

# CGS Provider Enrollment OPTING OUT OF MEDICARE

## PRIVATE CONTRACT

SECTION 4507 of the Balance Budget Act allows certain Medicare physician/practitioners to opt out of Medicare and enter into a private contract with the Medicare beneficiaries for a period of two years.

In a private contract, the Medicare beneficiary agrees to give up Medicare payment for services furnished by the physician/practitioner and to pay the physician/practitioner with regard to any limits that would otherwise apply to what the physician/practitioner could charge.

### REQUIREMENTS OF A PRIVATE CONTRACT BETWEEN THE PHYSICIAN/PRACTITIONER AND BENEFICIARY

- Be in writing and in print sufficiently large to ensure that the beneficiary is able to read the contract
- Clearly state whether the physician or practitioner is excluded from Medicare.
- State that the beneficiary or his or her legal representative accepts full responsibility for payment for the physician's or practitioner's charge for all services furnished by the physician or practitioner.
- State that the beneficiary or his or her legal representative understands that Medicare limits do not apply to what the physician or practitioner may charge for items or services furnished by the physician or practitioner.
- State that the beneficiary or his or her legal representative agrees not to submit a claim to Medicare or to ask the physician or practitioner to submit a claim to Medicare.
- State that the beneficiary or his or her legal representative understands that Medicare payment will not be made for any items or services furnished by the physician or practitioner that would have otherwise been covered by Medicare if there was no private contract and a proper Medicare claim had been submitted.
- State that the beneficiary or his or her legal representative enters into the contract with the knowledge that he or she has the right to obtain Medicare-covered items and services from physicians and practitioners who have not opted out of Medicare, and that the beneficiary is not compelled to enter into private contracts that apply to other Medicare-covered services furnished by other physicians or practitioners who have not opted out.
- State the expected or known effective date and expected or known expiration date of the opt-out period.
- State that the beneficiary or his or her legal representative understands that Medigap plans do not, and that other supplemental plans may elect not to, make payments for items and services not paid for by Medicare.
- Be signed by the beneficiary or his or her legal representative and by the physician or practitioner.

**Please note:** You are required to have your patients sign a new contract every two years.

Be retained (original signatures of both parties required) by the physician/practitioner for the duration of the opt out period.

Be made available to CMS upon request.

Be provided (a photocopy is permissible) to the beneficiary or to his or legal representative before items or services are furnished to the beneficiary under the terms of the contract.

### REQUIREMENTS OF OPTING OUT FOR THE PHYSICIAN/PRACTITIONER

Participating physician/practitioner can only opt out at the beginning of each calendar quarter. Therefore, a provider must submit a valid Affidavit signed

and dated at least 30 days before the first day of any quarter (January 1, April 1, July 1 or October 1).

Non-participating physician/practitioner can opt out at any time, must submit a valid Affidavit signed and dated.

The Opt Out contract is for a period of two years which will auto renew. If the physician/practitioner no longer wishes to Opt Out of Medicare they must submit a letter within 30 days of the current Opt Out period or an application can be submitted.

Certain specialties such as Chiropractors, Physical Therapists, Independent Practice and Occupational Therapists cannot opt out of the Medicare program.

