

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICARE PAYMENTS
FOR BENEFICIARIES INCARCERATED
IN THE STATE OF MICHIGAN**



JANET REHNQUIST
Inspector General

NOVEMBER 2002
A-05-02-00029



Memorandum

Date November 22, 2002

From Regional Inspector General
for Audit Services

Subject Review of Medicare Payments for Incarcerated Beneficiaries in Michigan
(A-05-02-00029)

To Dorothy Burk Collins, Regional Administrator
Centers for Medicare & Medicaid Services

Attached are two copies of the U.S. Department of Health and Human Services (HHS), Office of the Inspector General's report entitled "Review of Medicare Payments for Beneficiaries Incarcerated in the State of Michigan." At the request of Senator Grassley, Senate Finance Committee, we undertook a review of Medicare payments for services provided to incarcerated beneficiaries during the 3-year period of January 1, 1997 through December 31, 1999. The objective was to determine whether Medicare fee-for-service claims paid in 10 States were in compliance with Federal regulations and Centers for Medicare & Medicaid Services guidelines. Michigan was one of the 10 States selected for review.

Officials at your office have generally concurred with our recommendations, set forth on page five of the attached report and have taken, or agreed to take, corrective action. We appreciate the cooperation given us in this audit.

We would appreciate your views and the status of any further action taken or contemplated on our recommendations within the next 60 days. If you have any questions, please contact me or have your staff contact Frank Polasek, Audit Manager, at (312) 353-7896.

To facilitate identification, please refer to Common Identification Number A-05-02-00029 in all correspondence relating to this report.

A handwritten signature in cursive script that reads "Paul Swanson".

Paul Swanson

Attachments -- as stated





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At the request of Senator Grassley, Senate Finance Committee, we undertook a review of Medicare payments for services provided to incarcerated beneficiaries. The objective of our review was to determine whether Medicare fee-for-service claims paid in 10 States during the 3-year period of January 1, 1997 through December 31, 1999 were in compliance with Federal regulations and Centers for Medicare & Medicaid Services (CMS) guidelines. Michigan was 1 of the 10 States selected for review.

Senator Grassley's request was made at the April 25, 2001 Senate Finance Committee hearing held to address improper payments in Federal programs. At this hearing, we released our report entitled, *Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries*, in which we found that the Medicare program had paid \$32 million in fee-for-service benefits on behalf of 7,438 incarcerated beneficiaries during the 3-year period mentioned above. Generally, no Medicare payments should be made when a beneficiary is in State or local custody under a penal authority, since the State or other government component is responsible for providing medical care. This is a rebuttable presumption that may be overcome only if a State or local law exists requiring incarcerated beneficiaries to repay the cost of medical services and the incarcerating entity enforces this requirement by diligently pursuing collection.

In order to determine the extent of improper Medicare payments made on behalf of incarcerated beneficiaries, we reviewed a randomly selected statistical sample of 100 claims from each of 10 States including Michigan. The States selected represented about 70 percent of the \$32 million mentioned in our April 25, 2001 report and the claims reviewed were for services in the 3-year period covered in that report.

We found in Michigan that three of the 100 sample claims were unallowable. The sample also included 63 claims for beneficiaries in psychiatric hospitals operated by the Michigan Department of Community Health. We determined that these beneficiaries did qualify for Medicare coverage because under State law, the beneficiaries were responsible for repayment of medical costs and the State did pursue collection. Thirty additional claims in our sample were also allowable because we believe the beneficiaries were not incarcerated on the day of the medical service. We were unable to determine the incarceration status of the beneficiaries for four claims in our sample.



As a result of our April 25, 2001 report, CMS plans to establish an edit in its Common Working File (CWF) that will deny claims for incarcerated beneficiaries, unless the supplier or provider certifies using a modifier on the claim, that the State or local government has instructed that the conditions for Medicare payment have been met. We recommended that CMS require its Michigan contractors to educate suppliers and providers on the proper use of the modifier and monitor that payment requirements under regulations at 42 CFR 411.4 (b) are being followed. Officials at CMS concurred with our recommendations.

