

## § 405.400

## 42 CFR Ch. IV (10–1–24 Edition)

(ii) Are employed by or affiliated with a provider, HMO, or Competitive Medical Plan (CMP) that receives Medicare payment for services; or

(iii) Are members of a group practice that receives Medicare payment for services.

(2) For purposes of this section, “provider” includes all entities eligible to receive Medicare payment in accordance with an agreement under section 1866 of the Act.

(c) *Beginning of offset.* (1) The Medicare carrier offsets Medicare payments beginning six months after it notifies the individual or the group practice of the amount to be deducted and the particular individual to whom the deductions are attributable.

(2) The Medicare intermediary offsets payments beginning six months after it notifies the provider, HMO, CMP or group practice of the amount to be deducted and the particular individuals to whom the deductions are attributable. Offset of payments is made in accordance with the terms of the repayment agreement. If the individual ceases to be employed by the provider, HMO, or CMP, or leaves the group practice, no deduction is made.

(d) *Refusal to offset against Medicare payment.* If the individual refuses to enter into a repayment agreement, or breaches any provision of the agreement, or if Medicare payment is insufficient to maintain the offset collection according to the agreed upon formula, then—

(1) The Department, within 30 days if feasible, informs the Attorney General; and

(2) The Department excludes the individual from Medicare until the entire past due obligation has been repaid, unless the individual is a sole community practitioner or the sole source of essential specialized services in a community and the State requests that the individual not be excluded.

[57 FR 19092, May 4, 1992]

### Subpart D—Private Contracts

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.

### § 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 health and, because of the danger to life or health, require use of the most accessible hospital available and equipped to furnish those services.

*Legal representative* means one or more individuals who, as determined by applicable State law, has the legal authority to enter into the contract with the physician or practitioner on behalf of the beneficiary.

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

*Opt-out period* means, with respect to an affidavit that meets the requirements of § 405.420, a 2-year period beginning on the date the affidavit is signed, as specified by § 405.410(c)(1) or (2) as applicable, and each successive 2-year period unless the physician or practitioner properly cancels opt-out in accordance with § 405.445.

*Participating physician* means a “physician” as defined in this section who has signed an agreement to participate in Part B of Medicare.

*Physician* means a doctor of medicine; doctor of osteopathy; doctor of dental surgery or of dental medicine; doctor of podiatric medicine; or doctor of optometry 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 performs such functions.

*Practitioner* means a physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, clinical psychologist, clinical social worker, marriage and family therapist, mental health counselor, registered dietitian or nutrition professional, who is currently legally authorized to practice in that capacity by each State in

which he or she furnishes services to patients or clients.

*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; 88 FR 79523, Nov. 16, 2023]

#### § 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]

#### § 405.410 Conditions for properly opting-out of Medicare.

The following conditions must be met for a physician or practitioner to properly opt-out of Medicare:

(a) Each private contract between a physician or a practitioner and a Medicare beneficiary that is entered into prior to the submission of the affidavit described in paragraph (b) of this section must meet the specifications of § 405.415.

(b) The physician or practitioner must submit an affidavit that meets the specifications of § 405.420 to each Medicare Administrative Contractor with which he or she would file claims absent the opt-out.

(c) A nonparticipating physician or a practitioner may opt-out of Medicare at any time in accordance with the following:

(1) The initial 2-year opt-out period begins the date the affidavit meeting the requirements of § 405.420 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.

(2) If the physician or practitioner does not timely file the opt-out affidavit(s) as specified in the previous paragraph, the initial 2-year 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, and 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.

(d) A participating physician may properly opt-out of Medicare at the beginning of any calendar quarter, provided that the affidavit described in