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Note: This article was updated on July 14, 2016, to correct a chapter reference to the "Medicare Benefit Policy Manual." It should have stated Chapter 16 Section 50.3.3(3). All other information remains unchanged.

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. CR6880 rescinds and fully replaces CR 6544

Provider Types Affected

This article applies to physicians, providers, and suppliers submitting claims to Medicare contractors (carriers, DME Medicare Administrative Contractors (DME MACs), Fiscal Intermediaries (FIs), and/or A/B Medicare Administrative Contractors (A/B MACs)) for services provided to Medicare beneficiaries in State or local penal custody.

What You Need to Know

This article is based on Change Request (CR) 6880 which updates billing instructions and claims processing requirements to fully implement the policy for Medicare beneficiaries in State or local custody that was outlined in CR 6544. CR 6880 rescinds and fully replaces CR 6544, and revises the "Medicare Claims Processing Manual", [Chapter 1, Section 10.4](#) and the "Medicare Benefit Policy Manual", [Chapter 16, Section 50.3.3\(3\)](#). These revisions are included as attachments to CR 6880.

Background

The Medicare program does not pay for services if:

- The beneficiary has no legal obligation to pay for the services, and

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- No other person or organization has a legal obligation to provide or pay for that service.

Also, if services are paid for directly or indirectly by a governmental entity, Medicare does not pay for the services. See the Social Security Act Section 1862 (a)(2)&(3) at http://www.socialsecurity.gov/OP_Home/ssact/title18/1862.htm on the Internet.

In the Fiscal Year (FY) 2008 Inpatient Prospective Payment System (IPPS) final rule (72 FR 47409 and 47410; see <http://edocket.access.gpo.gov/2007/pdf/07-3820.pdf> on the Internet), the Centers for Medicare & Medicaid Services (CMS) clarified its regulations at 42 CFR 411.4(b) (see <https://www.gpo.gov/fdsys/pkg/CFR-1996-title42-vol2/pdf/CFR-1996-title42-vol2-sec411-4.pdf> on the Internet) 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.

42 CFR 411.4(b) describes the special conditions that must be met in order for Medicare to make payment for individuals who are in custody and 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, and
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.”

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NOTE: Your Medicare contractor will require evidence that routine collection efforts include the filing of lawsuits to obtain liens against individuals' assets outside the prison and income derived from non-prison sources. In addition, the State or local entity must document its case with copies of regulations, manual instructions, directives, etc., spelling out the rules and procedures for billing and collecting amounts paid for prisoners' medical expenses. As a rule, your Medicare contractor will inspect a representative sample of cases in which prisoners have been billed and payment pursued, randomly selected from both Medicare and non-Medicare eligible. The existence of cases in which the State or local entity did not actually pursue collection, even though there is no indication that the effort would have been unproductive, indicates that the requirement to pay is not enforced.

The Centers for Medicare & Medicaid Services (CMS) maintains a file of incarcerated beneficiaries, obtained from the Social Security Administration (SSA) that is used to edit claims.

To avoid improper denial of claims, providers and suppliers that render services or items to a prisoner or patient in a jurisdiction that meets the conditions described above should indicate this fact with the use of the QJ modifier on claims for such services.

For inpatient claims where 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.

Additional Information

The official instruction, CR 6880, was issued to your carrier, FI, A/B MAC, and DME MAC in two transmittals. The first transmittal modifies the "Medicare Claims Processing Manual" and it is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R1944CP.pdf> on the CMS website. The second transmittal is at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R122BP.pdf> and it contains the revised portion of the "Medicare Benefit Policy Manual" regarding this change.

If you have any questions, please contact your MAC at their toll-free number. That number is available at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/index.html> under - How Does It Work.

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