BACKGROUND

Under current Federal law and regulations, Medicare payments made on behalf of beneficiaries in the custody of law enforcement agencies are generally unallowable except when certain requirements are met.

Under sections 1862(a)(2) and (3) of the Social Security Act, the Medicare program will not pay for services if the beneficiary has no legal obligation to pay for the services or if the services are paid directly or indirectly by a government entity. Furthermore, regulations at 42 CFR 411.4 states that:

- (a) General rule: Except as provided in 411.8(b) (for services paid by a government entity), Medicare does not pay for service if: (1) the beneficiary has no legal obligation to pay for the service; and (2) no other person or organization (such as a prepayment plan of which the beneficiary is a member) has a legal obligation to provide or pay for that service.*
- (b) Special conditions for services furnished to individuals in custody of penal authorities. Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met:*
 - (1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody.*
 - (2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.*

Under these criteria, Medicare payments on behalf of prisoners in custody of Federal authorities are not allowable since these prisoners by definition are not subject to State or local laws regarding the terms of their care. For prisoners in custody of State or local government entities, the component operating the prison is presumed to be responsible

for the medical needs of its prisoners. This is a rebuttable presumption that must be affirmatively overcome by the initiative of the State or local government entity. There must be a law requiring all individuals or groups of individuals in their custody to repay the cost of medical service. In addition, the entity must establish that it enforces the requirement to pay by billing and seeking collection from all individuals or groups of individuals in custody, whether insured or uninsured, with the same vigor it pursues the collection of other debts. Guidelines in CMS contractor manuals state the government entity must enforce the requirement to pay and seek collection from all individuals in custody with the same legal status.

Section 202(x)(1)(A) of the Social Security Act requires the Social Security Administration (SSA) to suspend Old Age and Survivors and Disability Insurance (i.e., Social Security benefits) to persons who are incarcerated. To implement this requirement, SSA, with the assistance of the Federal Bureau of Prisons (FBOP) and various State and local entities, developed and maintains a database of incarcerated individuals.

The Office of Inspector General matched a file of incarcerated Medicare beneficiaries provided by SSA to CMS's National Claims History file for claims paid between January 1, 1997 and December 31, 1999. Based on the matching, we compiled a database of claims paid on behalf of beneficiaries whose SSA payments had been suspended due to incarceration on the dates of service. We created a listing for Michigan that included 3,921 claims totaling \$1,428,463. Using the Michigan listing, we selected a random statistical sample of 100 fee-for-services claims totaling \$24,578 paid during the January 1, 1997 through December 31, 1999.

OBJECTIVE, SCOPE AND METHODOLOGY

Our objective was to determine whether Medicare payments for services provided to beneficiaries reported to be incarcerated during the period January 1, 1997 through December 31, 1999 were in compliance with regulations and CMS guidelines. To achieve our objective, we:

- Reviewed applicable Federal laws and regulations, Medicare reimbursement policies and procedures, and pertinent provisions of the Social Security Act pertaining to incarcerated beneficiaries.
- Reviewed applicable Michigan laws and regulations pertaining to health care cost liabilities for incarcerated beneficiaries and other individuals in the penal system.
- Spoke with various State officials including individuals from the Michigan Departments of Corrections and Community Health.
- Determined if collection procedures at the Department of Community Health were adequate and applied uniformly for all claims.

- Contacted county jails in the counties where medical services were provided to identify incarcerating entity of beneficiaries for selected claims in our sample.
- Checked the FBOP database to see if any beneficiaries, whose incarceration status on the date of service could not be determined, were confined at a Federal prison.

We conducted our review in accordance with generally accepted government auditing standards. The objectives of our audit did not require an understanding or assessment of the overall internal control structures of the suppliers and providers. Our field work was performed during November 2001 through July 2002 at various county jails and mental hospitals in Michigan and our field office in Columbus, Ohio.

