

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-04 Medicare Claims Processing</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 1944</b>	<b>Date: April 9, 2010</b>
	<b>Change Request 6880</b>

**SUBJECT: 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. This CR rescinds and fully replaces CR 6544.**

**I. SUMMARY OF CHANGES:** This CR is updating billing instructions and claims processing requirements to fully implement the policy outlined in CR 6544, Transmittal 1812, issued September 4, 2009. Updates are made only on the Pub. 100-04 Transmittal. No changes were made on the Pub. 100-02 Transmittal (it is the same version as previously communicated in CR 6544, Transmittal 110, issued on September 4, 2009).

**EFFECTIVE DATE: JULY 9, 2010**

**IMPLEMENTATION DATE: JULY 9, 2010**

*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>	1/10.4/Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority

**III. FUNDING:**

**For Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs) and/or Carriers:**

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

**For Medicare Administrative Contractors (MACs):**

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted 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.

#### **IV. ATTACHMENTS:**

**Business Requirements**

**Manual Instruction**

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

# Attachment - Business Requirements

Pub. 100-04	Transmittal: 1944	Date: April 9, 2010	Change Request: 6880
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**SUBJECT: 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. This CR rescinds and fully replaces CR 6544.**

**Effective Date: July 9, 2010**

**Implementation Date: July 9, 2010**

## I. GENERAL INFORMATION

**A. Background:** Under Section 1862(a)(2) of the Social Security Act (“the Act”), the Medicare program does not pay for services if the beneficiary has no legal obligation to pay for the services and no other person or organization has a legal obligation to provide or pay for that service. Also, under Section 1862(a)(3) of the Act, if services are paid for directly or indirectly by a governmental entity, Medicare does not pay for the services.

**B. Policy:** In the FY 2008 IPSS rule (72 FR 47409 and 47410), CMS clarified its regulations at 42 CFR §411.4(b) by stating that for purposes of Medicare payment, individuals who are in "custody" include, but are not limited to, 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.

## II. BUSINESS REQUIREMENTS TABLE

*“Shall” denotes a mandatory requirement.*

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 I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
6880.1	Medicare contractors/carriers shall not make payment for individuals or groups of individuals who are in “custody” under a penal statute or rule unless the exceptions outlined at Pub. 100-04, chapter 1, section 10.4 are met.	X	X	X	X						
6880.2	Providers and suppliers that render services or items to a prisoner or patient in a jurisdiction that meets the conditions of 42 CFR 411.4(b) shall indicate this fact with the use of Healthcare Common Procedure Coding System (HCPCS) modifier QJ (for carrier or A/B MAC or DME MAC processed claims).	X	X	X	X						
6880.3	Hospitals that render outpatient services/items to a prisoner or patient in a jurisdiction that meets the conditions of 42 CFR 411.4(b) shall append a HCPCS modifier QJ on all lines with a line item date of service during the incarceration period.	X		X							
6880.4	Hospitals that render inpatient services/items to a prisoner	X		X							

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 I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	or patient in a jurisdiction that meets the conditions of 42 CFR 411.4(b) shall bill as non-covered all days, services and charges that overlap the incarceration period. Non-coverage billing guidelines can be found in Pub. 100-04, chapter 1, section 60.										
6880.5	Upon receiving a CWF edit that prevents claims from overlapping an incarceration period (i.e., U538H), contractors shall review the claim to ensure that all days, services and charges are billed as non-covered during an incarceration period.	X		X							
6880.5.1	Contractors shall allow the claim to reject if it has any covered days, services and/or charges during an incarceration period.	X		X							
6880.5.2	Contractors shall append payer-only condition code 63 (Incarcerated beneficiary) to the claim if there are no covered days, services and/or charges during an incarceration period.	X		X							

### III. PROVIDER EDUCATION TABLE

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 I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
6880.6	<p>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.</p> <p>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.</p>	X	X	X	X						

#### IV. SUPPORTING INFORMATION

**Section A: Recommendations and supporting information associated with listed requirements: N/A**  
*"Should" denotes a recommendation.*

X-Ref Requirement Number	Recommendations or other supporting information:
N/A	

**Section B: All other recommendations and supporting information: N/A**

#### V. CONTACTS

**Pre-Implementation Contact(s):**

Policy: Fred Grabau 410-786-0206

Claims: Joe Bryson 410-786-2986

**Post-Implementation Contact(s):**

Policy: Fred Grabau 410-786-0206

Claims: Regional Office

#### VI. FUNDING

**Section A: For *Fiscal Intermediaries (FIs)*, *Regional Home Health Intermediaries (RHHIs)*, and/or *Carriers*:**

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

**Section B: For *Medicare Administrative Contractors (MACs)*:**

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted 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.

