

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MEDICARE IMPROPERLY PAID  
PROVIDERS MILLIONS OF DOLLARS FOR  
INCARCERATED BENEFICIARIES WHO  
RECEIVED SERVICES DURING 2009  
THROUGH 2011**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



**Daniel R. Levinson  
Inspector General**

**January 2013  
A-07-12-01113**

# *Office of Inspector General*

<https://oig.hhs.gov/>

---

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

## *Office of Audit Services*

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

## *Office of Evaluation and Inspections*

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

## *Office of Investigations*

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

## *Office of Counsel to the Inspector General*

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

# *Notices*

---

**THIS REPORT IS AVAILABLE TO THE PUBLIC**  
at <https://oig.hhs.gov>

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

## **OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS**

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

## **EXECUTIVE SUMMARY**

### **BACKGROUND**

Pursuant to Title XVIII of the Social Security Act, the Medicare program provides health insurance for people aged 65 and over, people with disabilities, and people with permanent kidney disease. The Centers for Medicare & Medicaid Services (CMS), which administers the program, contracts with Medicare contractors to process and pay Medicare Part A and Part B claims submitted by health care providers.

Under Federal requirements, Medicare generally does not pay for services rendered to incarcerated beneficiaries. Federal requirements, however, allow Medicare payment if State or local law requires incarcerated beneficiaries to repay the cost of medical services. Health care providers indicate this exception by placing a specific code on the claims submitted for payment. We refer to this code as “exception code.”

The Social Security Administration (SSA) is CMS’s primary source of information about incarcerated beneficiaries. Generally, SSA collects information, such as the names of beneficiaries and the dates on which beneficiaries begin and/or end periods of incarceration, directly from penal authorities. SSA also collects incarceration end dates from beneficiaries’ requests for reinstatement of Social Security benefits.

CMS’s records identified 135,805 Medicare beneficiaries who had been incarcerated at some point during calendar years (CY) 2009 through 2011. We limited our review to 75,639 claims on behalf of 11,619 incarcerated beneficiaries with \$33,587,634 in associated Medicare payments.

### **OBJECTIVE**

Our objective was to determine whether CMS had adequate controls to prevent and detect improper payments for Medicare services rendered to incarcerated beneficiaries.

### **SUMMARY OF FINDINGS**

When CMS’s data systems indicated at the time that a claim was processed that a beneficiary was incarcerated, CMS’s controls were adequate to prevent payment for Medicare services. Specifically, CMS had a prepayment edit that flagged claims so that Medicare contractors could deny payments to providers when the incarceration dates and the dates of service on the claims overlapped.

When CMS’s data systems did not indicate until after a claim had been processed that a beneficiary was incarcerated, CMS’s controls were not adequate to detect and recoup the improper payment. CMS will not always receive timely updates regarding incarceration information before Medicare contractors pay providers on behalf of incarcerated beneficiaries, and accordingly, Medicare payments totaling \$33,587,634 were made to providers for services rendered to 11,619 incarcerated beneficiaries during CYs 2009 through 2011. CMS did not have policies and procedures to review incarceration information on a postpayment basis that would

have detected improper payments that the prepayment edit could not prevent. Consequently, CMS did not notify the contractors to recoup any of the \$33,587,634 in improper payments.

CMS allowed Medicare contractors to follow varying policies when processing claims with exception codes for payment. In one instance, a contractor approved claims with exception codes that another contractor would have denied. Therefore, providers also had varying procedures regarding the use of exception codes when submitting claims for payment. For example, some providers submitted claims without the exception codes, even though they knew through sources other than CMS that the beneficiaries were incarcerated and that the requirements for the exception codes had been met. If CMS implements a postpayment edit but does not also standardize the claims-processing policies for contractors to follow, some providers will then have to resubmit the claims with the exception codes added, which would create inefficiencies and time delays at both the provider and contractor levels.

## **RECOMMENDATIONS**

We recommend that CMS:

- ensure that Medicare contractors recoup the \$33,587,634 in improper payments;
- implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to incarcerated beneficiaries when incarceration information is received on previously paid Medicare claims;
- identify improper payments made on behalf of incarcerated beneficiaries after our audit period but before implementation of policies and procedures and ensure that Medicare contractors recoup those payments;
- work with other entities, including SSA, to identify ways to improve the timeliness with which CMS receives incarceration information before Medicare contractors pay providers on behalf of incarcerated beneficiaries; and
- work with the Medicare contractors to ensure that all claims with exception codes are processed consistently and pursuant to Federal requirements.

