



**MANA**  
Massachusetts Association  
of Nurse Anesthesiology

# What is Anesthesia “Opt-Out”?

**An economic advantage option for Massachusetts healthcare facilities  
to add value for safe and cost-efficient anesthesia practice models**

# Massachusetts is the 25<sup>th</sup> state to Opt-Out of the Medicare CRNA Supervision Rule

- On May 29, 2024, Massachusetts Governor Maura Healey signed and sent a letter to CMS notifying them of her decision to opt out of the Medicare Part A CRNA supervision requirement.
- The Opt-Out took effect on June 4, 2024



MAURA T. HEALEY  
GOVERNOR

OFFICE OF THE GOVERNOR  
COMMONWEALTH OF MASSACHUSETTS  
STATE HOUSE BOSTON, MA 02133  
(617) 725-4000

KIMBERLEY DRISCOLL  
LIEUTENANT GOVERNOR

May 29, 2024

Administrator Chiquita Brooks-LaSure  
Centers for Medicare and Medicaid Services  
314G Hubert H. Humphrey Building  
200 Independence Ave., S.W.  
Washington, D.C. 20201

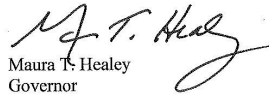
Dear Administrator Brooks-LaSure,

I hereby notify you that the Commonwealth of Massachusetts requests exemption from physician supervision of Certified Registered Nurse Anesthetists (CRNAs) under 42 CFR 482.52 (hospitals), 42 CFR 485.639 (critical access hospitals), 42 CFR 485.524 (rural emergency hospitals), and 42 CFR 416.42 (ambulatory surgical centers).

I attest that I have consulted with the Massachusetts Board of Registration in Nursing and Board of Registration in Medicine about issues related to access to and the quality of anesthesia services in Massachusetts. I have concluded that it is in the best interests of Massachusetts citizens to opt-out of the current physician supervision requirement, as provided in the federal regulations, and that the opt-out is consistent with Massachusetts law.

This letter constitutes my formal notification of the Commonwealth of Massachusetts opt-out.

Sincerely,

  
Maura T. Healey  
Governor

Governors of 25 states and the territory of Guam have opted-out without negative outcomes since 2001

1. Iowa 12/2001	6. New Mexico 11/2002	11. Oregon 12/2003	16. Colorado 6/2010, 10/2023	21. Michigan 3/2022
2. Nebraska 2/2002	7. Kansas 3/2003	12. Montana 6/2005	17. Kentucky 4/2012	22. Arkansas 5/2022
3. Idaho 3/2002	8. North Dakota 10/2003	13. South Dakota 3/2005	18. Arizona 3/2020	23. Wyoming 5/2023
4. Minnesota 4/2002	9. Washington 10/2003	14. Wisconsin 6/2005	19. Oklahoma 8/2020	24. Delaware 6/2023
5. New Hampshire 6/2002	10. Alaska 12/2003	15. California 7/2009	20. Utah 2/2022	25. Massachusetts 6/2024

The US territory of Guam opted out 6/2016.

The state of Colorado expanded a partial opt-out on October 19, 2023, after realizing the benefits of a partial opt-out established in 2010.

# The problem: Barriers to CRNA practice are costing the health care system in Massachusetts millions



A poorly understood and misrepresented Centers for Medicare and Medicaid Services (CMS) reimbursement rule leads to decreased access and increased costs for anesthesia services provided by Certified Registered Nurse Anesthetists and Physician Anesthesiologists.



State Governors have an opportunity to remove this barrier by **“Opting-Out”** of this unnecessary restriction.

# First review the Centers for Medicare and Medicaid Services (CMS) parts

## Medicare Part A

### Hospital/ASC reimbursement

- Defines Conditions of Participation (CoPs) rules for reimbursement for Hospitals and Ambulatory Care Centers (ASCs)
  - Requires CRNAs to work under the supervision of the operating practitioner or of an anesthesiologist
- Helps cover inpatient care in hospitals, skilled nursing facility care, hospice care, and home health care

**\*\*\*Governor Healey Opted-Out of the Medicare Part A, Condition of Participation requiring supervision of CRNAs on June 4, 2024\*\*\***

## Medicare Part C

- Offers an alternate way to receive Medicare benefits

## Medicare Part B

### Provider reimbursement

- Services provided by physicians and other health care providers (Anesthesia billing for Medical Direction, Medical Supervision, Non-Medical Direction, etc.)
- Outpatient care
- Home health care
- Durable medical equipment (like wheelchairs, walkers, hospital beds, and other equipment)
- Many preventive services (like screenings, shots or vaccines, and yearly “Wellness” visits)

## Medicare Part D

- Helps to cover the cost of prescription drugs

# Where are the CMS regulations found?

The **Federal Register** is a daily publication of the US Federal Government that issues proposed and final administrative regulations of federal agencies. All the executive departments and agencies contribute to the register.

