

# The Reality of Opting out of Medicare

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## Opinions

- These are my opinions
  - Anyone who knows me, knows that I have lots of opinions.
  - Always pass major changes by your Corporate Attorney.
  - Always work with your Accountant and your Banker when making strategic changes in your business plans.
  - Know your patients and your area.
  - Know your politics.

## Medicare Fact URLs

<file:///C:/Users/kroberts/Downloads/know-options-medicare-participation-guide.pdf>

<http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/medicare/medicare-participation-guide/medicare-participation-calculator.page>

<https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms855o.pdf>

<https://med.noridianmedicare.com/web/jeb/enrollment/opt-out>

## Medicare Choices (Part B)

- Par
- Non-Par/Assigned
- Non-Par/Unassigned
- Opt-Out

## Medicare Options (Part B) PAR and Non-PAR

Example: A service for which Medicare fee schedule amount is \$100

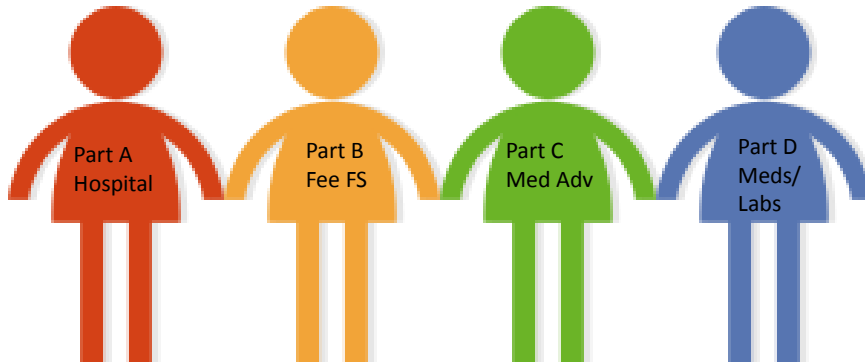
Payment Arrangement	Total Payment Rate	Amount from Medicare	Payment amount from Patient
PAR Physician	100% Medicare Fee Schedule = \$100	\$80 (80%) carrier direct to physician	\$20 (20%) paid by patient or supplemental insurance (e.g., Medigap)
Non-PAR /Assigned Claim	95% Medicare Fee Schedule = \$95	\$76 (80%) carrier direct to physician	\$19 (20%) paid by patient or supplemental insurance (e.g., Medigap)
Non-PAR / Unassigned Claim	Limiting charge of 115% of 95% Medicare fee schedule (effectively, 109.25%) Medicare fee schedule = \$109.25	\$0	\$76 (80%) paid by carrier to patient + \$19 (20%) paid by patient or supplemental insurance + \$14.25 balance bill paid by patient

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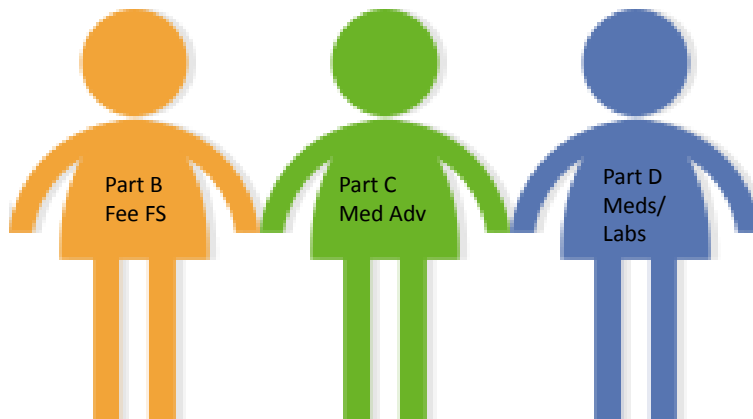
## Medicare Opt Out Decision Tree

- Do you want to accept traditional Medicare Fee for Service? (Part B Fee FS)
- Do you want to be a Medicare Advantage Provider? (Part C Med Adv)
- Do you want to prescribe Drugs? (Part D Meds)