## **CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, CMS concurred with three of our recommendations. CMS stated that in April 2013 it plans to implement a process for detecting and recouping improper payments for previously paid Medicare claims.

CMS partially concurred with our recommendation regarding the recoupment of the \$33,587,634 in improper payments. CMS stated that it is committed to recovering overpayments we identified, but it must take into account the cost benefit of recoupment activities, including potential appeal costs and the cost of manually reopening these claims.

After providing its comments, CMS advised us that it had initiated recovery actions for CY 2009 claims and that it would shortly begin to recoup improper payments for CY 2010 and 2011 claims as well. We acknowledge that CMS must take into account the cost benefit for recoupment activities. We encourage CMS to continue to recover these improper payments in accordance with its policies and procedures.

CMS did not concur with our last recommendation, adding that it was not able to fully understand the issue or fully evaluate this recommendation. CMS requested greater specificity regarding our findings concerning inconsistencies in contractor policies for the processing of claims with exception codes. After receiving CMS's comments, we gave CMS the detailed information that it had requested.

# TABLE OF CONTENTS

	<b><u>Page</u></b>
<b>INTRODUCTION</b> .....	1
<b>BACKGROUND</b> .....	1
Medicare Program.....	1
Medicare Payments on Behalf of Incarcerated Beneficiaries .....	1
Obtaining Information for Incarcerated Beneficiaries .....	2
<b>OBJECTIVE, SCOPE, AND METHODOLOGY</b> .....	2
Objective.....	2
Scope.....	2
Methodology.....	2
<b>FINDINGS AND RECOMMENDATIONS</b> .....	3
<b>WHEN THE CENTERS FOR MEDICARE &amp; MEDICAID SERVICES     RECEIVED INCARCERATION INFORMATION BEFORE CLAIMS     WERE PAID, IT HAD CONTROLS TO PREVENT IMPROPER PAYMENTS</b> ....	4
<b>WHEN THE CENTERS FOR MEDICARE &amp; MEDICAID SERVICES     RECEIVED INCARCERATION INFORMATION AFTER CLAIMS     WERE PAID, IT DID NOT HAVE CONTROLS TO DETECT     AND RECOUP IMPROPER PAYMENTS</b> .....	4
Federal Requirements .....	4
Improper Payments Not Detected .....	5
The Centers for Medicare & Medicaid Services Did Not Have Policies and Procedures To Detect and Recoup Improper Payments on a Postpayment Basis .....	6
Improper Payments on Behalf of Incarcerated Beneficiaries Remained Uncollected.....	6
<b>INCONSISTENCIES IN POLICIES FOR PROCESSING CLAIMS WOULD     LEAD TO INEFFICIENCIES IN CLAIMS SUBMISSION PROCESS</b> .....	6
Federal Requirements .....	6
Inconsistent Policies for Processing of Claims for Incarcerated Beneficiaries.....	7
Inefficiencies at Provider Level in Claims Submission Process.....	7
<b>RECOMMENDATIONS</b> .....	7

CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS AND  
OFFICE OF INSPECTOR GENERAL RESPONSE ..... 8  
    Recoupment of Improper Payments ..... 8  
    Consistent Processing of Claims With Exception Codes ..... 9  
    Provider Access to Incarceration Information ..... 9

**APPENDIX**

CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS



# INTRODUCTION

## BACKGROUND

### Medicare Program

Pursuant to Title XVIII of the Social Security Act (the Act), the Medicare program provides health insurance for people aged 65 and over, people with disabilities, and people with permanent kidney disease. The Centers for Medicare & Medicaid Services (CMS) administers the program. Medicare Part A provides inpatient hospital insurance benefits and coverage of extended care services for patients after hospital discharge. Medicare Part B provides supplementary medical insurance for medical and other health services, including coverage of hospital outpatient services. CMS contracts with Medicare contractors to, among other things, process and pay claims submitted by hospitals, physicians, and suppliers. For this report, we refer to all Medicare Part A and Part B entities or individuals receiving Medicare payments as “providers.”

### Medicare Payments on Behalf of Incarcerated Beneficiaries

Pursuant to section 1862 of the Act and Federal requirements, Medicare generally does not pay for services rendered to incarcerated beneficiaries.<sup>1</sup> Federal regulations (42 CFR § 411.4(b)) define individuals who are in custody of a governmental entity as including, but 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.” For this report, we refer to individuals in any of these circumstances as “incarcerated.”

