

California Orthopaedic Association

The Process for Opting out of Medicare

Physicians have three options for interacting with Medicare:

- Participating Physician
- Non-Participating Physician
- Physicians Opting out of Medicare

Participating physicians are enrolled in the Medicare program for one year. They are paid at 100% of the Medicare Fee Schedule for Physician Services (20% coinsurance is paid by the patient).

Non-Participating physicians are enrolled in the Medicare program, but they have not signed the Medicare participation agreement. They are paid at 95% of Medicare fee schedule rates. Patients are responsible for up to 35% (20% coinsurance plus no more than 15% of the Medicare allowance of 95% of the Medicare fee schedule (limiting charge)).

Physicians Opting out of Medicare

Physicians may opt out of Medicare and bill Medicare patients directly. The numbers of specialists opting out of the Medicare program is increasing due to onerous billing rules and seemingly annual reductions in physician reimbursement. 1662 physicians had opted out of Medicare in 2024, compared to 8283 physicians in 2024. (Data accessed on May 1, 2024 – <https://data.cms.gov/provider-characterists/medicare-provider-supplier>)

Opting Out of Medicare

Source: Noridian Medicare June, 2024

Opting out is a contract between a provider, patient, and Medicare where the provider or patient agrees to not file a claim with Medicare. Instead, the physician bills the patient directly and is not required to follow the Physician Fee Schedule fee-for-service charges determined by Medicare. The physician may ask the patient to pay their fees prior to the surgery.

To opt-out, providers must submit an Opt-Out Affidavit with the Centers for Medicare and Medicaid Services (CMS) and must keep a Private Contract with all beneficiaries on file for each two-year period. **Remember to have the patient sign the contract.**

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Opt-Out Overview

Providers who do not wish to enroll in the Medicare Program, may opt-out. To "opt-out" means a patient pays a physician out-of-pocket and no one is reimbursed by Medicare. See table below for provider types who may or may not opt out. If a provider is able to opt out, they must:

- Submit an Opt-Out Affidavit expressing his/her decision to opt-out.

Even if the physician has never enrolled in Medicare as a participating or non-participating physician, they must still file an opt-out affidavit within 10 days of entering into their first private contract with a Medicare patient. The affidavit must be filed before the first day of the next calendar quarter showing an effective date of the first day in that quarter (e.g, January 1, April 1, July 1, October 1). The opt-out period is for 2 years and cannot be terminated early unless the physician opts out within the first 90 days of submitting an initial opt-out affidavit. Once in place, the opt-out automatically renews.

If a provider wishes to end his/her opt out status and reenroll in Medicare, he/she must submit the cancellation request via a letter **30 days before** the opt out is due to expire. If the cancellation letter is submitted after 30 days, he/she will remain opted out for another 2-year cycle. This must be mailed in to Noridian.

- Sign private Medicare Opt-Out Private Contracts with each Medicare patient.
- Be legally authorized to practice dentistry, podiatry, optometry, medicine, or surgery by the state in which such function or action is performed
- Be legally authorized to practice by the state and otherwise meet Medicare requirements
- Once a provider opts out of Medicare, they are opted out across the United States of America and territories. If the provider goes from one MAC to another, an additional opt out affidavit is required to be submitted to the new MAC
 - Example: Provider sees patient in South Dakota and then sees a patient in California. The provider is required to submit an opt out affidavit to the MAC that oversees California – currently Noridian.

Providers Eligible to Opt Out	Providers NOT Eligible to Opt Out
<ul style="list-style-type: none"> • Doctors of medicine • Doctors of osteopathy • Doctors of dental surgery or dental medicine <ul style="list-style-type: none"> ◦ Dental Anesthesiology ◦ Dental Public Health ◦ Endodontics ◦ Oral and Maxillofacial Pathology ◦ Oral and Maxillofacial Radiology ◦ Oral Medicine 	<ul style="list-style-type: none"> • Groups/Organizations • Part A enrollments • Chiropractor • Anesthesiologist assistant • Speech Language Pathologist • Physical Therapists • Qualified Audiologists • Occupational Therapists

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Providers Eligible to Opt Out	Providers NOT Eligible to Opt Out
<ul style="list-style-type: none"> ○ Orofacial Pain ○ Orthodontics and Dentofacial Orthopedics ○ Pediatric Dentistry ○ Periodontics ○ Prosthodontics ● Doctors of podiatric medicine ● Doctors of optometry ● Physician assistants ● Nurse practitioners ● Clinical nurse specialists ● Certified registered nurse anesthetists ● Certified nurse midwives ● Clinical psychologists ● Clinical social workers ● Marriage and Family Therapist and Mental Health Counselor ● Registered dietitians and nutrition professionals 	<ul style="list-style-type: none"> ● Any specialty not eligible to enroll in Medicare

Emergency Services

- If a provider has elected to Opt-out of Medicare, they cannot bill for any current patients or clients for any reason except for emergency situations
- Example of emergencies:
 - Provider assists in a car accident for an unknown victim
 - Provider assists in providing services after a natural disaster
- In order to bill for these services, the provider will need to fully enroll.
 - Submit an application for enrollment via the Provider Enrollment Chain and Ownership System (PECOS) or a paper CMS-855I application.
 - Once the Provider Transaction Access Number (PTAN) has been received, claims must be submitted for any emergency or urgent care service(s) provided.
 - Keep in mind the timeliness requirements, which typically require submission of the 855I no later than 30 days after the service occurred, in order for the Noridian to honor the effective date.
 - Noridian will work with CMS for guidance when this type of situation arises and work with the eligible practitioner to get their PTAN set up.
- Refer to [Pub. 100-08, Chapter 10, Section 10.6.12](#) for more information on Emergency and Urgent Care Services.

