Medicare Opt-Out for the Total Joint Surgeon

What does opting out of Medicare mean?

Physicians have the option of opting out of Medicare Fee-For-Service, the traditional Medicare reimbursement system that pays healthcare providers and facilities for each service they provide to patients covered by Medicare. This means that neither the physician nor their patient can submit claims to Medicare for services. Opting out applies to all Medicare and Medicare Replacement/Advantage plans and all Medicare–covered patients. The patient becomes responsible for paying the physician directly for services rendered.

If you as a physician want to operate on a cash pay basis and still see Medicare patients, opting out of Medicare is mandatory and essential.

Failure to formally opt-out of Medicare when you seek to operate on a cash pay basis could place you in violation of the law with associated penalties and consequences.

Opting-out is not simply a formality; it is a legal premise for having a compliant cash-pay practice.

As of 2024, 1.2% of non-pediatric physicians have opted out. As of February 2024, 308 orthopaedic surgeons (1.1%) have opted out of Medicare.

Why would a surgeon choose to opt-out of Medicare?

Reimbursement for total joint replacement has declined significantly over the last 30 years. During that same period, costs have increased. Margins for total joint surgery have decreased to the point that it is hard for some surgeons to stay financially viable. This has led to practice consolidation, often with the surgeon giving up independent private practice and becoming a hospital employee.

Opt-out surgeons can set their own fee schedules and have more control over practice revenue. Fees are set by economic forces rather than government regulation.

Precertification, peer to peer appeals, and other documentation needs consume time and reduce productivity. Much of the administrative burden goes away when physicians and patients contract directly with each other, leading to fewer employees and reduced overhead. Total joint surgeons who opt-out of Medicare can collect payment up front for elective procedures, so there is no need for collections after the fact.

What are the disadvantages to opting-out?

Physicians who opt-out may lose much of their Medicare business. Many Medicare patients are on fixed incomes and might not pay extra to contract with a specific surgeon. Referral patterns might change as a result of not taking Medicare. Certainly, there is a risk of lost revenue and possibly reduced income.

The opt-out period is for 2 years and automatically renews every 2 years. If it doesn't work out, you are committed for 2 years and can't submit any claims to Medicare during that term. For physicians opting out for the first time, there is a 90-day "cool-off" period during which you can change your mind and return to Medicare. After that window, you must wait 2 years to re-enter the program.

Most practices have group, not individual contracts; therefore, a single provider cannot cease being in network with a Medicare Replacement/Advantage plan in some cases. Being a Medicare provider is a prerequisite for the Replacement/Advantage plans.

How does it affect the patient?

Under an individual contract, patients must pay physicians directly and are not reimbursed for those costs. Hospital charges, ancillary tests, etc. can still be billed to Medicare.

What are the specific steps required for opting out?

Step 1	Complete and sign an Opt-out Affidavit
Step 2	Submit the affidavit to your MAC (Medicare contractor for your state)
Step 3	Enter into private contracts with your Medicare patients after patient notification of opt-out status
Step 4	Renew every two years
Step 5	Ensure continued compliance

The Opt-out Affidavit

There are two options:

1. Use a template provided by your MAC. Most provide fillable affidavits on their website. This is the recommended option to ensure compliance and reduce the risk of you omitting a required element.
2. Draft your own affidavit, but be sure it includes:
    i. Full legal name and provider type
    ii. Your NPI and other identifying information
    iii. A declaration that you will not submit Medicare claims except for limited exceptions
    iv. A statement that you will enter into private contracts with Medicare beneficiaries for all covered services
    v. The effective date of the opt-out period

Submit the affidavit to your MAC (Medicare contractor for your state)

To check your MAC, visit CMS' MACs by state page: https://www.cms.gov/mac-info

- Access your MAC for their specific submission instructions (retain proof of submission and request acknowledgement of opt-out status).
- **NOTE**: **Opt-out timing is crucial**. The effective date of the opt-out period is the 1st day of the next quarter provided you have filed the affidavit at least 30 days beforehand.
- Also ensure you have submitted the affidavit to all MACs if you practice in different jurisdictions.

Enter into private contracts with your Medicare patients after patient notification of opt-out status

These contracts must:

- Be in writing and signed by both parties
- Be kept on file and producible when requested
- Clearly state that Medicare will not reimburse you for services
- Confirm the patient understands they are paying all associated costs out of pocket
- Include the effective date of the contract and outline the 2 year opt-out period
- Be renewed for each 2-year period

Renew every two years

- The opt-out period automatically renews every two years
- If you wish to revoke your opt-out status after the first 2 years; you must file a revocation affidavit with Medicare at least 30 days prior to the start of the next opt-out period.

Ensure continued compliance

Once you have opted out:

- You cannot submit claims to Medicare for any services, except in specific emergency cases. (Emergency care in a hospital ED or ICU and only until no longer an emergency.)
- If in a group practice, ensure your appointment and billing staff are aware of your Medicare status. If a Medicare claim for your professional services is erroneously submitted, you may be subjected to an audit for non-compliant billing practices.
- Ensure your credentialing department is aware.
- If an entity employing a physician submits a Medicare claim and the physician is indirectly paid, this constitutes a violation. If there is a pattern of repeated violations, the physician can and will have their status involuntarily terminated.
- Be careful of call obligations. You may or may not be able to bill for patients you see on call, depending on their situation. True emergency care is exempted.

Frequently Asked Questions

Can I still order tests and pharmaceuticals for Medicare beneficiaries?

Yes, however you must indicate this desire on your affidavit and ensure your CMS 855I profile identifies you as an ordering/referring physician.

I have never been enrolled in Medicare, so can I simply not enroll and state I do not accept Medicare?

No, as this would not be in full compliance with the Social Security Act. To ensure full compliance, you must formally opt-out.

Can a patient send in an itemized bill/claim form to Medicare for reimbursement?

No, a patient cannot seek reimbursement. In fact, the physician, not the patient, would be liable for this practice from a compliance perspective.

I moonlight or have a side locums job as an independent contractor. Can I simply opt-out for my private practice?

No, opting out is all inclusive.

I changed jobs and became employed after I opted-out. Can I enroll before the two-year period as my new job requires I see Medicare patients?

No, as the opt-out period is for a two-year period. Does not matter if you take a new job or move to a new location. You are still out of Medicare for two years.

I am in a group practice, how does this impact Medicare Replacement/Advantage Plans?

Most practices have "group" and not individual contracts. Therefore, a single provider cannot cease being in network with a Medicare Replacement plan in some cases. In other words, being a Medicare provider is a prerequisite for the Replacement/Advantage plans. It is highly recommended that you check your existing contracts prior to opting out.

What if I skip a step?

Failure to complete all required steps results in:

- Your private contracts with patients are null and void.
- You are still bound by Medicare billing rules.
- You can face repayment, fines or the ultimate consequence of being excluded from Medicare.

References:

1. Nordt JC, Connair MP, Gregorian JA. (December 2012) As Medicare Costs Rise, Reimbursements Drop. Retrieved August 1, 2019 from http://www.aaos.org/AAOSNow/2012/Dec/cover/cover1/?ssopc=1
2. CMS.gov
3. Costello AA, Cohen-Rosenblum AR, Borsinger TM, Novicoff WM, Browne JA. A Study of Arthroplasty Surgeons Who Opt Out of Medicare. J Arthroplasty. 2025 Sep;40(9S1):S117-S122. doi: 10.1016/j.arth.2025.04.039. Epub 2025 Apr 22. PMID: 40273958.

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