



MEDICARE COVERAGE OF ITEMS AND SERVICES FURNISHED TO BENEFICIARIES IN CUSTODY UNDER A PENAL AUTHORITY

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Please note: The information in this publication applies only to the Medicare Fee-For-Service Program (also known as Original Medicare).

The Hyperlink Table, at the end of this document, provides the complete URL for each hyperlink.

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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 is incarcerated or in custody under a penal statute or rule at the time the items and services are furnished. Learn about these topics on beneficiaries in custody under a penal authority:

- ❖ 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
- ❖ Refunds
- ❖ Appeals
- ❖ Resources

POLICY BACKGROUND

Medicare will generally not pay for medical items and services furnished to a beneficiary who is 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 those items and services under these "[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
- ❖ 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 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
- ❖ 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 two automated methods:

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

If the beneficiary is in 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 [contact your MAC](#) to verify the beneficiary's status to determine whether Social Security Administration records indicate that the beneficiary was incarcerated when items or services were furnished.

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. An RA Remittance Advice Remark Code (RARC) further explains an adjustment or relays informational messages that cannot be expressed with a claim adjustment reason code.

When denying claims for services furnished to Medicare beneficiaries under penal custody, the RA will include RARC N103 (in addition to RA language already in use):

“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. The provider can collect from the Federal/State/Local Authority as appropriate.”

EXCEPTION TO MEDICARE POLICY

Items and services furnished for incarcerated beneficiaries are covered, as specified under 42 CFR 411.4(b), **only when both of these 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.
- ❖ 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 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
- ❖ 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 CPT or 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 Part B/MAC and Durable Medical Equipment MAC-processed claims or Condition Code 63 for Part A/MAC-processed claims.

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.

REFUNDS

In 2013, the Centers for Medicare & Medicaid Services (CMS) initiated recoveries from providers and suppliers based on data indicating that a beneficiary was incarcerated on the DOS. CMS subsequently discovered that some of the data used was incomplete. Since some of these recoveries might have been erroneous, CMS initiated refunds. Most of the incarcerated beneficiary erroneous overpayment refunds were issued before the end of December 2013, with some subsequent refunds on situations that were appealed. CMS' process to expedite the refunds precluded the issuance of a detailed RA. However, CMS mailed a spreadsheet to each impacted provider, which listed each claim being refunded.

Some of the overpayments for incarcerated beneficiaries were valid and were not refunded. If you believe that an incarcerated beneficiary-related claim was erroneously designated as an overpayment, with funds recovered and not subsequently refunded, you may request that your MAC reopen the claim.

If you received an RA from your MAC indicating a Temporary Allowance but no other documentation (such as a separate letter), you may contact your MAC and request an explanation.

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 informational unsolicited response.

RESOURCES

This chart provides resource information for items and services furnished to beneficiaries in custody under a penal authority.

For More Information About...	Resource
Items and Services Furnished to Incarcerated Beneficiaries	Chapter 16 of the " Medicare Benefit Policy Manual " (Publication 100-02) Chapter 1 of the " Medicare Claims Processing Manual " (Publication 100-04) 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 "
All Available Medicare Learning Network® (MLN) Products	"MLN Catalog"
Provider-Specific Medicare Information	"MLN Guided Pathways: Provider Specific Medicare Resources"
Medicare Information for Beneficiaries	Medicare.gov

Hyperlink Table

Embedded Hyperlink	Complete URL
"Code of Federal Regulations"	http://www.ecfr.gov on the United States Government Publishing Office website
Contact Your MAC	https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Review-Contractor-Directory-Interactive-Map
Chapter 16 of the "Medicare Benefit Policy Manual" (Publication 100-02)	https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c16.pdf

Hyperlink Table (cont.)

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Chapter 1 of the “Medicare Claims Processing Manual” (Publication 100-04)	https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c01.pdf
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”	https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM6880.pdf
“MLN Catalog”	https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/MLNCatalog.pdf
“MLN Guided Pathways: Provider Specific Medicare Resources”	https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNEdWebGuide/Downloads/Guided_Pathways_Provider_Specific_Booklet.pdf

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