
Program Memorandum Intermediaries/Carriers

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)

Transmittal AB-03-115

Date: AUGUST 1, 2003

CHANGE REQUEST 2825

THE FINAL RULE IMPLEMENTING THE CREATION OF A MEDICARE EXEMPTION FROM THE PROHIBITION ON ELIGIBILITY FOR QUALIFIED ALIEN BENEFICIARIES WHO ARE LAWFULLY PRESENT IN THE UNITED STATES HAS NOT YET BEEN FINALIZED. AS A RESULT, THERE MAY BE CHANGES MADE TO THIS INSTRUCTION IF THE FINAL RULE IS REVISED.

SUBJECT: Payment Denial for Medicare Services furnished to Alien Beneficiaries Who are Not Lawfully Present in the United States

I. GENERAL INFORMATION

A. Background:

This Program Memorandum (PM) provides claims processing procedures for all Medicare contractors that process claims containing Medicare services submitted for alien beneficiaries.

Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) prohibited aliens who are not “qualified aliens” from receiving Federal public benefits including Medicare. The term “qualified alien” is defined to include six groups of aliens as follows:

- (1) aliens who are lawfully admitted for permanent residence under the Immigration and Nationality Act (Act);
- (2) aliens who are granted asylum under section 208 of the Act;
- (3) refugees admitted into the United States under section 207 of the Act;
- (4) aliens who are paroled into the United States under section 212(d)(5) of the Act for a period of at least 1 year;
- (5) aliens whose deportation is being withheld under section 243(h) of the Act; or
- (6) aliens who are granted conditional entry pursuant to section 203(a)(7) of the Act as in effect prior to April 1, 1980.

Two groups of qualified aliens were added to the statute after the original enactment of the restriction in the 1996 Welfare Reform statute. These groups are certain Cuban and Haitian entrants to the United States and certain “battered aliens.”

Under the terms of the PRWORA, non-qualified aliens could not receive Medicare benefits.

Section 5561 of the Balanced Budget Act of 1997 (BBA) amended section 401 of the PRWORA to create a Medicare exemption to the prohibition on eligibility for non-qualified alien beneficiaries, who are lawfully present in the United States and who meet certain other conditions.

Under the provisions of the final rule (*DOCUMENT NUMBER TO BE ISSUED AT PUBLICATION*), payment may be made for services furnished to an alien who is lawfully present in the United States (and, provided that with respect to benefits payable under Part A of Title XVIII of the Social Security Act [42 U.S.C. 1395c et seq.], who was authorized to be employed with respect to any wages.

attributable to employment which are counted for purposes of eligibility for Medicare benefits). The definition for “lawfully present in the United States” is found at 8 CFR 103.12.

B. Policy:

Payment for Medicare Benefits

Make no payments for Medicare services furnished to an alien beneficiary who is not lawfully present in the United States.

Implementation of Payment Policy

1. Common Working File (CWF)

The CWF must establish an auxiliary file based on information from the Enrollment Data Base from the Social Security Administration in order to appropriately edit the claims specifically associated with alien beneficiaries.

The auxiliary file will be the basis for an edit that rejects claims for beneficiaries not lawfully present.

The CWF will create a new trailer response containing Alien dates on the CWF Alien Auxiliary File and send it to the contractor processing claims for alien beneficiaries.

The CWF will create an override code if necessary.

2. Carriers/DMERCs

Carriers and DMERCs must deny claims for items and services, based on dates of service, when rejected by CWF.

Carriers and DMERCs must refer to the CWF documentation on this subject for the error code assigned to this editing.

Upon receipt of an error code that is specific to this edit, carriers and DMERCs must use reason code 30, “Payment adjusted because the patient has not met the required eligibility, spend down, waiting or residency requirements.”

When CWF rejects a claim, carriers and DMERCs must issue an MSN Message 5.7, “Medicare payment may not be made for the item or service because, on the date of service, you were not lawfully present in the United States.”

MSN Message 5.7 “Medicare no puede pagar por este articulo o servicio porque, en la fecha en que lo recibí, usted no estaba legalmente en los Estados Unidos.”