Chapter 1, section 10.4, of CMS’s *Medicare Claims Processing Manual* explains further:

CMS presumes that a State or local government that has custody of a Medicare beneficiary under a penal statute has a financial obligation to pay for the cost of healthcare items and services. Therefore, Medicare’s policy is to deny payment for items and services furnished to beneficiaries in State or local government custody.

Federal regulations (42 CFR § 411.4(b)), however, allow Medicare payment if State or local law requires incarcerated beneficiaries to repay the costs of medical services and the State or local government enforces the requirement. CMS requires providers to indicate claims that meet this exception by placing a specific code on them. We refer to this code as “exception code.” CMS has instructed the Medicare contractors to review, on a sample basis, claims with the exception code to verify that the requirements have been met.

---

<sup>1</sup> In certain instances, the providers are aware that an individual is incarcerated because the individual is accompanied by a penal facility official and/or is under physical restraint. In other instances, though, providers may not be aware that an individual is incarcerated. For example, individuals who are residing in halfway houses or living under home detention may not be readily recognizable as incarcerated.

## **Obtaining Information for Incarcerated Beneficiaries**

The Social Security Administration (SSA) is CMS's primary source of information about incarcerated beneficiaries. Generally, SSA collects information, such as the names of beneficiaries and the dates on which beneficiaries begin and/or end periods of incarceration, directly from penal authorities. SSA also collects incarceration end dates from beneficiaries' requests for reinstatement of Social Security benefits. SSA maintains the incarceration information in its Prisoner Update Processing System.

CMS's Enrollment Database (EDB) interfaces with SSA's systems to identify incarcerated individuals. Several applications, including CMS's Common Working File (CWF), can then access the dates of incarceration. The Medicare contractors use the CWF to process Part A and Part B claims from providers.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

Our objective was to determine whether CMS had adequate controls to prevent and detect improper payments for Medicare services rendered to incarcerated beneficiaries.

### **Scope**

We identified 91,169 claims for which CMS's data systems indicated that Medicare contractors made \$44,517,431 in payments to providers on behalf of incarcerated beneficiaries who received services in calendar years (CY) 2009 through 2011. These claims did not contain the exception codes. As described in "Methodology," we further limited our review to \$33,587,634 of payments made for 75,639 Part A and Part B claims.

We did not review claims with exception codes. We will determine whether those claims were paid in accordance with Federal requirements in a separate review.

We limited our review of CMS's internal controls to those that directly related to our objective.

We performed fieldwork from January through June 2012.

### **Methodology**

To accomplish our objective, we performed the following steps:

- We reviewed applicable Federal laws, regulations, and guidance.
- We held discussions with CMS officials, Medicare contractors, and providers to gain an understanding of how claims for incarcerated beneficiaries are processed.

- We used data from CMS's EDB (as of March 28, 2012) to identify 135,805 beneficiaries who had been incarcerated at some point during CYs 2009 through 2011. Our comparison to CMS's National Claims History file (as of March 31, 2012) showed that Medicare contractors paid 91,169 claims (on behalf of 14,034 beneficiaries with \$44,517,431 in associated payments) for which the dates of incarceration overlapped with the dates of service.
- We identified 94 penal facilities for which hospitals submitted claims both with and without exception codes. On the basis of conversations with hospital officials and our analysis of the data, we concluded that the majority of claims from any provider for which the beneficiary was incarcerated at 1 of these 94 facilities could have met the exception to Federal requirements. Therefore, we eliminated 15,530 claims (with \$10,929,797 in payments) without exception codes for medical services rendered to beneficiaries who were incarcerated in the 94 facilities.<sup>2</sup>
- We reviewed the remaining 75,639 claims for 11,619 incarcerated beneficiaries whose associated Medicare payments totaled \$33,587,634.
- We judgmentally selected 53 inpatient claims and, for those claims, compared the dates on which CMS's data systems were updated with incarceration information from SSA to the dates on which Medicare contractors paid providers.
- We discussed the results of our review with CMS officials on August 7, 2012.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **FINDINGS AND RECOMMENDATIONS**

When CMS's data systems indicated at the time that a claim was processed that a beneficiary was incarcerated, CMS's controls were adequate to prevent payment for Medicare services. Specifically, CMS had a prepayment edit that flagged claims so that Medicare contractors could deny payments to providers when the incarceration dates and the dates of service on the claims overlapped.

