

	Policy Title	Medicare Opt Out Regulations and Billing Requirements
	Policy Number	3.11
	Department	Compliance & Privacy
	Effective Date	September 18, 2023
	Last Reviewed	September 18, 2023
	Approved By	Clinical Compliance Committee
	Approval Date	September 18, 2023

Policy

WCM physician organization policy requires employed faculty members to be participating providers with fee-for-service government payers (i.e., Medicaid and Medicare insurers) unless the Dean grants an exception and allows the provider to opt out of such programs. The opt-out arrangement, if approved by the Dean, requires coordination with the WCM Managed Care Office as it will impact the provider’s participation status with Medicare Advantage plans.

Purpose

The purpose of this policy is to set forth the standard that all faculty members employed by Weill Cornell Medicine (WCM) physician organization are participating providers with fee-for-service government payers (i.e., Medicaid and Medicare insurers). Exception to this participation requirement is granted by the Dean to individual providers. When such exceptions are granted, it is essential that the provider adheres to the established rules and procedures for opting out of government payer program (Medicare) in compliance with relevant laws and regulations. In addition, private billing to the affected patients should confirm to all relevant opt-out and non-participation rules.

Scope

All WCM faculty members of the physician organization. This policy outlines the requirement for the providers who have been granted Medicare participation exemption by the Dean.

Definitions

Medicare Opt-Out Provider – Medicare opt-out providers do not accept Medicare at all and have signed an official agreement for exclusion from the Medicare program. Medicare opt-out providers are not subject to the Medicare participating or non-participating fee schedules and may bill and collect their full charges directly from the Medicare patient, however the Medicare opt-out provider must follow certain rules.

Medicare Opt-Out Affidavit – The agreement signed by the provider and submitted to Medicare in which the providers agree to opt-out of Medicare and to meet all associated criteria.

Private Contract – An agreement signed between the provider and each of the provider’s Medicare patients (except those not previously contracted with who are receiving emergency care). The private contracts states that neither the provider nor the patient can receive payment from Medicare for covered services from the provider. A private contract pertains to services that are covered by Medicare.

Medicare Participating Providers – Providers who accept Medicare patients and agree to accept the Medicare fee schedule approved amount for health care services as full payment.

Medicare Non-Participating Providers – Providers who accept Medicare patients but do not accept the Medicare fee schedule approved amount and are therefore subject to the NYS limiting charge (which is set at 5% above the Medicare fee schedule approved amount).

Procedure

Documentation Requirements –

The following documents are required for Medicare opt-out providers. As legal billing records, retention of copies of fully executed documents is necessary, and documents must be made available upon request:

The physician or practitioner must submit a Medicare Opt-Out Affidavit to Medicare expressing his/her decision to opt-out of the Medicare program.

The required Medicare Opt-Out Affidavit can be obtained from NGS Medicare at:

https://www.ngsmedicare.com/documents/Medicare_Opt_Out_Affidavit

During the opt-out period, Medicare opt-out providers must enter into a (signed) private contract with all Medicare beneficiaries to whom they furnish (Medicare covered) services. Private contracts may not be solicited from Medicare beneficiaries who need emergency care.

The Medicare Private Contract form is available from NGS Medicare at:

https://www.ngsmedicare.com/documents/Medicare_Private_Contract_Form

The provider must also maintain copies of written communications to and from the Dean's office to substantiate the Dean's approval of the provider's opt-out status.

Operational Procedures –

Scheduling: Opt-out providers should not be on the "on call" list since they are not billing the Medicare program. In rare circumstances, if the opt-out provider renders emergency care and the emergency situation is ongoing (for example, after admission), the provider may continue to care for the patient until it was no longer urgent to do so.

Billing:

Medicare patients who enter into a Medicare Private Contract with the opt-out provider are responsible for full payment of the provider's charges in the same manner as an uninsured/self-pay patient. The provider's billing statement is issued to the patient. No Medicare claim (primary or secondary) will occur.

Medicare patients who have not entered into a Medicare Private Contract with the opt-out provider are not to be billed for the opt-out provider's services, except in the instance where the opt-out Provider renders emergency or urgent care services to a Medicare patient. For such emergency services, the opt-out provider must submit a claim to Medicare and will be subject to non-participating provider payment limitations. Services on this claim will require that modifier -GJ (opt-out physician/practitioner Emergency or Urgent Services) is appended.

Pre-Billing Monitoring/Billing Coordination –

Departments with opt-out providers must monitor the billing for services rendered to Medicare beneficiaries by the opt-out provider. The monitoring of opt-out provider billing should at a minimum, validate the following:

That the Medicare Private Contract is on file when billing the Medicare patient as self-pay.

That medical record documentation supports the use of modifier -GJ when submitting a claim to Medicare for a patient to confirm that the service was due to an emergency need.

Compliance with this Policy

Contact Information

Direct any questions about this policy to the Clinical Compliance and Privacy Office:

- Telephone: (646) 962-6930
- Email: Compliance@med.cornell.edu

Reports of Non-Compliance:

Reports of Non-Compliance should be made to the Clinical Compliance and Privacy Office:

- Telephone: (646) 962-6930
- Email: Compliance@med.cornell.edu

References

Medicare Benefit Policy Manual Chapter 15 – Covered Medical and Other Health Services
(Rev. 12171, 08-03-23)

Section 40 - Effect of Beneficiary Agreements Not to Use Medicare Coverage

(Rev. 160, Issued: 10-26-12, Effective: 01-28-13, Implementation: 01-28-13)

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102e15.pdf>

Opting out of Medicare and/or Electing to Order and Certify Items and Services to Medicare Beneficiaries

MLN Matters® Number: SE1311 Revised

<https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/SE1311.pdf>

Requirements of Medicare Opt-Out Affidavit Agreement (Revised 11/12/2021)

https://www.ngsmedicare.com/web/ngs/opt-out-of-medicare_ArticleId=146792

Provider Opt-Out Affidavits Look-up Tool

Data.CMS.gov

<https://data.cms.gov/tools/provider-opt-out-affidavits-look-up-tool>

Policy Approval

The Compliance Department will review and update this Policy, when necessary, in the normal course of its review of the Organization's Compliance Program.

Version History

Original Policy Date – October 1, 2006

Review and Update – May 4, 2023

Date	Author	Revisions
		Initial draft completed. Original date of issue.

