

## § 405.400

### § 405.400 Definitions.

For purposes of this subpart, the following definitions apply:

*Beneficiary* means an individual who is enrolled in Part B of Medicare.

*Emergency care services* means services furnished to an individual for treatment of an "emergency medical condition" as that term is defined in § 422.2 of this chapter.

*Legal representative* means one or more individuals who, as determined by applicable State law, has the legal authority to enter into the contract with the physician or practitioner on behalf of the beneficiary.

*Opt-out* means the status of meeting the conditions specified in § 405.410.

*Opt-out period* means the 2-year period beginning on the effective date of the affidavit as specified by § 405.410(c)(1) or § 405.410(c)(2), as applicable.

*Participating physician* means a "physician" as defined in this section who has signed an agreement to participate in Part B of Medicare.

*Physician* means a doctor of medicine or a doctor of osteopathy who is currently licensed as that type of doctor in each State in which he or she furnishes services to patients.

*Practitioner* means a physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, clinical psychologist, or clinical social worker, who is currently legally authorized to practice in that capacity by each State in which he or she furnishes services to patients or clients.

*Private contract* means a document that meets the criteria specified in § 405.415.

*Properly opt-out* means to complete, without defect, the requirements for opt-out as specified in § 405.410.

*Properly terminate opt-out* means to complete, without defect, the requirements for terminating opt-out as specified in § 405.445.

*Urgent care services* means services furnished to an individual who requires services to be furnished within 12 hours in order to avoid the likely onset of an emergency medical condition.

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### § 405.405 General rules.

(a) A physician or practitioner may enter into one or more private contracts with Medicare beneficiaries for the purpose of furnishing items or services that would otherwise be covered by Medicare, provided the conditions of this subpart are met.

(b) A physician or practitioner who enters into at least one private contract with a Medicare beneficiary under the conditions of this subpart, and who submits one or more affidavits in accordance with this subpart, opt-out of Medicare for a 2-year period unless the opt-out is terminated early according to § 405.445. The physician's or practitioner's opt-out may be renewed for subsequent 2-year periods.

(c) Both the private contracts described in paragraph (a) of this section and the physician's or practitioner's opt-out described in paragraph (b) of this section are null and void if the physician or practitioner fails to properly opt-out in accordance with the conditions of this subpart.

(d) Both the private contracts described in paragraph (a) of this section and the physician's or practitioner's opt-out described in paragraph (b) of this section are null and void if the remainder of the opt-out period if the physician or practitioner fails to remain in compliance with the conditions of this subpart during the opt-out period.

(e) Services furnished under private contracts meeting the requirements of this subpart are not covered services under Medicare, and no Medicare payment will be made for such services either directly or indirectly, except as permitted in accordance with § 405.435(c).

### § 405.410 Conditions for properly opting-out of Medicare.

The following conditions must be met for a physician or practitioner to properly opt-out of Medicare:

(a) Each private contract between a physician or a practitioner and a Medicare beneficiary that is entered into prior to the submission of the affidavit described in paragraph (b) of this section must meet the specifications of § 405.415.