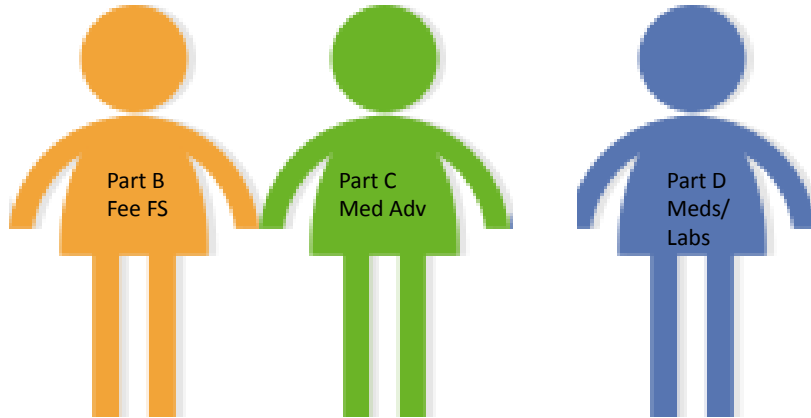
# Medicare Simplified



## Opting out deals with B C & D

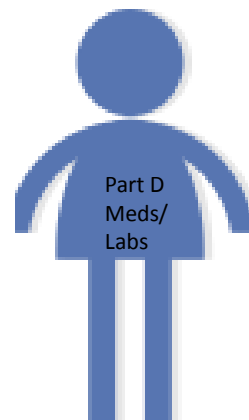


C is always with B, B Can Stand Alone



When you opt out – There is only D

8550  
Order,  
Certify,  
and/or  
Prescribe



**File form 8550**

## Medicare's Opt Out Decision Tree

Your Desired Professional Status with Medicare	Enroll in Medicare	Opt Out of Medicare
<ul style="list-style-type: none"> <li>You want to prescribe Part D drugs.</li> <li>You want to be a Medicare Advantage (Part C) provider</li> <li>You want to furnish services that would NOT be covered by traditional Medicare fee-for service (Part B) even if you were enrolled in Medicare with billing privileges.*</li> </ul>	Please enroll using the CMS 8550 (order, certify, and/or prescribe).	You may NOT opt out if you want to be a Medicare Advantage (Part C) provider.
<ul style="list-style-type: none"> <li>You want to prescribe Part D drugs.</li> <li>You do NOT want to be a Medicare Advantage (Part C) provider.</li> <li>You want to furnish services that would NOT be covered by traditional Medicare fee-for service (Part B) even if you were enrolled in Medicare with billing privileges.**</li> </ul>	Please enroll using the CMS 8550 (order, certify, and/or prescribe), or,	You may opt out and still prescribe Part D drugs. However, you can only terminate your opt out early if you are opting out for the very first time and you terminate your opt out no later than 90 days after the effective date of your first opt out period. Opt out periods last for two years and automatically renew unless you cancel your opt-out in writing no later than 30 days before the end of the current 2-year opt-out period. . CMS recommends you enroll using the CMS 8550 (order, certify, and/or prescribe). Also, you should double check that you are not indirectly contracted with a Medicare Advantage (Part C) plan, for example, as some dentists are.

