Fact Sheet Concerning State Opt-Outs And November 13, 2001 CMS Rule

States That Have Opted Out From the Federal Supervision Requirement Since Publication of the November 13, 2001 CMS Rule Permitting Such Opt-Outs (**27** states and Guam as of 2026).

- Iowa opted out of the federal supervision requirement in December 2001.
- Nebraska opted out in February 2002.
- Idaho opted out in March 2002.
- Minnesota opted out in April 2002.
- New Hampshire opted out in June 2002.
- New Mexico opted out in November 2002.
- Kansas opted out in March 2003.
- North Dakota opted out in October 2003.
- Washington opted out in October 2003.
- Alaska opted out in October 2003.
- Oregon opted out in December 2003.
- Montana opted out in January 2004 (Gov. Judy Martz opted-out; Gov. Brian Schweitzer reversed the opt-out in May 2005, without citing any evidence to justify the decision. Subsequently, after the governor and his staff became more familiar with the reasons justifying the January 2004 opt-out, Gov. Schweitzer restored the opt-out in June 2005. Montana's opt-out, therefore, is currently in effect.)
- South Dakota opted out in March 2005.
- Wisconsin opted out in June 2005.
- California opted out in July 2009.
- Colorado opted out in September 2010 (for Critical Access Hospitals (CAHs) and specified rural hospitals). Colorado obtained a full opt-out in October 2023.
- Kentucky opted out in April 2012.
- Guam opted out in June 2016.
- Arizona opted out in March 2020.

- Oklahoma opted out in August 2020.
- Utah opted out in February 2022 (for Critical Access Hospitals (CAHs) and specified rural hospitals).
- Michigan opted out in May 2022.
- Arkansas opted out in May 2022.
- Wyoming opted out in May 2023 (for Critical Access Hospitals (CAHs) and hospitals with 25 licensed beds or less).
- Delaware opted out in June 2023.
- Massachusetts opted out in June 2024.
- Vermont opted out in July 2026
- Ohio opted out in July 2026

Publication Date

- The Centers for Medicare & Medicaid Services (CMS) published in the November 13, 2001 *Federal Register* a final rule concerning the federal Medicare and Medicaid physician supervision requirement for Certified Registered Nurse Anesthetists (CRNAs). The November 13 rule amended the requirement in the

  Anesthesia Services Condition of Participation for hospitals, the Surgical Services Condition of Coverage for Ambulatory Surgical Centers, and the Surgical Services Condition of Participation for Critical Access Hospitals.

Effective Date of Rule

- The November 13 rule was effective upon publication in the November 13, 2001 *Federal Register*.

Requirements for "Opt-Out" Of Federal Supervision Requirement

- The federal requirement has been that CRNAs must be supervised by a physician. The November 13, 2001 rule allows states to "opt-out" or be "exempted" (the terms are used synonymously in the November 13 rule) from the federal supervision requirement.
- For a state to "opt-out" of the federal supervision requirement, the state's governor must send a letter of attestation to CMS. The letter must attest that:

  a. The state's governor has consulted with the state's boards of medicine and nursing about issues related to access to and the quality of anesthesia services in the state; and
  b. That it is in the best interests of the state's citizens to opt-out of the current federal physician supervision requirement; and
  c. That the opt-out is consistent with state law.

When A Requested Opt-Out Goes Into Effect

- The November 13 rule says that the request for an opt-out will be effective upon submission.

Meaning of "Consultation"

- CMS says in its comments that accompanied its November 13, 2001 rule that CMS does not intend to define "consultation" and wants to give governors maximum flexibility in implementing the opt-out process.

- CMS will not require the boards of medicine or nursing to provide written comments concerning a particular governor's petition for an opt-out. CMS states in its November 13, 2001 rule comments that it was purposefully "not prescriptive in detailing processes or steps that should be undertaken" concerning how a governor seeks consultation with the boards of medicine and nursing. CMS states that it does 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."

- The November 13 rule appears to allow virtually whatever "consultation" a governor deems appropriate.

Requirement That an Opt-Out Be "Consistent" With State Law

- Regarding the November 13 rule requirement that an opt-out must be "consistent" with state law, CMS states in the November 13 rule comments that CMS wants to leave it up to governors to determine what constitutes "consistency" with state law. CMS rejected the idea of mandating a particular process or mechanisms for determining consistency. CMS refused, for example, to require that a state's attorney general would have to issue a written opinion supporting any opt-out decision. CMS further states in its November 13 rule comments that a governor's letter to CMS seeking an opt-out "will be accepted on face value, with no independent CMS scrutiny or analysis of the governors' [sic] underlying rationale."

