

# Improper Payments

*Standard opening (lead-in music)*

**Canned:** This is a Medicaid Program Integrity Podcast. The Centers for Medicare & Medicaid Services developed and produced these podcasts to keep you informed on Medicaid program integrity topics.

*(End music)*

**Narrator:** Welcome to the “Improper Payments” podcast. This presentation provides information on important program integrity issues for providers on improper payments in the Medicaid program. By being more aware of improper payments, providers will preserve Medicaid resources and protect themselves from the professional risks associated with overbilling Medicaid. Please join us as Mark and Jeff, two health care association staffers, discuss the implications of overpayments for their association’s members.

*Scene – Jeff’s office:*

**Mark:** Morning, Jeff. Do you have time to talk today about planning our next quarterly meeting?

**Jeff:** Sure. What do you have in mind for this one?

**Mark:** Have you seen the stories in the news about improper health care payments? I’m thinking we should focus our meeting on how our members can improve their billings and reduce overpayments.

**Jeff:** What’ve you heard about it?

**Mark:** Well, I read a story recently that the President’s Office of Management and Budget, the OMB, sent a letter to the Department of Health and Human Services, or HHS, about reducing Medicaid and Medicare improper payments.[1] The article said the OMB wants HHS to be “more aggressive” in reducing overpayments. I also read an article that some members of Congress are unhappy about Medicaid overpayments. [2] I think this topic is timely and affects all our members.

**Jeff:** I think you’re onto something, Mark. This sounds particularly important if it’s getting this kind of attention. Providers already have a lot of risk for errors, even if the errors are inadvertent. I believe anything that we can do to help them bill more accurately will be well received.

**Mark:** Agreed. Do you have any initial thoughts on how we might organize the meeting?

**Jeff:** Hmm. What if we use a combination of presentations? We could talk about the current situation on improper payments, give them information on how they can address their own billing errors, and provide an overview of the consequences of

improper payments. This should help them see how important correct documentation and billing are and what's at stake.

**Mark:** That's a great approach. Many of our members see lots of Medicaid-insured patients. Focusing on Medicaid errors might be a big help to them. Let me do some research and I'll get back to you after I drill down further into this.

**Jeff:** Good idea. Talk to you later.

*Scene – Jeff's office – a few days later:*

**Mark:** Hey, Jeff. There's even more information out there about Medicaid improper payments than I realized. Would it be helpful if I run down some of what I've learned since we talked last week?

**Jeff:** That'd be great. Fire away.

**Mark:** Let's start with what constitutes an improper payment.[3] According to the Centers for Medicare & Medicaid Services, or CMS, improper payments include overpayments and underpayments to providers. In its simplest terms, it comes down to verifying that a Medicaid service was paid: in the correct amount; on behalf of the correct and eligible beneficiary; and to the correct and eligible provider.

**Jeff:** That seems straightforward enough. It's interesting that underbilling is included. If I were a provider, I'd want the government to treat me fairly, and if they're going to ask for repayment, I'd want the same consideration for underpayments. So how serious is this improper payment problem?

**Mark:** The Government Accountability Office, or the GAO, added the Medicaid program to its list of "high risk" federal programs in 2003.[4] GAO was concerned even then because of the size and growth of Medicaid, the diversity of its programs, and its fiscal oversight. In fiscal year 2014, Medicaid served an estimated 65 million beneficiaries nationally, and Medicaid improper payments rose from \$14.4 billion in fiscal year 2013 to \$17.5 billion in fiscal year 2014.[5] That's an increase from a 5.8 percent error rate to 6.7 percent in 1 year, and by the way, the government has a payment accuracy website where we can direct our members who want to learn more.[6]

**Jeff:** Sharing that resource with members will be helpful. But let's get back to the error rate itself. Why did it jump so much in just 1 year?

