

furnish emergency or urgent care services to a Medicare beneficiary in accordance with § 405.440.)

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

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

(n) Be made available to CMS upon request.

(o) Be entered into for each opt-out period.

**§ 405.420 Requirements of the opt-out affidavit.**

An affidavit under this subpart must:

(a) Be in writing and be signed by the physician or practitioner.

(b) Contain the physician's or practitioner's full name, address, telephone number, national provider identifier (NPI) or billing number, if one has been assigned, uniform provider identification number (UPIN) if one has been assigned, or, if neither an NPI nor a UPIN has been assigned, the physician's or practitioner's tax identification number (TIN).

(c) State that, except for emergency or urgent care services (as specified in § 405.440), during the opt-out period the physician or practitioner will provide services to Medicare beneficiaries only through private contracts that meet the criteria of paragraph § 405.415 for services that, but for their provision under a private contract, would have been Medicare-covered services.

(d) 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 § 405.440.

(e) 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, wheth-

er 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+Choice plan.

(f) 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.

(g) State a promise by the physician or practitioner to the effect that, during the opt-out 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.

(h) 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.

(i) With respect to a physician who has signed a Part B participation agreement, acknowledge that such agreement terminates on the effective date of the affidavit.

(j) 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 § 405.440 apply if the physician furnishes such services.

**§ 405.425 Effects of opting-out of Medicare.**

If a physician or practitioner opts-out of Medicare in accordance with this subpart for the 2-year period for which the opt-out is effective, the following results obtain:

(a) Except as provided in § 405.440, no payment may be made directly by

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Medicare or by any Medicare+Choice plan to the physician or practitioner or to any entity to which the physician or practitioner reassigns his right to receive payment for services.

(b) The physician or practitioner may not furnish any item or service that would otherwise be covered by Medicare (except for emergency or urgent care services) to any Medicare beneficiary except through a private contract that meets the requirements of this subpart.

(c) The physician or practitioner is not subject to the requirement to submit a claim for items or services furnished to a Medicare beneficiary, as specified in § 424.5(a)(6) of this chapter, except as provided in § 405.440.

(d) The physician or practitioner is prohibited from submitting a claim to Medicare for items or services furnished to a Medicare beneficiary except as provided in § 405.440.

(e) In the case of a physician, he or she is not subject to the limiting charge provisions of § 414.48 of this chapter, except for services provided under § 405.440.

(f) The physician or practitioner is not subject to the prohibition-on-reassignment provisions of § 414.80 of this chapter, except for services provided under § 405.440.

(g) In the case of a practitioner, he or she is not prohibited from billing or collecting amounts from beneficiaries (as provided in 42 U.S.C. 1395u(b)(18)(B)).

(h) The death of a beneficiary who has entered into a private contract (or whose legal representative has done so) does not invoke § 424.62 or § 424.64 of this chapter with respect to the physician or practitioner with whom the beneficiary (or legal representative) has privately contracted.

(i) The physician or practitioner who has not been excluded under sections 1128, 1156, or 1892 of the Social Security Act may order, certify the need for, or refer a beneficiary for Medicare-covered items and services, provided the physician or practitioner is not paid, directly or indirectly, for such services (except as provided in § 405.440).

(j) The physician or practitioner who is excluded under sections 1128, 1156, or 1892 of the Social Security Act may not

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order, prescribe, or certify the need for Medicare-covered items and services except as provided in § 1001.1901 of this title, and must otherwise comply with the terms of the exclusion in accordance with § 1001.1901 effective with the date of the exclusion.

### § 405.430 Failure to properly opt-out.

(a) A physician or practitioner fails to properly opt-out if—

(1) Any private contract between the physician or practitioner and a Medicare beneficiary, that was entered into before the affidavit described in § 405.420 was filed, does not meet the specifications of § 405.415; or

(2) He or she fails to submit the affidavit(s) in accordance with § 405.420.

(b) If a physician or practitioner fails to properly opt-out in accordance with paragraph (a) of this section, the following results obtain:

(1) The physician's or practitioner's attempt to opt-out of Medicare is nullified, and all of the private contracts between the physician or practitioner and Medicare beneficiaries for the two-year period covered by the attempted opt-out are deemed null and void.

(2) The physician or practitioner must submit claims to Medicare for all Medicare-covered items and services furnished to Medicare beneficiaries, including the items and services furnished under the nullified contracts. A nonparticipating physician is subject to the limiting charge provisions of § 414.48 of this chapter. A participating physician is subject to the limitations on charges of the participation agreement he or she signed.

(3) The practitioner may not reassign any claim except as provided in § 424.80 of this chapter.

(4) The practitioner may neither bill nor collect an amount from the beneficiary except for applicable deductible and coinsurance amounts.

(5) The physician or practitioner may make another attempt to properly opt-out at any time.

### § 405.435 Failure to maintain opt-out.

(a) A physician or practitioner fails to maintain opt-out under this subpart if, during the opt-out period—

(1) He or she knowingly and willfully—