### REQUIREMENTS FOR THE OPT OUT AFFIDAVIT BETWEEN THE PHYSICIAN/PRACTITIONER AND THE CARRIER

- Be in writing and be signed and dated by the physician or practitioner.
- Contain the physician's or practitioner's full name, address, telephone number, National Provider Identifier (NPI) or billing number (if one has been assigned), or if an NPI has not been assigned, the physician's or practitioner's Tax Identification Number (TIN).
- State that, except for emergency or urgent care services (as specified in Section §40.28), during the opt-out period the physician or practitioner will provide services to Medicare beneficiaries only through private contracts that meet the criteria of Section §40.8 for services that, but for their provision under a private contract, would have been Medicare-covered services.
- State that the physician or practitioner will not submit a claim to Medicare for any service furnished to a Medicare beneficiary during the opt-out period, nor will the physician or practitioner permit any entity acting on his or her behalf to submit a claim to Medicare for services furnished to a Medicare beneficiary, except as specified in Section §40.28
- State that, during the opt-out period, the physician or practitioner understands that he or she may receive no direct or indirect Medicare payment for services that he or she furnishes to Medicare beneficiaries with whom he or she has privately contracted, whether as an individual, an employee of an organization, a partner in a partnership, under a reassignment of benefits, or as payment for a service furnished to a Medicare beneficiary under a Medicare Advantage plan.
- State that a physician or practitioner who opts out of Medicare acknowledges that, during the opt-out period, his or her services are not covered under Medicare and that no Medicare payment may be made to any entity for his or her services, directly or on a capitated basis.
- State a promise by the physician or practitioner to the effect that, during the optout period, the physician or practitioner agrees to be bound by the terms of both the affidavit and the private contracts that he or she has entered into.
- Acknowledge that the physician or practitioner recognizes that the terms of the affidavit apply to all Medicare-covered items and services furnished to Medicare beneficiaries by the physician or practitioner during the opt-out period (except for emergency or urgent care services furnished to the beneficiaries with whom he or she has not previously privately contracted) without regard to any payment arrangements the physician or practitioner may make.
- With respect to a physician or practitioner who has signed a Part B participation agreement, acknowledge that such agreement terminates on the effective date of the affidavit.
- Acknowledge that the physician or practitioner understands that a beneficiary who has not entered into a private contract and who requires emergency or urgent care services may not be asked to enter into a private contract with respect to receiving such services and that the rules of Section §40.28 apply if the physician or practitioner furnishes such services.
- Be filed with all carriers who have jurisdiction over claims the physician or practitioner would otherwise file with Medicare and be filed no later than 10 days after the first private

contract to which the affidavit applies  
is entered into.

## Opt Out Affidavit for Eligible Physicians/Practitioners

Please read the CMS guidelines in Chapter 15 Section 40 (<http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf>) of the Medicare Benefit Policy Manual prior to filing this Opt Out Affidavit.

Provider Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Medical School: \_\_\_\_\_ Graduation Year: \_\_\_\_\_

Specialty: \_\_\_\_\_ License #: \_\_\_\_\_

Medicare PTAN(s) (if issued): \_\_\_\_\_ NPI: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Contact Email: \_\_\_\_\_ Fax #: \_\_\_\_\_

### BY SIGNING THIS AFFIDAVIT I ACKNOWLEDGE I UNDERSTAND AND AGREE WITH THE FOLLOWING TERMS AND CONDITIONS:

I understand the Opt Out period is for two (2) years beginning on the later of the date the affidavit is signed or its effective date.

Except for emergency or urgent care services (as specified in §40.28), during the opt-out period I will provide services to Medicare beneficiaries only through private contracts that meet the criteria of §40.8 for services that, but for their provision under a private contract, would have been Medicare-covered services;

I will not submit a claim to Medicare for any service furnished to a Medicare beneficiary during the opt-out period, nor will I permit any entity acting on my behalf to submit a claim to Medicare for services furnished to a Medicare beneficiary, except as specified in §40.28;

During the opt-out period, I understand that he/she may receive no direct or indirect Medicare payment for services that I furnished to Medicare beneficiaries with whom I have privately contracted, whether as an individual, an employee of an organization, a partner in a partnership, under a reassignment of benefits, or as payment for a service furnished to a Medicare beneficiary under a Medicare Advantage plan;

During the opt-out period, my services are not covered under Medicare and that no Medicare payment may be made to any entity for services, directly or on a capitated basis;

During the opt-out period, I agree to be bound by the terms of both the affidavit and the private contracts that I have entered into;

I recognize that the terms of the affidavit apply to all Medicare-covered items and services furnished to Medicare beneficiaries by me during the opt-out period (except for emergency or urgent care services furnished to the beneficiaries with whom I have not previously privately contracted) without regard to any payment arrangements that I may make;

If a Part B participation agreement has been signed, I acknowledge that such agreement terminated on the effective date of the affidavit.

A beneficiary who has not entered into a private contract and who requires emergency or urgent care services may not be asked to enter into a private contract with respect to receiving such services and that the rules of §40.28 apply if I furnish such services.

I will file this affidavit with all carriers who have jurisdiction over claims that I would otherwise file with Medicare and be filed no later than 10 days after the first private contract to which the affidavit applies is entered into.

Provider Signature: \_\_\_\_\_

Date: \_\_\_\_\_

