



BENEFICIARIES IN CUSTODY UNDER A PENAL AUTHORITY

Target Audience: Medicare Fee-For-Service Program (also known as Original Medicare)

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When “you” is used in this fact sheet, 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:

- Medicare policy background, including the definition of individuals who are in custody (or incarcerated) under a penal statute or rule
- Determining whether a Medicare beneficiary is in custody under a penal statute or rule
- Medicare claims processing
- Exception to Medicare policy
- Medicare appeals
- Social Security Administration (SSA) policy on beneficiaries in custody
- How Medicare receives data for incarcerated beneficiaries
- Resources

MEDICARE 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 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 Medicare Program 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 MEDICARE 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 (HETS)
- 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 may also refer the beneficiary to 1-800-MEDICARE (1-800-633-4227) if he or she does not know the reason for the period of inactivity.

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

As specified under [42 CFR 411.4\(b\)](#), Medicare payments for items and services furnished to incarcerated beneficiaries may be made **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 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 A and Part B/MACs and Durable Medical Equipment 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.

MEDICARE 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.

SSA POLICY ON BENEFICIARIES IN CUSTODY

Social Security benefits generally are not payable for the months a beneficiary is confined to a jail, prison, or certain other public institutions for committing a crime. SSA benefits can be reinstated starting with the month following the month of the beneficiary's release; however, the beneficiary needs to contact Social Security to request reinstatement and provide a copy of his or her release documents before SSA can act on the request. For more information about the SSA policy on beneficiaries in custody, visit [Can Prisoners Get Social Security or Supplemental Security \(SSI\) Payments?](#)

HOW MEDICARE RECEIVES DATA FOR INCARCERATED BENEFICIARIES

The Centers for Medicare & Medicaid Services (CMS) receives incarceration/custody data from SSA and uses this data to determine whether Medicare benefits are payable. Release data can be delayed as it is dependent on the penal facility reporting the release to SSA. Released beneficiaries should contact the SSA to request reinstatement of their Social Security benefits as doing so will also update the release data in CMS' systems and allow payment of Medicare services. If Medicare records do not reflect the release within 60 days of the SSA benefit reinstatement, the beneficiary should contact 1-800-MEDICARE (1-800-633-4227).

NOTE: Beneficiaries who are incarcerated or in custody need to continue to pay their monthly Part B premiums to avoid termination of Part B coverage. The law does not provide a Part B Special Enrollment Period for beneficiaries who get health coverage through penal authorities. Beneficiaries who are released from custody and have not maintained Part B coverage can enroll in Part B during the next General Enrollment Period (January through March with coverage starting July 1). They will be assessed a monthly late enrollment penalty for as long as they have Part B coverage. For more information about Medicare enrollment periods and the Part B penalty, visit [Original Medicare \(Part A and Part B\) Eligibility and Enrollment](#).

RESOURCES

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

Resources

For More Information About...	Resource
All Available Medicare Learning Network® (MLN) Products	MLN Catalog
Contact Your MAC	CMS.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Review-Contractor-Directory-Interactive-Map
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
Medicare Information for Beneficiaries	Medicare.gov

Hyperlink Table

Embedded Hyperlink	Complete URL
42 CFR 411.4	https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol2/pdf/CFR-2016-title42-vol2-sec411-4.pdf
42 CFR 411.6	https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol2/pdf/CFR-2016-title42-vol2-sec411-6.pdf
42 CFR 411.8	https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol2/pdf/CFR-2016-title42-vol2-sec411-8.pdf
42 CFR 411.4(b)	https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol2/pdf/CFR-2016-title42-vol2-sec411-4.pdf
42 CFR 405, Subpart I	https://www.gpo.gov/fdsys/pkg/CFR-2016-title42-vol2/pdf/CFR-2016-title42-vol2-part405.pdf
Can Prisoners Get Social Security or Supplemental Security (SSI) Payments?	https://faq.ssa.gov/link/portal/34011/34019/Article/3844/Can-prisoners-get-Social-Security-or-Supplemental-Security-Income-SSI-payments
Original Medicare (Part A and Part B) Eligibility and Enrollment	https://www.cms.gov/Medicare/Eligibility-and-Enrollment/OrigMedicarePartABEligEnrol
MLN Catalog	https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/MLNCatalog.pdf
Medicare Benefit Policy Manual	https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c16.pdf
Medicare Claims Processing Manual	https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c01.pdf
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

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