The **Code of Federal Regulations (CFR)** contains all general and permanent rules and regulations that have been enacted into administrative law. Regulations are added to the CFR only after they are published in the Federal Register.

- **The Code of Federal Regulation (CFR) is divided into 50 titles**
  - **Title 42** – Public Health
  - **Title 42**, Public Health, is divided into 5 chapters (I- V)
- **Chapter IV. CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES.**
  - Chapter IV is divided into subchapters A through H.
    - **SUBCHAPTER G — STANDARDS AND CERTIFICATION: Parts 482 - 498**
      - **Part 482 - CONDITIONS OF PARTICIPATION FOR HOSPITALS: (104 Subsections)**
      - **Subsection 52 (§482.52) Condition of participation: Anesthesia services.**
      - **§482.52(c) Standard: State Exemption (describes how a state governor can opt out)**

<https://www.ecfr.gov/>

<https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R59SOMA.pdf>

1/21/2025

# CMS Conditions of Participation & Opt Out

# Medicare Part A Conditions of Participation for Anesthesia services in a hospital state:

*“A certified registered nurse anesthetist (CRNA), ....is under the supervision of the Operating practitioner or of an anesthesiologist who is immediately available if needed”*

<https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-482/subpart-D/section-482.52>

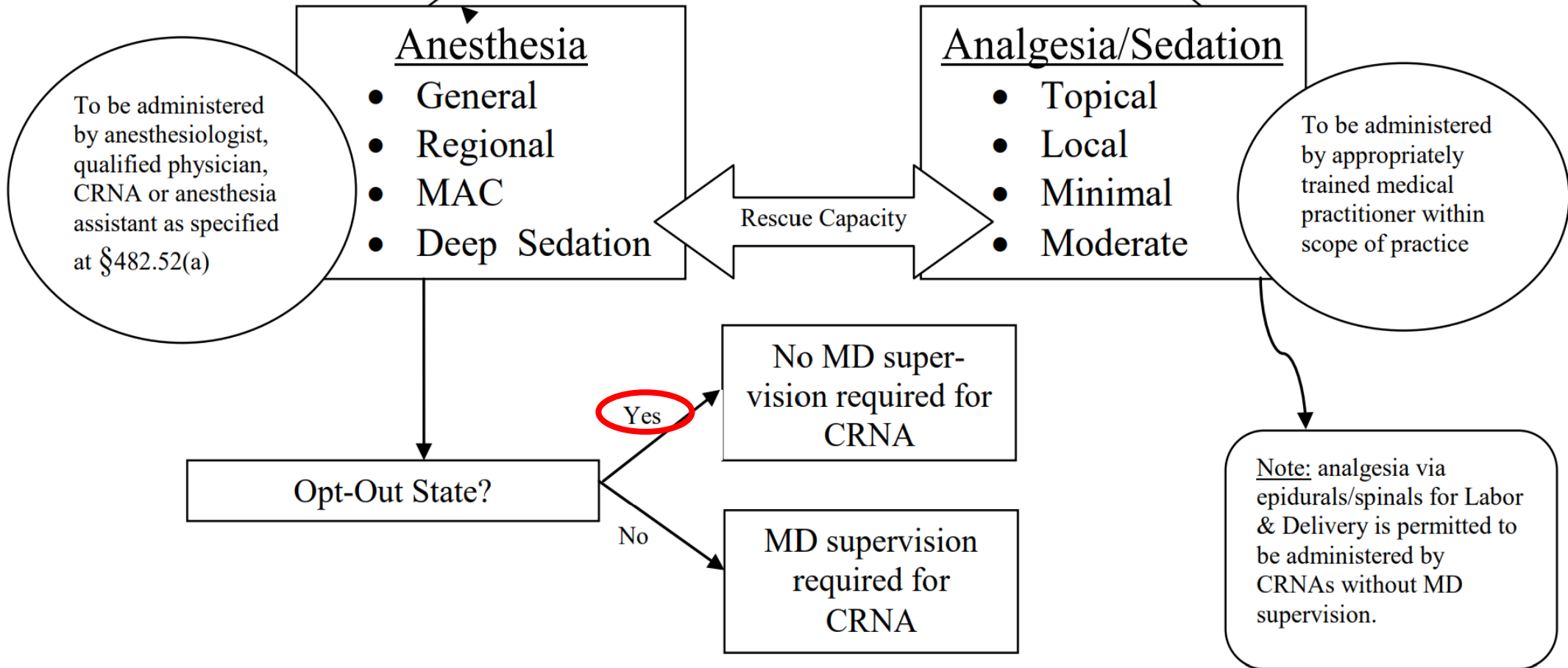
- “Supervision” is not defined other than to state “immediately available if needed”
- The “operating practitioner” (i.e., surgeon, practitioner performing surgery or procedure) may serve as “supervisor” to fulfill this requirement.
- **Reminder:** No Massachusetts laws or regulations require physician supervision of CRNAs in any way. CRNAs practice independently in many settings in the Commonwealth every day. **The Opt-Out aligns CMS rules with Massachusetts laws and regulations.**
- This arbitrary provision, which is intended solely to reimburse facilities for anesthesia services, has prevented anesthesia departments from deploying anesthesia personnel in the most cost-efficient manner and created confusion about liability.