**Mark:** Well in fairness, the increase in the error rate may be a little misleading.

**Jeff:** What makes you say that?

**Mark:** According to CMS, a big part of the error rate is attributable to new provider enrollment and screening requirements under the Affordable Care Act. Apparently, some States allowed payments to providers who weren't properly enrolled under the new regulations. If the ACA-related errors are removed, CMS says its FY 2014 error rate would've only been 5.4 percent.[7]

**Jeff:** How does CMS determine its Medicaid error rate?

**Mark:** CMS conducts an annual payment error rate measurement called PERM.[8] The government randomly selects a sample of Medicaid claims and requests the servicing providers' records to support the claims. A service under review is declared an error if the records aren't provided, aren't complete or simply don't support the claim. Bottom line, in one way or another, inadequate documentation significantly adds to the error rate.

**Jeff:** I know it's likely that members will be selected by our State Medicaid agency for a PERM review at some point. How can we help them prepare for one?

**Mark:** I think we should cover the basics of Medicaid documentation requirements. I assume some of our members might feel this is elementary, but given the risks they run for inadequate documentation, it's important to revisit them.

**Jeff:** All right. Where do you want to start?

**Mark:** CMS has a number of published toolkits for medical professionals on a variety of topics on the Medicaid Program Integrity Education (or MPIE) website.[9] Two immediately come to mind. The first is the toolkit on medical record documentation. Specifically, the fact sheet called "Medicaid Documentation for Medical Professionals." It lists a number of simple but critical documentation insights for our members. Medicaid providers must ensure their services are: medically necessary; provided to an eligible beneficiary by a qualified and eligible provider; and clearly and accurately documented.[10] Obviously, there's a lot more to it than that. We can get into the details during the presentation.

**Jeff:** What was the second toolkit you mentioned, and how would it fit in?

**Mark:** The second toolkit is about conducting self-audits. It nicely complements the documentation toolkit.[11] It provides guidance on conducting a self-audit to help providers assess their own compliance efforts. It also discusses how they can identify their risks and then conduct internal reviews of their policies, procedures, and claims to ensure they are meeting State regulations.

**Jeff:** From your research, what would you say are the most problematic areas for our members?

**Mark:** CMS reported that 78 percent of its projected 2014 Medicaid Fee-For-Service improper payments stemmed from one of three causes: insufficient documentation; documentation not meeting State requirements; or no documentation at all. CMS also cited the top three types of missing documents: treatment plans or plans of care; physicians' orders; and progress notes.[12] Knowing what is driving these PERM errors can help guide our members through their self-assessments.

**Jeff:** Reviewing all of this during the meeting sounds like it would be worthwhile. Prevention is always best. Last week we also talked about presenting on the consequences of improper payments. What are they?

**Mark:** It starts with ensuring provider repayment of overpayments found during a State or Federal review within the correct timeframe. Our members need to know that our State Medicaid agency has significant latitude on sanctions it can take against providers with patterns of overpayments. In addition, providers can be charged

interest and penalties. In the most severe cases, the agency can completely terminate the provider's participation in Medicaid.

**Jeff:** Whoa! A Medicaid termination can mean the end of their Medicare practice too! Federal regulations allow CMS to revoke the provider's Medicare enrollment based on a Medicaid termination,[13] and all other States are required to terminate that provider as well.[14]

**Mark:** That's correct, and providers can be subject to civil penalties, as well as the termination, if they knowingly fail to return overpayments within 60 days of their identification.[15] The government can levy a penalty of between \$5,000 and \$10,000 plus up to three times the damages based on the amount of the overpayment.[16]

**Jeff:** That sounds severe, but we know that the vast majority of our members aren't knowingly overbilling Medicaid and won't likely be subject to penalties like those. Nonetheless, it's good they understand the potential liabilities they face.

**Mark:** I couldn't agree more, Jeff. I think this will help our members protect themselves and their medical practices.