RESULTS OF AUDIT

During our review of Medicare payments for beneficiaries reported as incarcerated in the State of Michigan, we found that three of the 100 sample claims were unallowable. The sample also included 63 claims for beneficiaries in psychiatric hospitals operated by the Michigan Department of Community Health. We determined that these beneficiaries did qualify for Medicare coverage. Thirty additional claims in our sample were also allowable because the beneficiaries were not incarcerated on the day of the medical service. We were unable to determine the incarceration status of the beneficiaries for four claims in our sample.

The three unallowable claims, totaling \$724, were for a Federal prisoner in a county jail and two State prisoners in Michigan prisons. The Federal prisoner was taken from the county jail to a hospital and Medicare was incorrectly billed for the service. Claims applicable to both State prisoners were for durable medical equipment. These claims should not have occurred because State prisoners are not responsible for the costs of their medical care. The State of Michigan has an agreement with a private contractor to arrange for medical services for individuals in the custody of the State prison system.

Under current CMS guidelines, the Medicare program is responsible for coverage as long there is a law requiring the individual in custody to pay for medical services and the government entity enforces the requirements for all individuals in custody with the same legal status. Section 330.1804 of the Mental Health Code for the Michigan Department of Community Health provides that individuals receiving mental health care are financially liable for the cost of services. The Administrative Rules also state that delinquent accounts be turned over to the Department of Treasury for collection.

Department of Community Health records, received from various mental hospitals in Michigan, were reviewed for 63 claims in our sample. The records indicate that 48 of the 63 claims were for beneficiaries found not guilty by reason of insanity and 15 claims were for beneficiaries incompetent to stand trial. Under Michigan Law all of these beneficiaries were responsible for the costs of their medical care. We also reviewed the collection procedures at the Department of Community Health and found that they were adequate and applied uniformly to all individuals. We concluded that payment of the 63

claims totaling \$20,275 was allowable and consistent with Medicare reimbursement requirements.

We determined that 30 additional claims totaling \$3,229 were allowable because the beneficiaries were not in the custody of any penal authority at the time of the medical service. Generally, we found that the beneficiaries had been incarcerated, but not on the service date of our sample claims. Often the medical service occurred just prior to incarceration or just following release from custody. Our findings concerning these beneficiaries will be shared with SSA. We were unable to determine the incarceration status of the beneficiaries for the final four claims in our sample despite contacting jails near the places of the medical services. The combined Medicare payment for these four claims was \$350.

CONCLUSIONS AND RECOMMENDATIONS

As a result of our April 25, 2001 report, CMS plans to establish an edit in its Common Working File that will deny claims for incarcerated beneficiaries, unless the supplier or provider certifies using a modifier on the claim, that the State or local government has instructed that the conditions for Medicare payment have been met.

We recommend that the CMS regional office require contractors to:

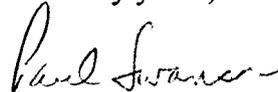
- Educate suppliers and providers on the meaning of the modifier or condition code and circumstance relating to their proper use.
- Monitor claims with the modifier or condition code after implementation to assure the conditions required in 42 CFR 411.4 (b) are met.

We believe the new edit will prevent Medicare payment of unallowable claims for incarcerated beneficiaries.

AUDITEE COMMENTS

Officials at CMS concurred with our recommendations.

Sincerely yours,



Paul Swanson
Regional Inspector General
for Audit Services

APPENDIX

Memorandum

Date November 14, 2002

From Associate Regional Administrator
Division of Financial Management

Subject Review of Medicare Payments for Incarcerated Beneficiaries in Michigan
(A-05-02-00029)

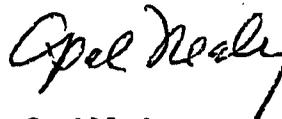
To Regional Inspector General for Audit Services

Refer to BCB12

We have reviewed the draft "Review of Medicare Payments for Beneficiaries Incarcerated in the State of Michigan" which contained the following recommendations:

- Educate suppliers and providers on the meaning of the modifier or condition code and circumstance relating to their proper use.
- Monitor claims with the modifier or condition code after implementation to assure the conditions required in 42 CFR 411.4(b) are met.

We agree with the recommendations contained in the draft report and will work with the Medicare contractor to insure their compliance.



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