When CMS's data systems did not indicate until after a claim had been processed that a beneficiary was incarcerated, CMS's controls were not adequate to detect and recoup the improper payment. CMS will not always receive timely updates regarding incarceration information before Medicare contractors pay providers on behalf of incarcerated beneficiaries, and accordingly, Medicare payments totaling \$33,587,634 were made to providers for services

---

<sup>2</sup> We will determine whether the 15,530 claims without exception codes were paid in accordance with Federal requirements in a separate review.

rendered to 11,619 incarcerated beneficiaries during CYs 2009 through 2011. CMS did not have policies and procedures to review incarceration information on a postpayment basis that would have detected improper payments that the prepayment edit could not prevent. Consequently, CMS did not notify the contractors to recoup any of the \$33,587,634 in improper payments.

CMS allowed Medicare contractors to follow varying policies when processing claims with exception codes for payment. In one instance, a contractor approved claims with exception codes that another contractor would have denied. Therefore, providers also had varying procedures regarding the use of exception codes when submitting claims for payment. For example, some providers submitted claims without the exception codes, even though they knew through sources other than CMS that the beneficiaries were incarcerated and that the requirements for the exception codes had been met. If CMS implements a postpayment edit but does not also standardize the claims-processing policies for contractors to follow, some providers will then have to resubmit the claims with the exception codes added, which would create inefficiencies and time delays at both the provider and contractor levels.

### **WHEN THE CENTERS FOR MEDICARE & MEDICAID SERVICES RECEIVED INCARCERATION INFORMATION BEFORE CLAIMS WERE PAID, IT HAD CONTROLS TO PREVENT IMPROPER PAYMENTS**

When CMS's data systems indicated that a beneficiary was incarcerated at the time that a claim was processed, CMS's controls, particularly its prepayment edit, were adequate to prevent payment for Medicare services rendered to incarcerated beneficiaries.

### **WHEN THE CENTERS FOR MEDICARE & MEDICAID SERVICES RECEIVED INCARCERATION INFORMATION AFTER CLAIMS WERE PAID, IT DID NOT HAVE CONTROLS TO DETECT AND RECOUP IMPROPER PAYMENTS**

#### **Federal Requirements**

Section 1862(a)(2) of the Act states that no payment will be made under Medicare Part A or Part B for services for which a beneficiary has no legal obligation to pay and which no other person has a legal obligation to pay. Section 1862(a)(3) of the Act states that (with limited exceptions) no payment will be made under Medicare Parts A or B for services paid for directly or indirectly by a governmental entity.

Chapter 1, section 10.4, of CMS's *Medicare Claims Processing Manual* states:

CMS has established claim level editing ... using data received from the Social Security Administration (SSA). Specifically, the data contain the names of the Medicare beneficiaries and time periods when the beneficiary is in such State or local custody. These data will be compared to the data on the incoming claims. CWF will reject claims where the dates from the SSA file and the dates of service on the claim overlap .... Contractors will, in turn, deny payment of such claims. [Emphasis added.]

The Presidential memorandum entitled *Finding and Recapturing Improper Payments* (75 Fed. Reg. 12119 (March 15, 2010)) directs Federal agencies, including CMS, to use every tool available to identify and reclaim the funds associated with improper payments that the Federal Government has made. The memorandum notes that reclaiming these funds is a critical component of the proper stewardship and protection of taxpayer dollars. Office of Management and Budget Circular A-123, *Requirements for Effective Measurement and Remediation of Improper Payments*, also states that Federal agencies should take all necessary steps to prevent, detect, and collect improper payments (Appendix C, part I, section L (2006)).

### **Improper Payments Not Detected**

When CMS's data systems did not indicate until after a claim had been processed that a beneficiary was incarcerated, CMS's controls were not adequate to detect and recoup the improper payment.

CMS received information on dates of incarceration after the beginning date of incarceration. (In one instance, CMS did not receive this information until 1 year after the beneficiary's beginning date of incarceration.) As a result, Medicare contractors received and processed claims from providers before CMS received notification of the beneficiaries' incarceration. Contractors incorrectly but unknowingly paid providers for services rendered to incarcerated beneficiaries. As a result, Medicare payments totaling \$33,587,634 were improperly made to providers for services rendered to 11,619 incarcerated beneficiaries during CYs 2009 through 2011.

