

MLN Matters Number: MM6081

Related Change Request (CR) #: 6081

Related CR Release Date: June 27, 2008

Effective Date: September 29, 2008

Related CR Transmittal #: R92BP

Implementation Date: September 29, 2008

Private Contracting/Opting out of Medicare

Provider Types Affected

Physicians and practitioners who opted out of Medicare and continue to bill Medicare Carriers or Part A/B Medicare Administrative Contractors (A/B MACs) for services to Medicare beneficiaries

Impact on Providers

This article is based on CR6081 and notifies providers of the update by the Centers for Medicare & Medicaid Services (CMS) to Medicare Benefit Policy Manual, Chapter 15, sections 40.5, 40.6, 40.9, 40.11, 40.13, 40.20, 40.26, and 40.35.

- The added sections clarify that the consequences for the failure on the part of a physician or practitioner to maintain opt-out apply **regardless of whether or when a carrier/MAC notifies a physician or practitioner** of the failure to maintain opt-out.
- A new paragraph was also added to clarify that in situations where a violation is not discovered by the carrier/MAC during the 2 year opt-out period when the violation actually occurred, then the requirements are applicable from the date that the first violation for failure to maintain opt-out occurred until the end of the opt-out period during which the violation occurred (unless the physician or practitioner takes good faith efforts to restore opt-out conditions, for example, by refunding the amounts in excess of the charge limits to beneficiaries with whom he or she did not sign a private contract).

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This article was prepared as a service to the public and is not intended to grant rights or impose obligations. This article may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents.

Key Points of CR6081

Failure on the part of a physician or practitioner to maintain opt-out will result in the following (unless the physician or practitioner takes good faith efforts, within 45 days of any notice from the carrier/MAC that the physician or practitioner failed to maintain opt-out, or within 45 days of the physician's or practitioner's discovery of the failure to maintain opt-out, **whichever is earlier, to correct his or her violations**)

A. Failure to Maintain Opt-Out Occurs if during the opt-out period:

- The physician/practitioner has filed an affidavit in accordance with §40.9 and has signed private contracts in accordance with §40.8 but, the physician/practitioner knowingly and willfully submits a claim for Medicare payment (except as provided in §40.28) or the physician/practitioner receives Medicare payment directly or indirectly for Medicare-covered services furnished to a Medicare beneficiary (except as provided in §40.28); (For specific information about Chapter 15, sections 8 and 28, refer to <http://www.cms.hhs.gov/Manuals/downloads/bp102c15.pdf> on the CMS website. The sections of Chapter 15 that are revised by CR6081 are attached to CR6081.)
- The physician/practitioner fails to enter into private contracts with Medicare beneficiaries for the purpose of furnishing items and services that would otherwise be covered by Medicare, or enters into private contracts that fail to meet the specifications of §40.8; or
- The physician/practitioner fails to comply with the provisions of §40.28 regarding billing for emergency care services or urgent care services; or
- The physician/practitioner fails to retain a copy of each private contract that the physician/practitioner has entered into for the duration of the opt-out period for which the contracts are applicable or fails to permit CMS to inspect them upon request.

B. Violation discovered by the Carrier during the 2-year opt out period:

- If a physician/practitioner fails to maintain opt-out in accordance with the provisions outlined in section A. of this article, and fails to demonstrate within 45 days of a notice from the carrier that the physician/practitioner has taken good faith efforts to maintain opt-out (including by refunding amounts in excess of the charge limits to the beneficiaries with whom the physician/practitioner did not sign a private contract), the following will result effective 46 days after the date of the notice, but only for the remainder of the opt-out period:

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1. All of the private contracts between the physician/practitioner and Medicare beneficiaries are deemed null and void.
2. The physician's or practitioner's opt-out of Medicare is nullified.
3. The physician or practitioner must submit claims to Medicare for all Medicare covered items and services furnished to Medicare beneficiaries.
4. The physician or practitioner or beneficiary will not receive Medicare payment on Medicare claims for the remainder of the opt-out period, except as stated above.
5. The physician or practitioner is subject to the limiting charge provisions as stated in §40.10.
6. The practitioner may not reassign any claim except as provided in the Medicare Claims Processing Manual, Chapter 1, "General Billing Requirements," §30.2.13. (For more information about the General Billing Requirements refer to <http://www.cms.hhs.gov/manuals/downloads/clm104c01.pdf> on the CMS website).
7. The practitioner may neither bill nor collect any amount from the beneficiary except for applicable deductible and coinsurance amounts.
8. The physician or practitioner may not attempt to once more meet the criteria for properly opting out until the 2-year opt-out period expires.

C. Violation not discovered by the Carrier during the 2-year opt out period.

- In situations where a violation of section A is not discovered by the carrier during the 2-year opt-out period when the violation actually occurred, the requirements of section B (1) through B (8) of this article are applicable from the date that the first violation of section A occurred until the end of the opt-out period during which the violation occurred.

TAKE NOTE: For a physician/practitioner who has never enrolled in the Medicare program and wishes to opt out of Medicare, the physician/practitioner must provide the carrier or A/B MAC with a National Provider Identifier (NPI).

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Additional Information

To see the official instruction (CR6081) issued to your carrier or A/B MAC visit <http://www.cms.hhs.gov/Transmittals/downloads/R92BP.pdf> on the CMS website.

If you have questions, please contact your carrier or A/B MAC at their toll-free number which may be found at <http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

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