

Important Information for California Healthcare Facilities

California Opts Out of the Federal Reimbursement Condition for CRNA Supervision

On July 17, 2009, California became the 15th state to opt out of the Centers for Medicare & Medicaid Services (CMS) federal Condition of Participation for physician supervision of certified registered nurse anesthetists (CRNAs). Twenty-five states and Guam, or almost one-half of the U.S., have opted out since 2001. The following are frequently asked questions concerning this decision.

1. **What is opt-out?** In a non-opt-out state, Medicare Conditions of Participation (CoP) require CRNAs to be supervised by a physician in order for a healthcare facility to receive Medicare Part A and Medi-Cal federal dollars. A state can opt out of this requirement if its law does not require physician supervision of nurse anesthetists. To opt out, the governor of a state must send a letter to CMS attesting the state's medical and nursing boards were consulted, and that opting out is consistent with state law and in the best interests of the people.
2. **Why do states opt out?** There are a number of reasons why states decide to opt out. One is to promote consistency between federal reimbursement requirements and state law. A second reason is to promote increased access to anesthesia services, particularly in rural and economically disadvantaged areas where there are an insufficient number of anesthesia providers. A third reason is to give hospitals and other facilities flexibility to provide more cost-efficient anesthesia services.
3. **How and when did California opt out?** California opted out on July 17, 2009, when CMS received a letter from Governor Schwarzenegger attesting he had consulted with the California Boards of Medicine and Registered Nursing, and determined that opting out was consistent with state law and in the best interests of the people.
4. **What is the impact on California healthcare facilities?** California hospitals, ambulatory surgical centers, and critical access hospitals now have increased flexibility. Healthcare facilities no longer have to require physician supervision of CRNAs in order to receive federal reimbursement dollars under the Medicare and Medi-Cal Programs.
5. **Are California healthcare facilities required to eliminate physician supervision of CRNAs?** No. The opt-out provides this flexibility. If an individual healthcare facility still wants to require physician supervision of CRNAs, it may do so.
6. **Does the opt-out change facility licensing requirements, or require facilities to alter the organization of their anesthesia departments?** No. There are no changes to facility licensing requirements. Healthcare facilities remain free to organize anesthesia departments and deliver anesthesia services in the manner that best serves their patients and communities.
7. **Does the opt-out affect reimbursement of individual providers?** No. The opt-out only applies to healthcare facility reimbursement. Individual providers including surgeons, anesthesiologists, and CRNAs continue to receive provider fees for service directly from Medicare Part B and Medi-Cal.
8. **Does the opt-out subject surgeons or facilities to a greater risk of vicarious liability?** No. Under California law, both CRNAs and anesthesiologists are independent practitioners, hold their own liability insurance, and are responsible for their own actions. Professional liability insurance premiums for CRNA's are 33% lower than they were 20 years ago, or 62% lower when adjusted for inflation. This fact reflects CRNAs' exceptional safety record. ***In determining liability, courts will look to the degree of direction and control exercised by a facility or a surgeon over the anesthesia provider regardless of CRNA or MD credential.***
9. **Does removing supervision affect the quality of anesthesia care for California patients?** No. The federal supervision Condition of Participation is a reimbursement criterion in non-opt-out states. California is one of seventeen states to opt out since 2001. To date, there has never been a single reported quality of care incident relating to any state opt-out. Recent peer reviewed studies continue to demonstrate that CRNA and anesthesiologist outcomes are equivalent. CRNAs already provide safe, high quality anesthesia care independently of anesthesiologists throughout California, and will continue to do so.
10. **Does the opt-out affect CRNAs' status as Licensed Independent Practitioners (LIPs)?** California law does not require physician supervision of CRNAs. The Superior and Appellate Courts of California have both unanimously upheld the opt-out and in June 2012, the California Supreme Court denied any further review. CRNAs may continue to be credentialed as LIPs by healthcare facilities under Joint Commission and other accreditation regulations as they have been for decades prior to the opt-out.

Links to Additional Information:

CMS Spotlight Conditions of Participation, **Anesthesia Supervision Exemption** (scroll to bottom of page): <http://www.cms.gov/Regulations-and-Guidance/Legislation/CFCsAndCoPs/Spotlight.html>

CMS, HHS § 482.52 CoP, Anesthesia Services, **Section (c) Standard: State exemption:** <http://edocket.access.gpo.gov/cfr/2006/octqtr/pdf/42cfr482.52.pdf>

CMS, **States Allowed to Set Standards for Anesthesia:** <http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=319>

Dulisse, B. and Cromwell, J. (2010). *Journal of Health Affairs*, 29(8), 1469-1475: <http://content.healthaffairs.org/content/29/8/1469.full.html>

Needleman, J. and Minnick, A. (2009). *Health Services Research*, 44 (2 Pt 1), 464-482: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2677049/pdf/hesr0044-0464.pdf>

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