## Medicare's Opt Out Decision Tree

Your Desired Professional Status with Medicare	Enroll in Medicare	Opt Out of Medicare
<ul style="list-style-type: none"> <li>You do NOT want to prescribe Part D drugs.</li> <li>You want to be a Medicare Advantage (Part C) provider.</li> <li>You want to furnish services that would NOT be covered by traditional Medicare fee-for service (Part B) even if you were enrolled in Medicare with billing privileges.**</li> </ul>	Medicare Advantage plans may require providers to enroll, for ex., if the plans determine there's any chance you will prescribe a Part D drug. Please check with the plan(s) with which you contract. If they require you to enroll, please enroll using the CMS 8550 (order, certify, and/or prescribe).	You may NOT opt out if you want to be a Medicare Advantage (Part C) provider.
<ul style="list-style-type: none"> <li>You do NOT want to prescribe Part D drugs.</li> <li>You do NOT want to be a Medicare Advantage (Part C) provider.</li> <li>You want to furnish services that would NOT be covered by traditional Medicare fee-for service (Part B) even if you were enrolled in Medicare with billing privileges.**</li> </ul>	You do not need to enroll.	You do not need to opt out.
<ul style="list-style-type: none"> <li>You want to furnish services covered by traditional Medicare fee-for service (Part B). ** • You may or may not want to prescribe Part D drugs. • You may or may not want to be a Medicare Advantage (Part C) provider.</li> </ul>	Please enroll using the CMS 8551 form. You will be able to order, certify, and prescribe Part D drugs. You will also be able to contract with Medicare Advantage (Part C) plan(s), provided you meet the plan's requirements.	You may NOT opt out if you want to be a Medicare Advantage (Part C) provider or furnish services covered by traditional Medicare fee-for- service (Part B).**

## Decision Tree Simplified

Your Desired Professional Status with Medicare	Enroll in Medicare	Opt Out of Medicare
<b>NO PART B – OPTING OUT</b> • You want to furnish services that would NOT be covered by traditional Medicare fee-for service (Part B) even if you were enrolled in Medicare with billing privileges.*	Please enroll using the <b>CMS 8550</b> (order, certify, and/or prescribe).	You may opt out and still prescribe Part D drugs.  You may NOT opt out if you want to be a Medicare Advantage (Part C) provider.
<b>YES PART C</b> • You want to be a Medicare Advantage (Part C) provider.	Medicare Advantage plans may require providers to enroll, for ex., if the plans determine there's <b>any chance</b> you will prescribe a Part D drug. Please check with the plan(s) with which you contract. If they require you to enroll, please enroll using the <b>CMS 8550</b> (order, certify, and/or prescribe).	<b>You may NOT opt out if you want to be a Medicare Advantage (Part C) provider.</b>
<b>YES PART D</b> • You want to prescribe Part D drugs.	Please enroll using the <b>CMS 8550</b> (order, certify, and/or prescribe).	May do OPT OUT Part B with Part D
<b>NO PART B, C, OR D</b>	You do not need to enroll.	You do not need to opt out.
• You want to furnish services covered by traditional Medicare fee-for service (Part B). ** • You may or may not want to prescribe Part D drugs. • You may or may not want to be a Medicare Advantage (Part C) provider.	Please enroll using the <b>CMS 8551</b> form. You will be able to order, certify, and prescribe Part D drugs. You will also be able to contract with Medicare Advantage (Part C) plan(s), provided you meet the plan's requirements.	You may NOT opt out if you want to be a Medicare Advantage (Part C) provider or furnish services covered by traditional Medicare fee-for-service (Part B).**

## Steps to Opting Out

- Tell your patients
- Set your Opt Out date (1/1, 4/1, 7/1, 10/1)
- File your forms –
  - Opt Out Affidavit
  - CMS 8550
- Print up Carbon Patient Forms (you must keep the ORIGINAL).
- Install Procedures in Office Never to File to CMS.

