

§ 405.400

enter into a repayment agreement, or breaches any provision of the agreement, or if Medicare payment is insufficient to maintain the offset collection according to the agreed upon formula, then—

(1) The Department, within 30 days if feasible, informs the Attorney General; and

(2) The Department excludes the individual from Medicare until the entire past due obligation has been repaid, unless the individual is a sole community practitioner or the sole source of essential specialized services in a community and the State requests that the individual not be excluded.

[57 FR 19092, May 4, 1992]

Subpart D—Private Contracts

AUTHORITY: Secs. 1102, 1802, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395a, and 1395hh).

SOURCE: 63 FR 58901, Nov. 2, 1998, unless otherwise noted.

§ 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; doctor of osteopathy; doctor of dental surgery or of dental medicine; doctor of podiatric medicine; or doctor

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of optometry who is legally authorized to practice medicine, osteopathy, dental surgery, dental medicine, podiatric medicine, or optometry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions.

Practitioner means a physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, clinical psychologist, clinical social worker, registered dietitian or nutrition professional, 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.

[63 FR 58901, Nov. 2, 1998, as amended at 69 FR 1116, Jan. 7, 2004; 71 FR 69782, Dec. 1, 2006]

§ 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