3. Intermediaries/RHHIs

Intermediaries and RHHIs must deny claims for items and services, based on dates of service, when rejected by CWF.

Intermediaries and RHHIs must refer to the CWF documentation on this subject for the error code assigned to this editing.

Upon receipt of an error code that is specific to this edit, the intermediary or RHHI must use reason code 30, "Payment adjusted because the patient has not met the required eligibility, spend down, waiting or residency requirements."

When CWF rejects a claim, the intermediary and RHHI must issue an MSN Message 5.7, "Medicare payment may not be made for the item or service because, on the date of service, you were not lawfully present in the United States."

MSN Message 5.7 "Medicare no puede pagar por este articulo o servicio porque, en la fecha en que lo recibió, usted no estaba legalmente en los Estados Unidos."

Appeals

A party to a claim denied in whole or in part under this policy may appeal the initial determination on the basis that the beneficiary was lawfully present in the United States on the date of service.

Provider Education

Contractors shall inform affected provider communities by posting relevant portions of this instruction on their websites within two weeks of the issuance date of this instruction. In addition, this same information shall be published in your next regularly scheduled bulletin. If you have a listserv that targets the affected provider communities, you must use it to notify subscribers that information about "Payment Denial for Medicare Services furnished to Alien Beneficiaries Who are Not Lawfully Present in the United States." is available on your Web Site.

Initiators Please Note: If the two week limitation for website posting is not appropriate for your instruction due to the volume and/or complexity of changes or the importance of getting this information out to providers, please put a timeframe in the language that you feel is reasonable. We need to stay away from "as soon as possible" since that could vary among the contractors and all providers should receive the Web Site notification around the same time.

II. BUSINESS REQUIREMENTS

“Shall” denotes a mandatory requirement

“Should” denotes an optional requirement

| Req. # | Requirements | Resp. |
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| 1.1 | CWF shall establish an auxiliary file to use in editing all claims submitted for alien status beneficiaries. | CWF |
| 1.2 | CWF shall develop appropriate edit(s) as needed. | CWF |
| 1.3 | CWF shall create a new trailer response containing Alien dates on the CWF Alien Auxiliary File that will be sent to contractors processing claims for alien beneficiaries. | CWF |
| 1.4 | CWF shall create an override code if necessary. | CWF |
| 1.5 | CWF shall reject claims indicating the status that the beneficiary was not lawfully present in the United States. | CWF |
| 1.6 | Carriers, DMERCs, intermediaries, and RHHIs shall deny claims rejected by CWF. Review the CWF documentation to identify the error code assigned to the edit. | Carriers, DMERCs, Intermediaries, RHHIs |
| 1.7 | Carriers, DMERCs, intermediaries, and RHHIs shall use a reason code and remark code that denotes the status of the beneficiary was not lawfully present in the United States. | Carriers, DMERCs, Intermediaries, RHHIs |
| 1.8 | Issue an MSN Message 5.7, “Medicare payment may not be made for the item or service because, on the date of service, you were not lawfully present in the United States.” “Medicare no puede pagar por este articulo o servicio porque, en la fecha en que lo recibí, usted no estaba legalmente en los Estados Unidos.” | Carriers, DMERCs, Intermediaries, RHHIs |
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III. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A – Other Instructions: N/A

| X-Ref Req. # | Instructions |
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B – Design Considerations: ??

| X-Ref Req. # | Recommendation for Medicare System Requirements Implementation |
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C - Interfaces: N/A

| X-Ref Req. # | Recommendation for Medicare System Requirements |
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D - Contractor Financial Reporting /Workload Impact: N/A

E - Dependencies: N/A

F - Testing Considerations:

IV. Attachment(s)

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| Implementation Date: January 1, 2004 | Funding: Instructions should be implemented within your current operating budget |
| Discard Date: January 1, 2005 | |
| Post-Implementation Contact: Your appropriate Regional Office | Pre-Implementation Contact: Marvin Stoogenke |
| Effective Date: January 1, 2004 | |