## Tell your patients



## Dates

- January 1
- April 1
- July 1
- October 1



## Opt Out Affidavit – 1 of 2

- I, \_\_\_\_\_, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:
  1. I am a physician licensed to practice medicine in the state of \_\_\_\_\_. My address is at \_\_\_\_\_, my telephone number is \_\_\_\_\_, and my [national provider identifier (NPI) or billing number, if one has been assigned, uniform provider identification number (UPIN) if one has been assigned, or, if neither an NPI nor a UPIN has been assigned, my tax identification number (TIN)] is \_\_\_\_\_. I promise that, for a period of two years beginning on the date that this affidavit is signed (the "Opt-Out Period") and continuing indefinitely with automatic extensions of the 2-year opt out period unless terminated by me as allowed by Title 1 Section 106(a)(1) Medicare Access and CHIP Reauthorization Act of 2015, I will be bound by the terms of both this affidavit and the private contracts that I enter into pursuant to this affidavit. [NOTE: Your personal UPIN number must be used, not a corporate UPIN number. Persons opt out, not corporations.]
  2. I have entered or intend to enter into a private contract with a patient who is a beneficiary of Medicare ("Medicare Beneficiary") pursuant to Section 4507 of the Balanced Budget Act of 1997 for the provision of medical services covered by Medicare Part B. Regardless of any payment arrangements I may make, this affidavit applies to all Medicare-covered items and services that I furnish to Medicare Beneficiaries during the Opt-Out period, except for emergency or urgent care services furnished to Beneficiaries with whom I had not previously privately contracted. I will not ask a Medicare Beneficiary who has not entered into a private contract and who requires emergency or urgent care services to enter into a private contract with respect to receiving such services, and I will comply with 42 C.F.R. § 405.440 for such services. 3. I hereby confirm that I will not submit, nor permit any entity acting on my behalf to submit, a claim to Medicare for any Medicare Part B item or service provided to any Medicare Beneficiary during the Opt-Out Period, except for items or services provided in an emergency or urgent care situation for which I am required to submit a claim under Medicare on behalf of a Medicare Beneficiary, and I will provide Medicare-covered services to Medicare Beneficiaries only through private contracts that satisfy 42 C.F.R. § 405.415 for such services.

## Opt Out Affidavit – 2 of 2

- 4. I hereby confirm that I will not receive any direct or indirect Medicare payment for Medicare Part B items or services that I furnish to Medicare Beneficiaries with whom I have privately contracted, whether as an individual, an employee of an organization, a partner in a partnership, under a reassignment of benefits, or as payment for a service furnished to a Medicare Beneficiary under a Medicare+Choice plan, during the Opt-Out Period, except for items or services provided in an emergency or urgent care situation. I acknowledge that, during the Opt-Out Period, my services are not covered under Medicare Part B and that no Medicare Part B payment may be made to any entity for my services, directly or on a capitated basis, except for items or services provided in an emergency or urgent care situation.
- 5. A copy of this affidavit is being filed with [the name of each local Medicare carrier], the designated agent of the Secretary of the Department of Health and Human Services, no later than 10 days after the first contract to which this affidavit applies is entered into. [FOR PARTICIPATING PHYSICIANS ONLY: My Medicare Part B Participation agreement terminates on the effective date of this affidavit.]

Executed on [date] by [Physician name]  
[Physician signature]

## CMS Form 8550

- 8550 <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms8550.pdf>
- MEDICARE ENROLLMENT APPLICATION REGISTRATION FOR ELIGIBLE ORDERING AND REFERRING PHYSICIANS AND NON-PHYSICIAN PRACTITIONERS CMS-8550
- 8550 (order, certify, and/or prescribe).

## Patient Agreement 1 of 2

- This agreement is between Dr. \_\_\_\_\_ ("Physician"), whose principal place of business is \_\_\_\_\_, and patient \_\_\_\_\_ ("Patient"), who resides at \_\_\_\_\_ and is a Medicare Part B beneficiary seeking services covered under Medicare Part B pursuant to Section 4507 of the Balanced Budget Act of 1997. The Physician has informed Patient that Physician has opted out of the Medicare program effective on \_\_\_\_\_ for a period of at least two years, and is not excluded from participating in Medicare Part B under Sections 1128, 1156, or 1892 or any other section of the Social Security Act. Physician agrees to provide the following medical services to Patient (the "Services"):
- [LIST ALL THE SERVICES HERE]
- In exchange for the Services, the Patient agrees to make payments to Physician pursuant to the Attached Fee Schedule. Patient also agrees, understands and expressly acknowledges the following:
  - Patient agrees not to submit a claim (or to request that Physician submit a claim) to the Medicare program with respect to the Services, even if covered by Medicare Part B.
  - Patient is not currently in an emergency or urgent health care situation.
  - Patient acknowledges that neither Medicare's fee limitations nor any other Medicare reimbursement regulations apply to charges for the Services.
  - Patient acknowledges that Medi-Gap plans will not provide payment or reimbursement for the Services because payment is not made under the Medicare program, and other supplemental insurance plans may likewise deny reimbursement.