- CMS says that individual governors are "best suited" to make determinations concerning whether an opt-out is consistent with state law.

Requirement That Opt-Out Be in the Best Interests of the State's Citizens

- In his or her letter to CMS requesting an opt-out, a state's governor has to attest that the opt-out is in the "best interests of the State's citizens." In its November 13 rule comments, CMS says that it will not create criteria for determining whether opting-out is in the "best interests of the State's citizens." CMS says that it is "not categorizing specific situations or instances by which the governor has the ability to opt out."

No Requirement of a Particular Administrative or Public Notification Process

- CMS says in its November 13, 2001 rule comments that it will not require states to follow particular administrative or public notification processes in seeking an opt-out. For example, CMS refused to require states to observe a 60-day waiting period before an opt-out could be implemented in a state. CMS also refused to require states to publish a written "notice" of an opt-out request.

Withdrawal of A Previously Granted Opt-Out

- Under the November 13 rule, a governor could at any time request that a previously-granted opt-out be withdrawn. A request for withdrawal would be effective upon submission to CMS.

States Eligible for An Opt-Out

- Many states do not require CRNAs to be physician supervised. Forty-five states do not have a physician "supervision" requirement for CRNAs in nursing or medical laws or regulations. If clinical "direction" requirements are considered in addition to "supervision," 38 states do not have a physician supervision or direction requirement for CRNAs in nursing or medical laws or regulations. Taking into account state hospital licensing laws or regulations as well, 40 states still do not require physician supervision. Taking into account state hospital licensing laws or regulations, 33 states still do not require physician supervision or direction.

- The CMS November 13, 2001 rule comments cite a 1998 *Journal of the American Medical Association* (*JAMA*) article, and call it an "objective interpretation" of the supervision issue. The *JAMA* article, while not naming specific states, said that 18 states permit CRNAs to practice "independently." [Cooper, Richard A., Henderson, Tim, Dietrich, Craig L., "Roles of Nonphysician Clinicians as Autonomous Providers of Patient Care." *JAMA*. 1998; 280:795-802, at page 797 in Table 2.] The authors reasserted (in a letter published at page 511 of the February 10, 1999 issue of *JAMA*) that their findings are correct. The authors stated in their letter that:

  > [W]e want to reiterate that our data collection included not only NPC [nonphysician clinician] organizations but also the Health Policy Tracking Service at the National Conference of State
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  > Legislatures and the Internet Web sites of individual states. From these sources we concluded that CRNAs have the authority to practice independent of physician supervision in 18 states.
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  > While New Hampshire is alone in not placing some oversight limitation on CRNAs, the limitations imposed in 17 other states do not preclude CRNAs from practicing independently. Some of these limitations constrain their practices to specific guidelines and privileges; some mandate that CRNAs maintain collaborative and collegial relationships with a physician, dentist, or podiatrist; and some mandate that a physician be the director of the hospital anesthesia service. None of these stipulations creates the requirement for physician supervision of CRNAs. [JAMA. 1999; 281: page 511]

Study of Anesthesia Outcomes

- In its November 13, 2001 rule comments, CMS says that the Agency for Healthcare Research and Quality (AHRQ) will "conduct a study of anesthesia outcomes in those States that choose to opt-out of the CRNA supervision requirement compared to those States that have not." CMS will not pursue a voluntary registry that assesses outcomes of care. To date, AHRQ has not initiated the study, to our knowledge.

Facility Flexibility

- The November 13 rule comments say that regardless of whether a state "opts-out" of the federal supervision requirement, individual facilities may still require CRNAs to be physician supervised.

Scope of Practice

- The November 13 rule comments say that an opt-out would not permit a CRNA to practice outside the scope of authority granted by state law. Nor would an opt-out prohibit, limit, or restrict in any way the practice of medicine by a physician or an anesthesiologist.

Deference to the States

- In its November 13 rule comments, CMS says that the rule recognizes states' “traditional domain in establishing professional licensure and scope-of-practice laws." CMS also says that it "is not unusual to find differences in State law. States make decisions based upon their unique needs and specifications."

For More Information

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