## **10.4 – Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority**

*(Rev. 1944, Issued: 04-09-10, Effective/Implementation Date: 07-09-10)*

Under Section 1862(a)(2) of the Social Security Act (“the Act”), the Medicare program does not pay for services if the beneficiary has no legal obligation to pay for the services and no other person or organization has a legal obligation to provide or pay for that service. Also, under Section 1862(a)(3) of the Act, if services are paid for directly or indirectly by a governmental entity, Medicare does not pay for the services. These provisions are implemented by regulations 42 C.F.R. §411.4, 411.6, and 411.8, respectively.

The regulation at 42 CFR §411.4(b) states:

“Individuals who are in custody include, but are not limited to, 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.”

Moreover, 72 FR 47405 states further that the—

“...definition of “custody” is in accordance with how custody is defined by Federal courts for purposes of the habeas corpus protections of the Constitution. For example, the term “custody” is not limited solely to physical confinement. (*Sanders v. Freeman*, 221F.3d 846, 850-851 (6<sup>th</sup> Cir. 2000).) Individuals on parole, probation, bail, or supervised release may be “in custody.”

42 CFR §411.4(b) goes on to describe the special conditions that must be met in order for Medicare to make payment for individuals who are in custody, 42 CFR §411.4(b) states:

“Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met: (1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody. (2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing the collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.”

### **Exclusion from Coverage:**

In accordance with the foregoing statutory and regulatory provisions, Medicare excludes from coverage items and services furnished to beneficiaries in State or local government custody under a penal statute, unless, it is determined that the State or local government enforces a legal requirement that all prisoners/patients repay the cost of all healthcare items and services rendered while in such custody and also pursues collection efforts against such individuals in the same way, and with the same vigor, as it pursues other debts. CMS presumes that a State or local government that has custody of a Medicare

beneficiary under a penal statute has a financial obligation to pay for the cost of healthcare items and services. Therefore, Medicare's policy is to deny payment for items and services furnished to beneficiaries in State or local government custody.

## **Implementation**

CMS has established claim level editing to implement this policy using data received from the Social Security Administration (SSA). Specifically, the data contain the names of the Medicare beneficiaries and time periods when the beneficiary is in such State or local custody. These data will be compared to the data on the incoming claims. CWF will reject claims where the dates from the SSA file and the dates of service on the claim overlap. Any claims rejected by CWF will contain a trailer to the Medicare contractor indicating the date span covered. Contractors will, in turn, deny payment of such claims.

However, providers and suppliers that render services or items to a prisoner or patient in a jurisdiction that meets the conditions of 42 CFR 411.4(b) should indicate this fact with the use of modifier QJ (for carrier or DME MAC processed claims) or condition code 63 (for intermediary processed claims).

## **Appeals:**

A party to a claim denied in whole or in part under this policy may appeal the initial determination on the basis that, on the date of service, (1) the conditions of § 411.4(b) were met, or (2) the beneficiary was not, in fact, in the custody of a State or local government under authority of a penal statute.

## **Intermediary/RHHI Claims Processing Procedures**

Intermediaries must deny claims for items and services rendered to beneficiaries under State or local government custody when CWF rejects the claim. Provide appeal rights as specified above.

Providers that render services or items to a prisoner or patient in a jurisdiction that meets the conditions of 42 CFR 411.4(b) should indicate this fact on the claim *by billing as follows:*

*For outpatient claims, providers shall append a HCPCS modifier QJ on all lines with a line item date of service during the incarceration period. All associated charges should be billed as non-covered.*

*For inpatient claims where the incarceration period spans only a portion of the stay, hospitals shall identify the incarceration period by billing as non-covered all days, services and charges that overlap the incarceration period. Non-coverage billing guidelines can be found in Pub. 100-04, Chapter 1, Section 60.*

(Note: When the inpatient claim is correctly billed, the processing contractor will append the payer-only condition code 63, which will allow the claim to process for payment. This condition code indicates that the provider has been instructed by the state or local government agency that requested the healthcare items or services provided to the patient of the State or local government *entity* that it pursues collection of debts incurred for furnishing such items or services with the same vigor and in the same manner as any other debt.)

## **Carrier/*DME MAC* Claims Processing Procedures**

Carriers and *DME MACs* must deny claims for items and services rendered to beneficiaries when rejected by CWF. Provide appeal rights as specified above.

Physicians and other suppliers that render services to a prisoner or patient in a jurisdiction that meets the conditions of 42 CFR 411.4(b) should indicate this fact on the claim. Providers should use the QJ modifier. Language approved for QJ reads:

“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).”

This modifier indicates that the physician or other supplier has been instructed by the state or local government agency that requested the healthcare items or services provided to the patient that State or local law makes the prisoner or patient responsible to repay the cost of Medical services and that it pursues collection of debts incurred for furnishing such items or services with the same vigor and in the same manner as any other debt.