## Patient Agreement 2 of 2

- Patient acknowledges that he has a right, as a Medicare beneficiary, to obtain Medicare-covered items and services from physicians and practitioners who have not opted-out of Medicare, and that the patient is not compelled to enter into private contracts that apply to other Medicare-covered services furnished by other physicians or practitioners who have not opted-out.
- Patient agrees to be responsible, whether through insurance or otherwise, to make payment in full for the Services, and acknowledges that Physician will not submit a Medicare claim for the Services and that no Medicare reimbursement will be provided.
- Patient understands that Medicare payment will not be made for any items or services furnished by the physician that would have otherwise been covered by Medicare if there were no private contract and a proper Medicare claim were submitted.
- Patient acknowledges that a copy of this contract has been made available to him.[Optional:
- Patient agrees to reimburse Physician for any costs and reasonable attorneys' fees that result from violation of this Agreement by Patient or his beneficiaries.]
- Executed on [date] by [Patient name] and [Physician name]
- [Patient signature] [Physician signature]
- [NOTE to physicians: keep a copy of all of these contracts in case CMS demands them! CMS requires that this contract be re-executed each period.]

## WARNING

- You must set up a serious protocol for NEVER filing to CMS (except in case of emergency).
- B. Violation discovered by the Medicare contractor during the 2-year opt out period. If a physician/practitioner fails to maintain opt-out in accordance with the provisions outlined in paragraph (A) of this section, and fails to demonstrate within 45 days of a notice from the Medicare contractor that the physician/practitioner has taken good faith efforts to maintain opt-out (including by refunding amounts in excess of the charge limits to the beneficiaries with whom the physician/practitioner did not sign a private contract), the following will result effective 46 days after the date of the notice, but only for the remainder of the opt-out period: 1. All of the private contracts between the physician/practitioner and Medicare beneficiaries are deemed null and void. 2. The physician's or practitioner's opt-out of Medicare is nullified. 3. The physician or practitioner must submit claims to Medicare for all Medicare covered items and services furnished to Medicare beneficiaries. 4. The physician or practitioner or beneficiary will not receive Medicare payment on Medicare claims for the remainder of the opt-out period, except as stated above. 5. The physician or practitioner is subject to the limiting charge provisions as stated in §40.10. 6. The practitioner may not reassign any claim except as provided in the Medicare Claims Processing Manual, Chapter 1, "General Billing Requirements," §30.2.13. 7. The practitioner may neither bill nor collect any amount from the beneficiary except for applicable deductible and coinsurance amounts. 8. The physician or practitioner may not attempt to once more meet the criteria for properly opting out until the 2-year opt-out period expires.

## Who

- Who should opt out of Medicare?
  - Providers
    - In an area with large numbers of Medicare Recipients and small numbers of Endocrinologists.
    - Who have large numbers of Insured Patients which routinely pay **120-140%** of Medicare allowable.
    - Who do mostly E&M and not procedures.
    - Who are very hands on and don't utilize in house NPs, PAs, CDEs, Dieticians. (Pt's don't like paying out of pocket for these services.)
    - Who have really good rapport with their patients.
    - Who live in high cost of living areas – NYC, DC, LA etc.

## Why

- I opted out of Medicare and Tricare because I thought would either have to do that or close my doors.
- My problem was that I did not close off my practice to Medicare until I had too many patients.
- At that time, my area was underserved and I was terribly overworked.
- This was before High Deductibles and Obamacare.