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Providers who opt out should note the following information:

- An Affidavit must be filed with all carriers who have jurisdiction over claims the physician/practitioner would otherwise file with Medicare.
- All active Medicare enrollments will be terminated.
- Opting out means you cannot be involved in any Medicare program, including original fee-for-service Medicare, Medicare Managed Care Plans, Medicare+Choice Plan and Medicare Advantage Plan. To prescribe drugs covered by a Medicare Advantage Plan, providers must enroll in Medicare. Providers eligible to prescribe Part D drugs and order/certify may submit the CMS 8550.
- An opted-out physician may still order, prescribe, certify necessity, and refer Medicare patients for Medicare-covered, medically necessary services, so long as the opted-out physician is not paid directly or indirectly for those services.
- Physicians in a group practice may opt-out individually.
- Providers cannot be opted-out for some services and not others, as well as some locations and not others.
- No payment through Medicare.

Opt-Out Affidavit and Effective Dates

A signed and dated opt out affidavit must be mailed to the contractor to complete the opt out process. Mailing addresses may differ based on your state. Refer to the table on our [Mailing Addresses](#) webpage for more information. The effective date of the opt out will be as follows:

- Eligible practitioner never enrolled - effective date will be the signature date
- Eligible practitioner enrolled with non-participating status - effective date will be the signature date
- Eligible practitioner enrolled with participating status - for a valid affidavit post-marked 30 days prior to the first day of the following quarter (January, April, July, October)
 - Example: #1: If we received the affidavit on May 15, 2021; then the opt out effective date would be July 1, 2021
 - Example: #2: If we received the affidavit on July 5, 2021; then the opt out effective date would be October 1, 2021

Please note that the signature dates must be within 120 days of the affidavit receipt date and be an original signature.

Processing Timeframe and Changes

- Opt out applications will be processed within 60 days
- If we need additional information, we will send one development request.

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- The provider will have 30 days to submit the information.
 - Noridian will reject the opt out if we do not get the information requested.
- If the address of the opted-out provider needs to be updated, a new affidavit with the new address and a coversheet stating the provider is updating their address is required to be mailed in

Appeals

Opt outs can be reconsidered (Appealed). This request must be sent to CMS. If the opt out is sent to Noridian, we will return the opt out advising it will need to be sent to CMS. This must follow the guidelines below:

- Be requested in writing within 60 calendar days of the postmark date of the notification letter (or within 60 calendar days after the 90-day period to terminate ends) and mailed to the address listed therein.
- State the issues or findings of fact with which you disagree and the reasons for disagreement.
- Be signed by the eligible practitioner or an authorized legal representative.
 - If the authorized legal representative is an attorney, the attorney's statement that he or she has the authority to represent the provider or supplier is sufficient to accept this individual as the legal representative.
- If the authorized legal representative is not an attorney, the eligible practitioner must file written notice of the appointment of its representative with the submission of reconsideration request.

Renewal of Opt-Out Status

- Current opt-out providers are automatically renewed every two (2) years. If an affidavit has not been signed and received by the Medicare contract on/after June 16, 2015, a new affidavit must be submitted to start a new opt out period.
- Notification letters will be sent roughly 90 days before the opt out is due to renew. The letter advises that the opt out will be renewed shortly.
- If the provider wishes to terminate your auto-renewal, he/she must submit the cancellation request via a letter **30 days before** the opt out is due to expire.

Early Termination

- A providers opt out status may be voluntarily terminated within 90 days of the affidavit if a provider has not previously been in an opt out status.
- This only applies to initial opt out providers. This does not apply to providers who renew their opt out status
- All previous enrollments with Medicare will be reactivated at the time of the termination of the opt out period.

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Ordering, Certifying and Prescribing Status

- A provider who has opted out of Medicare is eligible to order, certify and prescribe by supplying the required Social Security Number, Date of Birth and NPI on the Opt Out Affidavit. If both elements are not supplied the provider will not be approved to order, certify, and/or prescribe.
- **If the provider wishes to order and refer services, this must be indicated on the affidavit.** The provider will need to check mark the box Yes or No on the affidavit template or includes this statement if creating their own affidavit form.
 - If no is selected, the provider will not be set up to order and refer services
- To learn more about opting out and ordering, certifying and prescribing Part D drugs, See [CMS Internet Only Manual \(IOM\), Publication 100-08, Medicare Integrity Manual, Chapter 10](#)

Affidavit

- The suggested Affidavit can be found under the Enrollment Forms section of our [Forms](#) page.
- Mail your request to the address as found on the [Mailing Addresses](#) webpage.
- If the provider wishes to order and refer services, ensure the provider check marks the box Yes or No on the affidavit.
- A provider may also create their own affidavit. All affidavits must have the information below.

Required Affidavit Statements

Private Contract

- The suggested Private Contract can be found under the Enrollment Forms section of our [Forms](#) page.
- A provider may also create their own private contract. All private contracts must have the information below.
- A contract must be completed for each patient and be kept on file for the two-year period.

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