Opt Out”.

(ii) receives no amount for such item or service from an organization which receives reimbursement for such item or service under this title directly or on a capitated basis.

(2) BENEFICIARY PROTECTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any contract unless—

(i) the contract is in writing and is signed by the medicare beneficiary before any item or service is provided pursuant to the contract;

(ii) the contract contains the items described in subparagraph (B); and

(iii) the contract is not entered into at a time when the medicare beneficiary is facing an emergency or urgent health care situation.

(B) ITEMS REQUIRED TO BE INCLUDED IN CONTRACT.—Any contract to provide items and services to which paragraph (1) applies shall clearly indicate to the medicare beneficiary that by signing such contract the beneficiary—

(i) agrees not to submit a claim (or to request that the physician or practitioner submit a claim) under this title for such items or services even if such items or services are otherwise covered by this title;

(ii) agrees to be responsible, whether through insurance or otherwise, for payment of such items or services and understands that no reimbursement will be provided under this title for such items or services;

(iii) acknowledges that no limits under this title (including the limits under section 1848(g)) apply to amounts that may be charged for such items or services;

(iv) acknowledges that Medigap plans under section 1882do not, and other supplemental insurance plans may elect not to, make payments for such items and services because payment is not made under this title; and

(v) acknowledges that the medicare beneficiary has the right to have such items or services provided by other physicians or practitioners for whom payment would be made under this title.

Such contract shall also clearly indicate whether the physician or practitioner is excluded from participation under the medicare program under section 1128.

(3) PHYSICIAN OR PRACTITIONER REQUIREMENTS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any contract entered into by a physician or practitioner unless an affidavit described in subparagraph (B) is in effect during the period any item or service is to be provided pursuant to the contract.

(B) AFFIDAVIT.—An affidavit is described in this subparagraph if—

(i) the affidavit identifies the physician or practitioner and is in writing and is signed by the physician or practitioner;

(ii) the affidavit provides that the physician or practitioner will not submit any claim under this title for any item or service provided to any medicare beneficiary (and will not receive any reimbursement or amount described in paragraph (1)(B) for any such item or service) during the 2–year period beginning on the date the affidavit is signed; and

(iii) a copy of the affidavit is filed with the Secretary no later than 10 days after the first contract to which such affidavit applies is entered into.

(C) ENFORCEMENT.—If a physician or practitioner signing an affidavit under subparagraph (B) knowingly and willfully submits a claim under this title for any item or service provided during the 2–year period described in subparagraph (B)(ii) (or receives any reimbursement or amount described in paragraph (1)(B) for any such item or service) with respect to such affidavit—

(i) this subsection shall not apply with respect to any items and services provided by the physician or practitioner pursuant to any contract on and after the date of such submission and before the end of such period; and

(ii) no payment shall be made under this title for any item or service furnished by the physician or practitioner during the period described in clause (i) (and no reimbursement or payment of any amount described in paragraph (1)(B) shall be made for any such item or service).

(4) LIMITATION ON ACTUAL CHARGE AND CLAIM SUBMISSION REQUIREMENT NOT APPLICABLE.—Section 1848(g) shall not apply with respect to any item or service provided to a medicare beneficiary under a contract described in paragraph (1).

(5) DEFINITIONS.—In this subsection:

(A) MEDICARE BENEFICIARY.—The term "medicare beneficiary" means an individual who is entitled to benefits under part A or enrolled under part B.

(B) PHYSICIAN.—The term "physician" has the meaning given such term by *paragraphs (1), (2), (3), and (4) of section* 1861(r).

(C) PRACTITIONER.—The term "practitioner" has the meaning given such term by section 1842(b)(18)(C).

The underlined section is the discriminatory language in the law that if deleted will enable the Doctor of Chiropractic to "Opt-Out".