# Massachusetts laws & regulations vs. Medicare Condition of Participation Rules

- Massachusetts laws and regulations do not require supervision of CRNAs
- Medicare rules apply only in facilities that participate in Medicare
  - So even before the Opt-Out, CRNAs did not require supervision when working in facilities that do not participate in Medicare (private/outpatient offices and/or facilities)
- Now, since MA is an Opt-Out state, CRNAs do not require supervision by either Medicare Condition of Participation Rule, consistent with by state law and regulation
- Regardless of state law or opt-out status, facilities maintain the right to adopt the anesthesia practice model of their choice, even if it is inefficient and expensive

# Hospital Anesthesia Services



# So how does a state opt-out?

Remember §482.52(c) **Standard: State Exemption**? Here it is:

- (1) A hospital may be exempted from the requirement for physician supervision of CRNAs as described in [paragraph \(a\)\(4\)](#) of this section, if the **State** in which the hospital is located **submits a letter to CMS signed by the Governor**, following **consultation** with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has **consulted** with State Boards of Medicine and Nursing **about issues related to access to and the quality of anesthesia services in the State** and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement, and that **the opt-out is consistent with State law**.
- (2) The request for exemption and recognition of State laws, and the withdrawal of the request may be submitted at any time and are effective upon submission.

<https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-482/subpart-D/section-482.52>

# A word about the governor “consult” with Boards of Medicine and Boards of Nursing

- The CMS requirement that the Governor must consult with the Boards of Medicine and Nursing **DOES NOT** require a specific process and **DOES NOT** require that either Board must agree to an Opt-Out; just that the governor must be able to document that both boards were “consulted”

*“...we do not agree that CMS should set standards, guidelines, or criteria for a consultation process to be used by any State. We are giving the States flexibility to develop a process that works best for its particular situation and unique needs.”*

[Federal Register / Vol. 66, No. 219 / Tuesday, November 13, 2001 / Rules and Regulations page 56764](#)

# A few notes about eligibility for a state to Opt-Out

## §482.52(c) Standard: State Exemption

(1) A hospital may be exempted from the requirement for physician supervision of CRNAs as described in [paragraph \(a\)\(4\)](#) of this section if the **State** in which the hospital is located **submits a letter to CMS signed by the Governor** following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has **consulted** *(does not require acceptance or agreement by either board)* with State Boards of Medicine and Nursing **about issues related to access to and the quality of anesthesia services in the State** *(In Massachusetts the "issue" was the economical disadvantage of facilities having to comply with the federal reimbursement requirement to supervise CRNAs)* and has concluded that it is in the best interests of the State's citizens to opt-out of the current physician supervision requirement and that **the opt-out is consistent with State law.** *(The CMS rule was inconsistent with Massachusetts law. There are no Massachusetts laws or regulations that require physician supervision of CRNA practice)*

(2) The **request for exemption and recognition of State laws**, and the withdrawal of the request may be submitted at any time and are **effective upon submission.** *(there are no legislative requirements or state agency's approval needed for a governor to establish an opt-out – the letter is final and effective upon the date of submission)*

# Opt-Out Myth Busters

**MYTH:** Opt-out is only for states with rural and/or critical access hospitals

**Truth:** The CMS opt-out rules do not mention what the opt-out is for, only that it is in the best interest of the citizens of that state. In Massachusetts, opt-out provides facilities with an economic advantage to utilize safe, cost-effective and value-based anesthesia services instead of expensive supervision models that prevent physician anesthesiologists from administering anesthesia themselves.