When CMS received untimely information indicating that the beneficiaries' periods of incarceration overlapped with the dates of service on previously paid Medicare claims, CMS did not notify Medicare contractors of this updated information. In the absence of such notification, the contractors did not detect and recoup the improper payments.

For the 53 claims that we reviewed, we compared the dates on which CMS's systems were updated with incarceration information from SSA to the dates on which Medicare contractors paid providers. For each of the 53 claims, we determined that CMS received the incarceration information from SSA after the contractors had paid the claims.

Medicare contractors confirmed to us that CMS had not notified them of the beneficiaries' dates of incarceration for this type of claim and explained that they made the payments because the information in CMS's systems at the time of payment did not indicate that the beneficiaries were incarcerated. After analyzing information from us regarding the beneficiaries' incarceration statuses, contractors stated that claims of this type were not allowable for payment. Contractors stated that they would have retroactively reprocessed such claims and recouped the payments if CMS had notified them of the incarceration information.

**The Centers for Medicare & Medicaid Services Did Not Have Policies and Procedures To Detect and Recoup Improper Payments on a Postpayment Basis**

CMS will not always receive timely updates regarding incarceration information before Medicare contractors pay providers on behalf of incarcerated beneficiaries. The improper payments remained uncollected because CMS did not have policies and procedures to review incarceration information on a postpayment basis to detect improper payments that the prepayment edit could not prevent.

Because CMS has instructed its Medicare contractors to rely on SSA’s incarceration information to prevent improper payments and because this information must be present for the prepayment edit to be effective, using the same information to notify contractors of beneficiaries’ status after claims have been paid is a reasonable extension of CMS’s efforts. Once notified, the contractors could then detect and recoup improper payments.

**Improper Payments on Behalf of Incarcerated Beneficiaries Remained Uncollected**

Because CMS did not have policies and procedures to detect improper payments, it did not notify the Medicare contractors to recoup the improper payments. Thus, \$33,587,634 in improper payments for CYs 2009 through 2011 remained uncollected (Table).

**Table. Improper Payments That Remained Uncollected**

<b>Type of Claim</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
Inpatient Hospital	\$11,101,662	\$5,540,831	\$4,317,518	\$20,960,011
Physician and Other Services <sup>3</sup>	2,585,410	1,728,912	1,171,098	5,485,420
Outpatient Hospital	2,225,114	1,351,800	868,535	4,445,449
Durable Medical Equipment	568,987	385,264	355,978	1,310,229
Skilled Nursing Facility	318,030	264,585	110,530	693,145
Home Health Agency	265,193	192,976	207,948	666,117
Hospice	17,900	3,659	5,704	27,263
<b>Total</b>	<b>\$17,082,296</b>	<b>\$9,468,027</b>	<b>\$7,037,311</b>	<b>\$33,587,634</b>

**INCONSISTENCIES IN POLICIES FOR PROCESSING CLAIMS WOULD LEAD TO INEFFICIENCIES IN CLAIMS SUBMISSION PROCESS**

**Federal Requirements**

Federal requirements (42 CFR § 411.4(b)) allow Medicare payment if the State or local law requires incarcerated beneficiaries to repay the cost of medical services. For these instances, providers place exception codes on the claims submitted for Medicare payment.

<sup>3</sup> For this report, this category includes, but is not limited to, ambulance services, home health services not covered under Medicare Part A, laboratory services, and physical therapy.

## **Inconsistent Policies for Processing of Claims for Incarcerated Beneficiaries**

CMS allowed Medicare contractors to follow varying policies when processing claims with exception codes. For example, one contractor approved claims with exception codes that another contractor would have denied. Substantive differences also existed between providers, which to obtain Medicare reimbursement, undertook additional steps in the submission and resubmission of claims based on the different policies each contractor followed.

One Medicare contractor stated that it denied claims with exception codes if the CMS databases were not updated in a timely fashion to indicate that the beneficiary was incarcerated. In reaction to this contractor's policy, one provider told us that it did not use an exception code, even when the requirements for the exception code had been met. This provider added that it used an exception code only when resubmitting a claim that the contractor had previously denied.

Conversely, two Medicare contractors stated that they pay claims with exception codes regardless of the incarceration status that appears in the CMS databases. For that reason, one provider told us that it submitted claims with the exception codes when it knew through sources other than CMS that the requirements for the exception codes had been met.