## Who should not Opt-Out

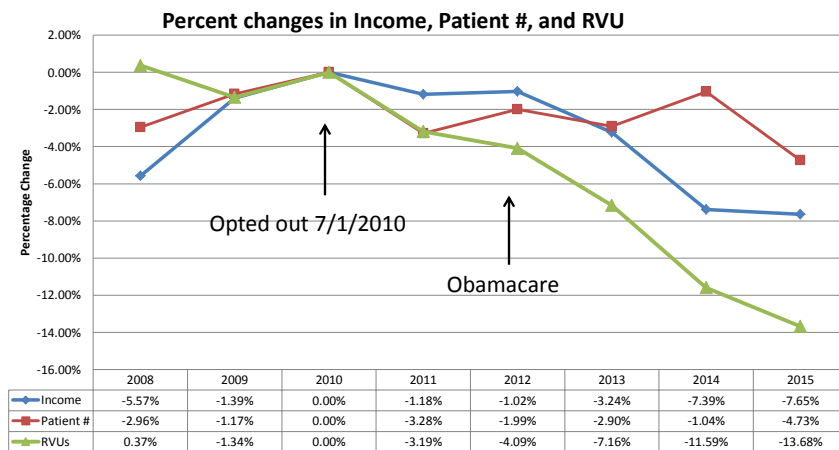
- Providers
  - Who see patients very quickly.
  - Who do a great deal of ancillary services.
  - Who do many procedures – e.g. Thyroidologists
  - Who have many competitors.
  - Who utilize physician extenders.
  - Whose insurance companies only pay 105-110% of Medicare.
  - Who have many patients with high deductibles.

REALITY – IT BITES

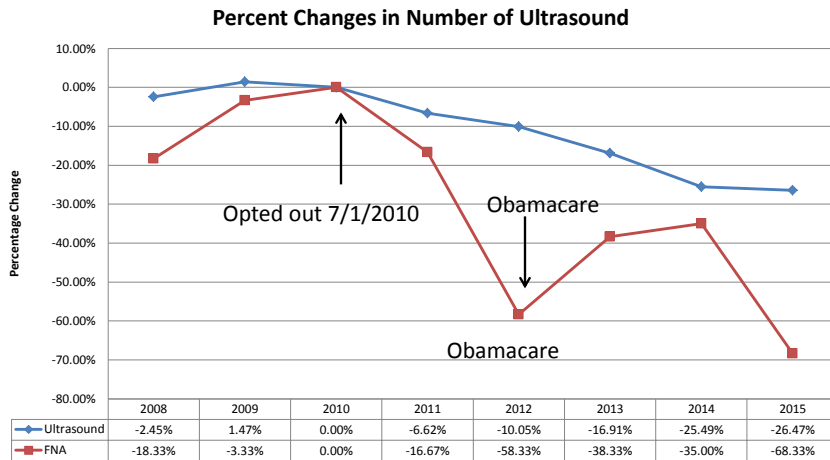
## Reimbursement numbers

- If you could do 1:1 switch Medicare for Insured you should be fine – all things being equal.
- However, people will say that they will pay you, but once faced with the facts; they will decrease their visits or change providers.
- When the commercially insured patients started being faced with high deductibles, they morphed into a different consumer pattern.
- Obamacare shifted insurance reimbursement algorithms.

## My Experience



## Biggest Impact on Procedures



## Recommendation

- DON'T DO IT
  - I plan to opt back in July 1<sup>st</sup> 2016
- Payments have changed
- No one is sure what is going to happen
- BE AGILE



## Forms and Instructions

- 8550 <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms8550.pdf>
- 855I <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms855I.PDF>
- <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf>
- Opt Out Affidavits and Contracts  
[http://www.aapsonline.org/index.php/site/article/sample\\_medicare\\_opt-out\\_forms/](http://www.aapsonline.org/index.php/site/article/sample_medicare_opt-out_forms/)
- <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1311.pdf>

## Medicare/ Opt Out URLs

- <https://med.noridianmedicare.com/web/jeb/enrollment/opt-out>
- <http://www.aafp.org/practice-management/regulatory/medicare.html>