**MYTH:** Opt-out requires legislature approval

**Truth:** While legislative support is helpful, it is not required. The sole decision-maker is the Governor of the state.

**MYTH:** Opt-out removes physicians from patient care

**Truth:** Quite the contrary – physicians are provided the opportunity to administer anesthesia personally while collaborating with CRNA colleagues

**MYTH:** Opt-out makes surgeons liable for CRNA actions

**Truth:** Removal of the CMS CRNA supervision rule clarifies what is *already true* - that surgeons are **NOT** liable for CRNA actions [244 CMR 4.06 and 4.09](#)

**MYTH:** Opt-out goes against Massachusetts laws and regulations for CRNA practice

**Truth:** There are no laws or regulations that require supervision of CRNA practice – Prescriptive practice requires supervision for 2 years, but that supervision can be provided by another CRNA – NO PHYSICIAN supervision is required.

[244 CMR.4.07](#)

How does “Opt-Out”  
provide opportunities  
for Massachusetts  
facilities to be  
reimbursed AND  
provide safe & cost-  
efficient Anesthesia  
services?

- It gives Massachusetts facilities an economic advantage by allowing them to **update outdated anesthesia practice models** that do not add value.
- **Provides an opportunity to alleviate anesthesia staffing shortages by utilizing ALL qualified anesthesia providers to administer anesthesia** care to the full extent of education, clinical judgment, expertise, and skill level instead of outdated, rigid supervision care models.
- **Opting out frees physician anesthesiologists from unnecessary supervision duties, allowing them to administer anesthesia personally, and increasing patient access to more anesthesia providers.**
- **DOES NOT prevent CRNAs and MD anesthesiologists from working and collaborating with one another. MD anesthesiologists can personally administer anesthesia alongside CRNAs and collaborate when necessary.**
- **\*\*\*\*REMINDER: This provision was waived for all states by Presidential Executive Order during the COVID public health emergency from March 2020 to May 11, 2023**

How does “Opt-Out”  
provide opportunities  
for Massachusetts  
facilities to be  
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services?

- **Clarify for surgeons and facility administrators that they are NOT liable for CRNA actions**
  - There is confusion among surgeons and facility administrators regarding the meaning of the federal supervision reimbursement requirement and what the supervision language requires.
  - Massachusetts statute and Board of Registration in Nursing regulations are exceedingly clear that CRNAs are responsible for their own practice and require that CRNAs carry liability insurance with a specified dollar amount. Yet surgeons continue to perceive that they are liable for CRNA actions. Massachusetts relies heavily on CRNA services and should provide the opportunity for surgeons to understand that they are not liable for CRNA actions. [244 CMR 4.06 and 4.09](#)
- **Several private/commercial insurance plans will only reimburse for CRNAs services in opt-out states**
  - This allows facilities to receive reimbursement from all insurance payers in the Commonwealth
  - Medicare and MassHealth already reimburse for CRNA services.

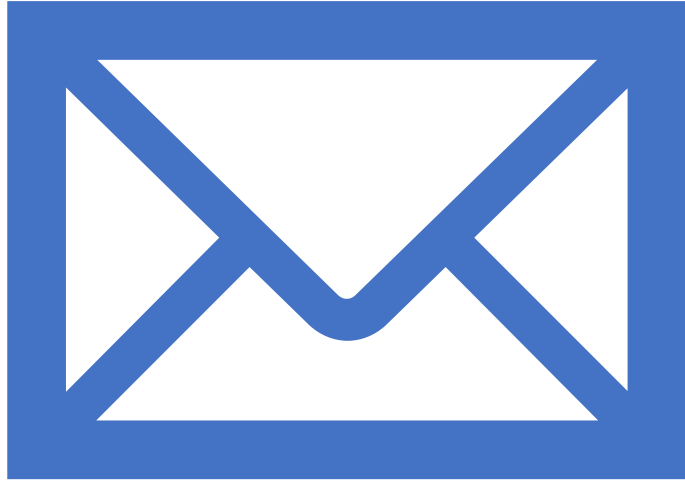


# Facility Cost Control and Accountability

Opt-out allows state governments to offer facilities a flexibility tool to update their anesthesia practice models and rein in out-of-control costs and spending.

Facilities are not required to take advantage of the opt-out option; they are free to utilize the anesthesia practice model of their choice.

Facilities that choose **NOT** to utilize this tool could potentially be held accountable by state government agencies for not using every legal opportunity provided to them to decrease costs and increase access to safe and efficient anesthesia care.



QUESTIONS??????

Contact MANA

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