## **Inefficiencies at Provider Level in Claims Submission Process**

If CMS implements a postpayment edit but does not also standardize the policies for Medicare contractors to follow when developing procedures to process claims, the providers that are not using the exception codes (even though the requirements have been met) will then have to resubmit the claims with the exception codes added. Further, providers may have to appeal some of the claims when time limits for submitting claims have expired. These extra steps would create inefficiencies and time delays at both the provider and contractor levels—conditions that would not exist if all of the contractors consistently processed claims with the exception codes.

## **RECOMMENDATIONS**

We recommend that CMS:

- ensure that Medicare contractors recoup the \$33,587,634 in improper payments;
- implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to incarcerated beneficiaries when incarceration information is received on previously paid Medicare claims;
- identify improper payments made on behalf of incarcerated beneficiaries after our audit period but before implementation of policies and procedures and ensure that Medicare contractors recoup those payments;

- work with other entities, including SSA, to identify ways to improve the timeliness with which CMS receives incarceration information before Medicare contractors pay providers on behalf of incarcerated beneficiaries; and
- work with the Medicare contractors to ensure that all claims with exception codes are processed consistently and pursuant to Federal requirements.

## **CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, CMS concurred with our recommendations to (a) implement policies and procedures to detect and recoup improper payments when incarceration information is received on previously paid Medicare claims, (b) identify and recoup improper payments made after our audit period but before the implementation of those policies and procedures, and (c) work with other entities to identify ways to improve the timeliness with which it receives incarceration information. CMS stated that in April 2013 it plans to implement a process for detecting and recouping improper payments for previously paid Medicare claims.

CMS partially concurred with our recommendation regarding the recoupment of the \$33,587,634 in improper payments and did not concur with our last recommendation regarding the consistent processing of claims with exception codes.

CMS's comments appear as the Appendix. We have redacted an individual's name and phone number from CMS's comments.

### **Recoupment of Improper Payments**

#### *Centers for Medicare & Medicaid Services Comments*

CMS stated that it is committed to recovering overpayments we identified, but it must take into account the cost benefit of recoupment activities, including potential appeal costs and the cost of manually reopening these claims.

CMS added that it is possible that Medicare was the proper payer for some of the 75,639 claims we questioned. CMS stated that our review did not determine whether the claims that we identified as improper were for beneficiaries in penal facilities where Medicare was the proper payer because State or local law required such beneficiaries to repay the costs of medical services and the State or local government enforced this law.

#### *Office of Inspector General Response*

After providing its comments, CMS advised us that it had initiated recovery actions for CY 2009 claims and that it would shortly begin to recoup improper payments for CY 2010 and 2011 claims as well. We acknowledge that CMS must take into account the cost benefit for



recoupment activities. We encourage CMS to continue to recover these improper payments in accordance with its policies and procedures.

We acknowledge that Medicare is the proper payer for some incarcerated beneficiaries. Federal requirements specify that providers are responsible for indicating that Medicare is the proper payer by placing an exception code on the claims. Accordingly, as stated in “Methodology,” we analyzed data from CMS’s systems and eliminated from our review 15,530 claims for which Medicare was likely the proper payer—even though providers had not used the exception code on these claims. For the remaining 75,639 claims, we concluded that it was unlikely that Medicare was the proper payer.

### **Consistent Processing of Claims With Exception Codes**

CMS did not concur with our last recommendation, adding that it was not able to fully understand the issue or fully evaluate this recommendation. CMS requested that we provide greater specificity regarding our findings concerning inconsistencies in contractor policies for the processing of claims with exception codes. After receiving CMS’s comments, we gave CMS the detailed information that it had requested.

### **Provider Access to Incarceration Information**

Our draft report also contained a finding and associated recommendation (referred to as Recommendation 1 in CMS’s comments) regarding provider access to the incarceration information that CMS used to prevent improper payments. CMS did not concur with that recommendation because one of its systems gives providers access to that information. After we issued our draft report, CMS gave us supplemental information regarding provider access. Specifically, CMS said that all providers can make beneficiary eligibility inquiries before filing claims, either through the Medicare contractors or through the Health Insurance Portability and Accountability Act (HIPAA) Eligibility Transaction System (HETS). CMS noted that for three specific reasons, including cases in which the beneficiary has been incarcerated, the HETS informs providers of a beneficiary’s ineligibility for Medicare benefits without giving the specific reason for that ineligibility.

After reviewing CMS’s comments regarding provider access to incarceration information and after getting further information from CMS, we removed that finding and recommendation from this report.

