Patients in Custody Under a Penal Authority
What’s Changed?

Note: No substantive content updates.
This fact sheet outlines Medicare policy about payment for medical items and services provided to Medicare patients incarcerated or in custody under a penal statute or rule, including:

- Medicare policy
- Definition of individuals who are in custody (or incarcerated) under a penal statute or rule
- Determining whether a patient is in custody under a penal statute or rule
- Medicare claims processing
- Medicare policy exceptions
- Social Security benefit policy
- Medicare data on incarcerated patients

### Medicare Policy

We generally won’t pay for medical items and services provided to a patient who’s incarcerated or in custody at the time items and services are provided. In most instances, if a patient is incarcerated on the date of service (DOS) when items and services are provided, we won’t cover those items and services according to these regulations:

- **42 CFR 411.4**: We don’t pay for services provided to a patient 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**: We don’t pay for services provided by a federal service provider or other federal agency
- **42 CFR 411.8**: We don’t pay for services paid 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 regulations at 42 CFR 411.4(b), patients in custody (or incarcerated) include, but aren’t limited to, individuals:

- Under arrest
- Incarcerated
- Imprisoned
- Escaped from confinement
- Under supervised release
- On medical furlough
- Required to live in mental health facilities
- Required to live in halfway houses
- Required to live under home detention
- Confined completely or partially under a penal statute or rule

Determining Whether a Patient is in Custody Under a Penal Statute or Rule

You can check patient eligibility with these online tools and services:

- Medicare Administrative Contractor (MAC) secure internet portal
- MAC interactive voice response (IVR) system
- Billing agencies, clearinghouses, or software vendors
- Health Insurance Portability and Accountability Act (HIPAA) Eligibility Transaction System (HETS)

If the patient’s status is inactive, the automated response to your inquiry provides the dates of inactivity but doesn’t provide the reason for inactivity. The inactive status response may cause you to ask the patient about their incarceration status. You may also refer them to 1-800-MEDICARE (1-800-633-4227) if they don’t know the reason for inactivity.

Medicare Claims Processing

If you submit a claim for items or services provided to a patient who is in custody (or incarcerated) on the DOS, we’ll deny the claim. You or your billing agent will get a remittance advice (RA) explaining the denial. A Remittance Advice Remark Code (RARC) further explains an adjustment or gives informational messages that can’t be explained with a claim adjustment reason code.
When denying claims for services provided to patients under penal custody, the RA will include RARC N103 (in addition to RA language already in use).

The regulations at 42 CFR 405, Subpart I apply to claim denials resulting from patient custody status and MAC-initiated overpayment recoveries based on a review of claims paid before receiving notification of a change in the patient’s custody status.

**Medicare Policy Exceptions**

Under 42 CFR 411.4(b), we can pay for items and services provided to incarcerated patients 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 get while in custody.
- The state or local government entity enforces the payment requirement 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 amounts owed in the same manner and with the same effort that it pursues other debt collection. This includes any Medicare deductible and coinsurance amounts and the costs of items and services we don’t cover.

Also, the state or local entity must provide:

- Evidence that routine collection efforts include lawsuits filed to get liens against incarcerated individuals’ assets outside the prison and income from non-prison sources
- Rules and procedures used to bill and collect amounts paid for incarcerated individuals’ medical expenses (for example, regulations, manual instructions, or directives)

**Submitting Claims When Exception is Met**

If you provided items and services meeting the exception criteria outlined above, you should submit claims using the appropriate CPT or HCPCS code and the QJ modifier.

For inpatient claims where the incarceration period spans only a portion of the stay, hospitals should identify the incarceration period by billing all days, services, and charges that overlap the incarceration period as non-covered.

MACs randomly select a representative case sample (both Medicare and non-Medicare eligible) to determine whether state or local entities appropriately bill and collect amounts paid for incarcerated patients’ medical expenses. For more information, find your MAC’s website.
Social Security Benefit Policy

Social Security benefits generally aren’t payable for the months the individual is confined to a jail, prison, or certain other public institutions for committing a crime. Benefits can be reinstated starting the month after the individual is released; however, the individual first needs to contact the Social Security Administration to request reinstatement and provide a copy of their release documents. Can Prisoners Get Social Security or Supplemental Security (SSI) Payments? has more information.

Medicare Data on Incarcerated Individuals

We get incarceration and custody data from the Social Security Administration and use this data to determine whether Medicare benefits are payable. A penal facility’s reporting practices may delay the release data. Individuals should contact the Social Security Administration to request benefits reinstatement because this also updates the release data in our systems and allows Medicare payments. If our records don’t reflect the release within 60 days of benefit reinstatement, the individual should contact 1-800-MEDICARE (1-800-633-4227).

Note: Individuals incarcerated or in custody must continue paying their monthly Part B premiums to avoid coverage termination. Individuals who are released from custody and haven’t maintained Part B may be assessed a monthly late enrollment penalty for as long as they didn’t have Part B coverage. Original Medicare (Part A and Part B) Eligibility and Enrollment has more information.

Resources

- Medicare Benefit Policy Manual, Chapter 16
- Medicare Claims Processing Manual, Chapter 1