

(b) When a physician or practitioner who has not been excluded under sections 1128, 1156, or 1892 of the Social Security Act furnishes emergency care services or urgent care services to a Medicare beneficiary with whom the physician or practitioner has not previously entered into a private contract, he or she:

(1) Must submit a claim to Medicare in accordance with both 42 CFR part 424 and Medicare instructions (including but not limited to complying with proper coding of emergency or urgent care services furnished by physicians and practitioners who have opted-out of Medicare).

(2) May collect no more than—

(i) The Medicare limiting charge, in the case of a physician; or

(ii) The deductible and coinsurance, in the case of a practitioner.

(c) Emergency care services or urgent care services furnished to a Medicare beneficiary with whom the physician or practitioner has previously entered into a private contract (that is, entered into before the onset of the emergency medical condition or urgent medical condition), are furnished under the terms of the private contract.

(d) Medicare may make payment for emergency care services or urgent care services furnished by a physician or practitioner who has properly opted-out when the services are furnished and the claim for services is made in accordance with this section. A physician or practitioner who has been excluded must comply with the regulations at §1001.1901 (Scope and effect of exclusion) of this title when he or she furnishes emergency services to beneficiaries and may not bill and be paid for urgent care services.

**§ 405.445 Cancellation of opt-out and early termination of opt-out.**

(a) A physician or practitioner may cancel opt-out by submitting a written notice to each Medicare Administrative Contractor to which he or she would file claims absent the opt-out, not later than 30 days before the end of the current 2-year opt-out period, indicating that the physician or practitioner does not want to extend the application of the opt-out affidavit for a subsequent 2-year period.

(b) To properly terminate opt-out a physician or practitioner must:

(1) Not have previously opted out of Medicare.

(2) Notify all Medicare Administrative Contractors, with which he or she filed an affidavit, of the termination of the opt-out no later than 90 days after the effective date of the initial 2-year period.

(3) Refund to each beneficiary with whom he or she has privately contracted all payment collected in excess of:

(i) The Medicare limiting charge (in the case of physicians); or

(ii) The deductible and coinsurance (in the case of practitioners).

(4) Notify all beneficiaries with whom the physician or practitioner entered into private contracts of the physician's or practitioner's decision to terminate opt-out and of the beneficiaries' right to have claims filed on their behalf with Medicare for the services furnished during the period between the effective date of the opt-out and the effective date of the termination of the opt-out period.

(c) When the physician or practitioner properly terminates opt-out in accordance with paragraph (b), he or she will be reinstated in Medicare as if there had been no opt-out, and the provision of § 405.425 shall not apply unless the physician or practitioner subsequently properly opts out.

(d) A physician or practitioner who has completed opt-out on or before January 1, 1999 may terminate opt-out during the 90 days following January 1, 1999 if he or she notifies all carriers to whom he or she would otherwise submit claims of the intent to terminate opt-out and complies with paragraphs (b)(3) and (4) of this section. Paragraph (c) of this section applies in these cases.

[63 FR 58901, Nov. 2, 1998, as amended at 80 FR 71371, Nov. 16, 2015]

**§ 405.450 Appeals.**

(a) A determination by CMS that a physician or practitioner has failed to properly opt out, failed to maintain opt-out, failed to timely renew opt-out, failed to privately contract, failed to properly terminate opt-out, or failed to