# **APPENDIX**

## APPENDIX: CENTERS FOR MEDICARE &amp; MEDICAID SERVICES COMMENTS



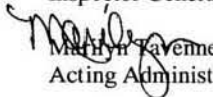
DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Centers for Medicare &amp; Medicaid Services

*Administrator*  
Washington, DC 20201

**DATE:** NOV 15 2012

**TO:** Daniel R. Levinson  
Inspector General

**FROM:**   
Matthew Tavenner  
Acting Administrator

**SUBJECT:** Office of Inspector General (OIG) Draft Report: "Medicare Improperly Paid Providers Millions of Dollars for Incarcerated Beneficiaries for Calendar Years 2009 Through 2011" (A-07-12-01113)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on OIG Draft Report entitled, "Medicare Improperly Paid Providers Millions of Dollars for Incarcerated Beneficiaries for Calendar Years 2009 Through 2011" (A-07-12-01113). The objective of this study was to determine whether CMS had adequate controls to prevent and detect improper payments for Medicare services rendered to incarcerated beneficiaries.

Medicare does not generally pay for services rendered to incarcerated beneficiaries. However, federal requirements allow Medicare payment if state or local law requires incarcerated beneficiaries to repay the cost of medical services. Health care providers indicate this exception by placing a specific code on the claims for Medicare payment. OIG refers to this code as "exception code."

The Social Security Administration (SSA) is CMS's primary source of information about incarcerated beneficiaries. Generally, SSA collects information, such as the names of beneficiaries and the dates on which beneficiaries begin and/or end periods of incarceration, directly from penal authorities. SSA also collects incarceration end dates from the beneficiaries' requests for reinstatement of Social Security benefits. With this information, CMS determines: (1) which beneficiaries are, or have been, incarcerated; and (2) the period of incarceration during which Medicare will not pay for health care services provided to these individuals, unless the beneficiary qualifies for the exception.

**OIG Recommendation 1**<sup>1</sup>

The OIG recommends that CMS change the timing by which it grants providers access to beneficiaries' incarceration information, so that providers have access to that information before they submit claims to Medicare contractors instead of gaining that access when claims are denied.

<sup>1</sup>**Office of Inspector General Note** — This section is not applicable because the finding and recommendation referred to by the auditee are not included in this report.

Page 2 – Daniel R. Levenson

### **CMS Response**

The CMS nonconcur with the recommendation. This non-concurrence is based upon incorrect information that Medicare providers do not have access to information regarding beneficiaries' ineligibility for Medicare benefits prior to submitting a claim. Medicare providers do have access to this information for beneficiaries and have had such access for many years, including those years included in the OIG audit. All providers are able to make beneficiary eligibility inquiries in advance of filing a claim either through the Medicare Administrative Contractors or through the HIPAA Eligibility Transaction System (HETS).<sup>1</sup> While the provider will not be told the reason for ineligibility (also known as the period of inactivity), the provider has access to the beginning and end dates for the period of inactivity and that the reason behind the inactivity is for one of the three following reasons: (1) The Medicare beneficiary has been classified as an illegal alien; (2) The Medicare beneficiary has been deported; or (3) The Medicare beneficiary has been incarcerated. Therefore, the provider has information about the period of inactivity and the relevant dates prior to submitting a claim.

### **OIG Recommendation 2**

The OIG recommends that CMS ensure that Medicare contractors recoup the \$33,587,634 in improper payments.

### **CMS Response**

The CMS partially concurs with the recommendation to recoup \$33,587,634 of improper payments. CMS is committed to collecting overpayments identified in this OIG report. In recovering overpayments, CMS must take into account the respective cost benefit of recoupment activities, including potential appeal costs and efforts to manually reopen, reprocess, and track these claims.

The OIG identified 91,169 claims for incarcerated beneficiaries totaling \$44,517,431 in Medicare payments. The OIG removed 15,300 claims that were billed without exception codes

---

<sup>11</sup> The HETS that CMS maintains for providers to submit beneficiary eligibility transactions that meet the ASC X12 270-271 HIPAA eligibility transaction requirements does release information that will notify a provider that the beneficiary is ineligible for Medicare benefits. The language in the 270-271 Implementation Guide found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/HETSHelp/Downloads/HETS270271CompanionGuideUpcoming.pdf> notifies providers what information to expect on the 271 eligibility response. It reads as follows:

The HETS 270/271 application will return a 2110C Loop with element EB01 = "6" (Inactive) along with a DTP (date and time period) segment containing beginning and end dates for the period of inactivity when an individual entitled to Medicare is ineligible for Medicare benefits over a period of time for any one the following reasons:

- The Medicare Beneficiary has been classified as an illegal alien in the United States.
- The Medicare Beneficiary has been deported from the United States.
- The Medicare Beneficiary has been incarcerated.
- **Note:** Information specifying the reason for the period of ineligibility will not be released.

