

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-02 Medicare Benefit Policy</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 62</b>	<b>Date: DECEMBER 22, 2006</b>
	<b>Change Request 5426</b>

**Subject: Private Contracting- Definition of Physician/Practitioner**

**I. SUMMARY OF CHANGES:** Prior to enactment of the Medicare Benefits Improvement and Protection Act of 2000 (BIPA), section 1802(b)(5)(C) of the Social Security Act (the Act) did not include registered dietitians or nutrition professionals among the list of practitioners who may choose to opt out of Medicare. Section 105(d) of BIPA amended the definition of practitioner located at section 1842(b)(18)(c) of the Act to include registered dietitians or nutrition professionals. Because section 1802(b)(5)(C) of the Act references section 1842(b)(18)(c) of the Act in order to define the term practitioner for purposes of opting out of Medicare, current law permits registered dietitians or nutrition professionals to opt out of Medicare. Therefore, because the definition of practitioner located in the manual does not include registered dietitians or nutrition professionals, CMS is amending that section so that it is consistent with section 1802(b)(5)(C) of the Act.

**New/Revised Material**

**Effective Date: November 13, 2006**

**Implementation Date: April 2, 2007**

*Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

**II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)**

R=REVISED, N=NEW, D=DELETED

<b>R/N/D</b>	<b>CHAPTER/SECTION/SUBSECTION/TITLE</b>
<b>R</b>	15/40.4/Definition of Physician/Practitioner

**III. FUNDING:**

No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2007 operating budgets.

**IV. ATTACHMENTS:**

**Business Requirements**

**Manual Instruction**

*\*Unless otherwise specified, the effective date is the date of service.*



**III. PROVIDER EDUCATION**

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B  M A C	D M E  M A C	F I    	C A R R E R	D M R C	R E H I	Shared-System Maintainers			
							F I S S	M C S	V M S	C W F	
5426.2	A provider education article related to this instruction will be available at <a href="http://www.cms.hhs.gov/MLNMattersArticles/">http://www.cms.hhs.gov/MLNMattersArticles/</a> shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X			X						

**IV. SUPPORTING INFORMATION**

**A. For any recommendations and supporting information associated with listed requirements, use the box below: N/A**

*Use "Should" to denote a recommendation.*

X-Ref Requirement Number	Recommendations or other supporting information:

**B. For all other recommendations and supporting information, use the space below: N/A**

**V. CONTACTS**

**Pre-Implementation Contact(s):**  
Fred Grabau (410-786-0206)

**Post-Implementation Contact(s):** Fred Grabau (410-786-0206)

## **VI. FUNDING**

### **A. For TITLE XVIII Contractors, use only one of the following statements:**

No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2007 operating budgets.

### **B. For Medicare Administrative Contractors (MAC), use only one of the following statements:**

The contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the Statement of Work (SOW). The contractor is not obligated to incur costs in excess of the amounts specified in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

#### **40.4 - Definition of Physician/Practitioner**

*(Rev.62, Issued: 12-22-06, Effective: 11-13-06, Implementation: 04-02-07)*

For purposes of this provision, the term “physician” is limited to doctors of medicine; doctors of osteopathy; doctors of dental surgery or of dental medicine; doctors of podiatric medicine; and doctors of optometry who are legally authorized to practice dentistry, podiatry, optometry, medicine, or surgery by the State in which such function or action is performed; no other physicians may opt out. Also, for purposes of this provision, the term “practitioner” means any of the following to the extent that they are legally authorized to practice by the State and otherwise meet Medicare requirements:

- Physician assistant;
- Nurse practitioner;
- Clinical nurse specialist;
- Certified registered nurse anesthetist;
- Certified nurse midwife;
- Clinical psychologist;
- Clinical social worker;
- *Registered dietitian; or*
- *Nutrition Professional*

The opt out law does not define “physician” to include chiropractors; therefore, they may not opt out of Medicare and provide services under private contract. Physical therapists in independent practice and occupational therapists in independent practice cannot opt out because they are not within the opt out law’s definition of either a “physician” or “practitioner”.