*(Standard closing with music)*

**Canned:** More questions? For additional information about improper payments, contact your State Medicaid agency or the Centers for Medicare & Medicaid Services at [www \[dot\] cms \[dot\] gov](http://www.cms.gov). Follow us on Twitter  [#MedicaidIntegrity](https://twitter.com/MedicaidIntegrity)

## References

- 1 Schulte, F. (2015, September 3). White House Wants More Aggressive Effort on Medicare, Medicaid Billing Errors. Center for Public Integrity. Retrieved October 7, 2015, from <http://www.publicintegrity.org/2015/09/03/17938/white-house-wants-more-aggressive-effort-medicare-medicaid-billing-errors>
- 2 Swann, J. (2015, June 4). Congressional Tempers Flare Over Medicaid Overpayments. Bloomberg BNA. Retrieved October 7, 2015, from <http://www.bna.com/congressional-tempers-flare-b17179927372/>
- 3 Centers for Medicare & Medicaid Services. (2013, November). Medicaid and CHIP 2014 Improper Payments Report (p. 65). Retrieved August 23, 2015, from <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/2014MedicaidandCHIPAnnualErrorRateReport1.pdf>
- 4 U.S. Government Accountability Office. (2015, February). Report to Congressional Committees. High Risk Series: An Update (p. 366). Retrieved August 23, 2015, from <http://www.gao.gov/assets/670/668415.pdf>
- 5 U.S. Government Accountability Office. (2015, February). Report to Congressional Committees. High Risk Series: An Update (p. 59). Retrieved August 23, 2015, from <http://www.gao.gov/assets/670/668415.pdf>
- 6 U. S. Government. Payment Accuracy. Retrieved August 22, 2015, from <https://paymentaccuracy.gov/programs/Medicaid>
- 7 Centers for Medicare & Medicaid Services. (2013, November) Medicaid and CHIP 2014 Improper Payments Report (p. 5). Retrieved August 23, 2015, from <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/2014MedicaidandCHIPAnnualErrorRateReport1.pdf>
- 8 Centers for Medicare & Medicaid Services. (2013, November) Medicaid and CHIP 2014 Improper Payments Report (p. 1). Retrieved August 23, 2015, from <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/2014MedicaidandCHIPAnnualErrorRateReport1.pdf>
- 9 Centers for Medicare & Medicaid Services. Medicaid Program Integrity Education. Retrieved August 22, 2015, from <https://www.cms.gov/medicare-medicaid-coordination/fraud-prevention/medicaid-integrity-education/edmic-landing.html>

10 Centers for Medicare & Medicaid Services. (2014, July) Medicaid Documentation for Medical Professionals – Fact Sheet. Retrieved October 7, 2015, from <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/docmatters-medicalprof-factsheet.pdf>

11 Centers for Medicare & Medicaid Services. (2015, February) Program Integrity Self-Audit Toolkit. Conducting a Self-Audit: A Guide for Physicians and Other Health Care Professionals [fact sheet]. Retrieved October 7, 2015, from <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/audit-toolkit.html>

12 Centers for Medicare & Medicaid Services. (2013, November) Medicaid and CHIP 2014 Improper Payments Report (pp. 23-24). Retrieved August 23, 2015, from <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/2014MedicaidandCHIPAnnualErrorRateReport1.pdf>

13 Revocation of Enrollment in the Medicare Program. 42 C.F.R § 424.535(a)(12)(i). Retrieved September 14, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?node=se42.3.424\\_1535&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?node=se42.3.424_1535&rgn=div8)

14 Termination or Denial of Enrollment. 42 § C.F.R 455.16(c). Retrieved September 14, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=564a824f3f4437032ffdb626fdab7725&mc=true&node=se42.4.455\\_1416&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=564a824f3f4437032ffdb626fdab7725&mc=true&node=se42.4.455_1416&rgn=div8)

15 Social Security Act. § 1320(a-7k)(d)(2). Medicare and Medicaid Program Integrity Provisions. Retrieved September 14, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title11/1128J.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128J.htm)

16 False Claims Act. U.S.C. § 3729(a)(1)(G). Retrieved September 14, 2015, from <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIII-chap37-subchapIII-sec3729.pdf>

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