Page 3 – Daniel R. Levenson

because these claims were associated with 94 penal facilities where a provider had previously used an exception code for a beneficiary at that facility. However, OIG did not determine if the claims associated with penal facilities that remained in its database were in a jurisdiction where the State or local law requires incarcerated beneficiaries to repay the costs of medical services. Therefore, it is possible that some of the 75,639 claims OIG identified as having improper payments are for beneficiaries in penal facilities where Medicare is the proper payer because the State or local law requires the beneficiary to repay the costs of medical services and the State or local government enforces this law.

**OIG Recommendation 3**

The OIG recommends that CMS implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to incarcerated beneficiaries when incarceration information is received on previously paid Medicare claims.

**CMS Response**

The CMS concurs with the recommendation and has developed more formalized contractor instructions to address these matters that will be effective April 2013. This guidance will implement a process to detect and recoup improper payments made for Medicare services furnished to incarcerated beneficiaries.

**OIG Recommendation 4**

The OIG recommends that CMS identify improper payments that were made on behalf of incarcerated beneficiaries after our audit period but before implementation of policies and procedures and ensure that Medicare contractors recoup those payments.

**CMS Response**

The CMS concurs with the recommendation and is developing a strategy to automate the identification of improper payments made after the OIG's audit period and before the IUR process, noted above, is implemented. CMS projects that recoupment efforts will, tentatively, begin in July 2013.

**OIG Recommendation 5**

The OIG recommends that CMS work with other entities, including SSA, to identify ways to improve the timeliness with which CMS receives incarceration information before Medicare contractors pay providers on behalf of incarcerated beneficiaries.

**CMS Response**

The CMS concurs with the recommendation to work with other entities, including SSA, to identify ways to improve the timing and frequency of CMS' receipt of data on incarcerated beneficiaries to help prevent Medicare payments for these individuals. CMS uses incarceration

Page 4 – Daniel R. Levenson

data transmitted by the SSA to adjudicate Medicare claims; therefore, we will investigate ways to improve the timeliness and frequency of our data transmissions from SSA. In this regard, it would be helpful to receive OIG's detailed findings regarding the length of time claims were paid prior to incarcerated data being available on CMS' systems.

While CMS agrees that timely receipt of incarcerated data is crucial to accurate claims processing, we also recognize that delays by correctional facilities in reporting this information will impact the utility of a more frequent reporting requirement. If SSA does not receive timely incarceration data from correctional facilities, then increasing the frequency of the data exchange between SSA and CMS may not prevent payment of all claims from incarcerated beneficiaries. In such cases, the OIG's other recommendations for CMS to implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to incarcerated beneficiaries would help ensure that improper payments are corrected and funds restored to the Medicare trust funds.

#### **OIG Recommendation 6**

The OIG recommends that CMS work with the Medicare contractors to ensure that all claims with exception codes are processed consistently and pursuant to Federal requirements.

#### **CMS Response**

The CMS nonconcur with this recommendation because the OIG's report does not describe the problem in sufficient detail to enable CMS to fully understand the issue nor to fully evaluate OIG's recommendation. First, with respect to what OIG terms an "exception code," CMS assumes that OIG is referring to the use of condition code "63" and modifier "QJ" that are intended to be used on claims for incarcerated beneficiaries whose claims may be payable under the exception provisions of 42 CFR section 411.4(b). Nevertheless, we ask that OIG confirm this assumption. More importantly, CMS asks OIG for greater specificity regarding its findings concerning contractors' policies and practices (and inconsistencies detected) from the use of "exception codes" in processing claims for incarcerated beneficiaries to ensure that CMS' remediation efforts are correctly targeted and fully effective. The OIG may contact [REDACTED] at [REDACTED] to provide this additional information.<sup>2</sup>

The CMS appreciates OIG's efforts in working with us to help identify billing issues associated with payments made to or on behalf of beneficiaries who are incarcerated on the date of service and look forward to working with OIG in the future.

<sup>2</sup>**Office of Inspector General Note** — We redacted the name and phone number of the CMS official from CMS's comments.