

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



Medicare Coverage of Items and Services Furnished to Beneficiaries in Custody Under a Penal Authority



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When “you” is used in this publication, we are referring to Medicare providers and suppliers.

Medicare will generally not pay for medical items and services furnished to a beneficiary who was incarcerated or in custody under a penal statute or rule at the time the items and services are furnished. This publication provides the following information about this Medicare policy:

- Policy background, including the definition of individuals who are in custody (or incarcerated) under a penal statute or rule;
- Determining whether a beneficiary is in custody under a penal statute or rule;
- Medicare claims processing for items and services for incarcerated beneficiaries;
- Exception to Medicare policy;
- Informational Unsolicited Response (IUR); and
- Resources.

POLICY BACKGROUND

Medicare will generally not pay for medical items and services furnished to a beneficiary who was incarcerated or in custody at the time the items and services are furnished. In most instances, if a beneficiary is incarcerated on the date of service (DOS) items and services are furnished, Medicare will not cover such items and services under the following “Code of Federal Regulations” (CFR) citations:

- 42 CFR 411.4 – Medicare does not pay for services furnished to a beneficiary who has no legal obligation to pay for the service and no other person or organization has a legal obligation to provide or pay for the service;
- 42 CFR 411.6 – Medicare does not pay for services furnished by a Federal provider of services or other Federal agency; and
- 42 CFR 411.8 – Medicare does not pay for services that are paid for directly or indirectly by a governmental entity.

Definition of Individuals Who Are in Custody (or Incarcerated) Under a Penal Statute or Rule

Under the Medicare Program, as defined in the current regulation at 42 CFR 411.4(b), beneficiaries who are in custody (or incarcerated) include, but are not limited to, those individuals who are:

- Under arrest;
- Incarcerated;
- Imprisoned;
- Escaped from confinement;
- Under supervised release;
- On medical furlough;
- Required to reside in mental health facilities;
- Required to reside in halfway houses;
- Required to live under home detention; or
- Confined completely or partially in any way under a penal statute or rule.

DETERMINING WHETHER A BENEFICIARY IS IN CUSTODY UNDER A PENAL STATUTE OR RULE

You can verify a beneficiary's eligibility status through the following automated methods:

- A 270/271 eligibility query in the Health Insurance Portability and Accountability Act (HIPAA) Eligibility Transaction System; and
- Medicare Administrative Contractor (MAC) interactive voice response units and provider internet portals.

If the beneficiary is in an inactive status, the automated response to your inquiry provides the dates for the period of inactivity, but it does not provide the reason for such inactivity. The beneficiary may be incarcerated, and the inactive status response may serve as a reason to ask him or her about such status.

You can also verify the beneficiary's status through your MAC contact center to determine whether Social Security Administration (SSA) records indicate that the beneficiary was incarcerated when items or services were furnished. To find MAC contact information, visit <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Provider-Compliance-Interactive-Map> on the Centers for Medicare & Medicaid Services (CMS) website.

MEDICARE CLAIMS PROCESSING

If you submit a claim for items or services furnished to a Medicare beneficiary who is in custody (or incarcerated) on the DOS, the claim will be denied. You or your billing agent will receive a Remittance Advice (RA) that explains the denial. Claim Adjustment Reason Codes (CARC) and Remittance Advice Remark Codes (RARC) are used in a RA to further explain an adjustment or to relay informational messages that cannot be expressed with a claim adjustment reason code.

Beginning on April 1, 2014, when denying claims for services furnished to Medicare beneficiaries under penal custody, the RA will include the following new CARC and RARC (in addition to RA language already in use):

- CARC 258 – Claim/service is not covered when patient is in custody/incarcerated. Applicable federal, state or local authority may cover this claim/service; and
- RARC N103 – Records indicate this patient was a prisoner or in custody of a Federal, State, or local authority when the service was rendered. This payer does not cover items and services furnished to an individual while he or she is in custody under a penal statute or rule, unless under State or local law, the individual is personally liable for the cost of his or her health care while in custody and the State or local government pursues the collection of such debt in the same way and with the same vigor as the collection of its other debts.

EXCEPTION TO MEDICARE POLICY

Items and services furnished for incarcerated beneficiaries are covered, as specified under 42 CFR 411.4(b), **only** when the following criteria are met:

- State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody; **and**
- The State or local government entity enforces the requirement to pay by billing and seeking collection from all such individuals or groups of individuals in custody with the same legal status (for example, not guilty by reason of insanity), whether insured or uninsured. It must also pursue collection of the amounts owed in the same manner and with the same vigor that it pursues the collection of other debts. This includes the collection of any Medicare deductible and coinsurance amounts and the costs of items and services that are not covered by Medicare.

In addition, the State or local entity must be able to provide:

- Evidence that routine collection efforts include the filing of lawsuits to obtain liens against incarcerated individuals' assets outside the prison and income derived from non-prison sources; and
- The rules and procedures it employs to bill and collect amounts paid for incarcerated individuals' medical expenses (such as regulations, manual instructions, or directives).

Submitting Claims When the Exception Is Met

If you furnished items and services that meet the exception criteria outlined above, you should submit claims using the appropriate Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) code and the QJ modifier, "Services/Items provided to a prisoner or patient in State or local custody, however the State or local government, as applicable, meets the requirements in 42 CFR 411.4 (b)."

For inpatient claims in which the incarceration period spans only a portion of the stay, hospitals should identify the incarceration period by billing as non-covered all days, services, and charges that overlap the incarceration period.

MACs randomly select a representative sample of cases (both Medicare and non-Medicare eligible) to determine whether State or local entities appropriately bill and collect amounts paid for incarcerated beneficiaries' medical expenses.

INFORMATIONAL UNSOLICITED RESPONSE (IUR)

The Office of Inspector General (OIG) identified a vulnerability where, in some instances, there may be a period of time between when the beneficiary is incarcerated and when the SSA learns of this status and updates its records (and Medicare files are subsequently updated). During this time, Medicare Fee-For-Service claims for items and services may be erroneously paid because the beneficiary's entitlement data in the Enrollment Database is not up to date when claims are adjudicated.

The IUR process, which identifies previously paid claims that contain dates of service that partially or fully overlap when a beneficiary was incarcerated, was implemented in 2013 to mitigate the OIG-identified vulnerability. The IUR process is initiated when:

- There is an automatic update to the beneficiary's record indicating a change to his or her incarcerated start date or end date; or
- There is a manual update to the beneficiary's record indicating a change to his or her incarcerated start date or end date.


Upon receiving an IUR, MACs initiate overpayment recovery procedures to recoup any Part A or Part B payments.

Appeals

The regulatory provisions at 42 CFR 405, subpart I, apply to the claim denials resulting from the beneficiary custody status and MAC initiated overpayment recoveries based on an IUR.

RESOURCES

The chart below provides resource information for coverage of items and services furnished to beneficiaries in custody under a penal authority.

For More Information About...	Resource
Items and Services Furnished to Incarcerated Beneficiaries	<p>Chapter 16 of the “Medicare Benefit Policy Manual” (Publication 100-02) located at http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c16.pdf on the CMS website</p> <p>Chapter 1 of the “Medicare Claims Processing Manual” (Publication 100-04) located at http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c01.pdf on the CMS website</p> <p>MLN Matters® article, MM8488, “Revised Beneficiary Liability and Messages Associated with Denials for Claims for Services Furnished to Incarcerated Beneficiaries” located at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/MM8488.pdf on the CMS website</p> <p>MLN Matters® article MM6880, “Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority and Examples of Application of Government Entity Exclusion,” located at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM6880.pdf on the CMS website</p> <p>“Code of Federal Regulations” located at http://www.ecfr.gov on the United States Government Printing Office website</p>
All Available Medicare Learning Network® (MLN) Products	<p>“Medicare Learning Network® Catalog of Products” located at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/MLNCatalog.pdf on the CMS website or scan the Quick Response (QR) code on the right with your mobile device</p> 
Provider-Specific Medicare Information	<p>MLN publication titled “MLN Guided Pathways to Medicare Resources Provider Specific Curriculum for Health Care Professionals, Suppliers, and Providers” booklet located at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNEdWebGuide/Downloads/Guided_Pathways_Provider_Specific_Booklet.pdf on the CMS website</p>
Medicare Information for Beneficiaries	<p>http://www.medicare.gov on the CMS website</p>



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