

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

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

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Inspector General

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Office of Inspector General

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

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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 does not pay for services rendered to an alien beneficiary who was not lawfully present in the United States (unlawfully present) on the date of service. The Social Security Administration (SSA) is CMS's primary source of information about unlawfully present beneficiaries. SSA collects information from Federal agencies, including the Department of Homeland Security, and transmits these data to CMS. With this information, CMS determines which beneficiaries are unlawfully present and the periods for which Medicare will not pay for health care services provided to these individuals.

CMS's records identified 29,185 beneficiaries who had been unlawfully present at some point during calendar years (CY) 2009 through 2011. We limited our review to 133,541 claims on behalf of 2,575 unlawfully present beneficiaries with \$91,620,548 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 unlawfully present beneficiaries.

SUMMARY OF FINDINGS

When CMS's data systems indicated at the time that a claim was processed that a beneficiary was unlawfully present, 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 unlawful presence 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 unlawfully present, CMS's controls were not adequate to detect and recoup the improper payment. Because CMS did not always receive information relating to unlawful presence in a timely manner, Medicare payments totaling \$91,620,548 were made to providers for services rendered to 2,575 unlawfully present beneficiaries during CYs 2009 through 2011. CMS did not have policies and procedures to review unlawful presence information on a postpayment basis that would have detected improper payments that the prepayment edit could not prevent. Consequently, CMS did not notify the Medicare contractors to recoup any of the \$91,620,548 in improper payments.

RECOMMENDATIONS

We recommend that CMS:

- ensure that Medicare contractors recoup the \$91,620,548 in improper payments,
- implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to unlawfully present beneficiaries in cases when information relating to unlawful presence is received on previously paid Medicare claims, and
- identify improper payments made on behalf of unlawfully present beneficiaries after our audit period but before implementation of policies and procedures and ensure that Medicare contractors recoup those payments.

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

In written comments on our draft report, CMS concurred with our last two recommendations and 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 \$91,620,548 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.

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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 Beneficiaries Who Are Not Lawfully Present in the United States

Medicare benefits are generally allowable when rendered to a beneficiary for whom the Social Security Administration (SSA) has evidence in its records that the beneficiary is a U.S. citizen or a U.S. national.

Pursuant to sections 202, 226, 226A, 1818, and 1818A of the Act, Medicare payments are also allowable for services furnished to an alien who is lawfully present in the United States. Pursuant to 8 U.S.C. § 1611,¹ Medicare benefits are not allowable for aliens who are not lawfully present in the United States as determined by the Attorney General.² For this report, we refer to these individuals as “unlawfully present.”

Obtaining Information for Unlawfully Present Beneficiaries

SSA is CMS’s primary source of information about unlawfully present beneficiaries. SSA collects the names of Medicare beneficiaries who lose their status of being lawfully present in the United States from the Department of Homeland Security and other Federal agencies. For these individuals, SSA also collects the dates on which their lawful presence status ended and, in some instances, restarted. When SSA’s information indicates that a beneficiary’s lawful presence has ended, CMS classifies the individual as unlawfully present for Medicare purposes. The end date of lawful presence as indicated by SSA’s systems becomes the start date on which these individuals are not eligible to receive Medicare benefits.

¹ Enacted by the Personal Responsibility and Work Opportunity Act of 1996, P.L. No. 104-193 § 401, as amended by the Balanced Budget Act of 1997, P.L. No. 105-33 § 5561.

² The Attorney General defined the phrase “lawfully present in the United States” in regulations published on September 6, 1996, by the Immigration and Naturalization Service (now part of the Department of Homeland Security). This regulation identifies five broad categories of lawfully present aliens, including “qualified aliens” as defined in 8 U.S.C. § 1641(b).

CMS's Enrollment Database (EDB) interfaces with SSA's data systems to identify and classify individuals as unlawfully present. CMS officials stated that the systems generally make these classifications on the same day that CMS receives the information from SSA. The dates of unlawful presence are then accessible by several applications, including CMS's Common Working File (CWF). The Medicare contractors use the CWF to process Medicare 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 unlawfully present beneficiaries.

Scope

We identified 133,541 claims for which CMS's data systems indicated that Medicare contractors made \$91,620,548 in payments to providers on behalf of unlawfully present beneficiaries who received services in calendar years (CY) 2009 through 2011.

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 Medicare claims for unlawfully present beneficiaries are processed.
- We used data from CMS's EDB (as of March 28, 2012) to identify 29,185 beneficiaries who had been unlawfully present 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 133,541 claims (on behalf of 2,575 beneficiaries with \$91,620,548 in associated payments) for which the unlawful presence dates overlapped with the dates of service.
- We judgmentally selected 160 inpatient claims and, for those claims, compared the dates on which CMS's data systems were updated with information relating to unlawful presence from SSA to the dates on which Medicare contractors paid providers.
- We discussed the results of our review with CMS officials on September 12, 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 unlawfully present, 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 unlawful presence 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 unlawfully present, CMS's controls were not adequate to detect and recoup the improper payment. Because CMS did not always receive information relating to unlawful presence in a timely manner, Medicare payments totaling \$91,620,548 were made to providers for services rendered to 2,575 unlawfully present beneficiaries during CYs 2009 through 2011. CMS did not have policies and procedures to review unlawful presence information on a postpayment basis that would have detected improper payments that the prepayment edit could not prevent. Consequently, CMS did not notify the Medicare contractors to recoup any of the \$91,620,548 in improper payments.

WHEN THE CENTERS FOR MEDICARE & MEDICAID SERVICES RECEIVED INFORMATION RELATING TO UNLAWFUL PRESENCE BEFORE CLAIMS WERE PAID, IT HAD CONTROLS TO PREVENT IMPROPER PAYMENTS

When CMS's data systems indicated at the time that a claim was processed that a beneficiary was unlawfully present, CMS's controls, particularly its prepayment edit, were adequate to prevent payment for Medicare services rendered to unlawfully present beneficiaries. Further, in May 2010, CMS significantly improved its coordination with SSA to classify beneficiaries as unlawfully present.

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

Federal Requirements

According to 8 U.S.C. § 1611, Medicare benefits will not be payable to any alien in the United States for any month during which the alien is not lawfully present in the United States as determined by the Attorney General.

Chapter 1, section 10.1.4.8, of CMS's *Medicare Claims Processing Manual* states:

Medicare payment may not be made for items and services furnished to an alien beneficiary who was not lawfully present in the United States on the date of service. [Emphasis added.]

The CWF must establish an auxiliary file based on enrollment data contained in the Enrollment Data Base ... 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 a beneficiary that was not lawfully present in the U.S. on the date of service. [Medicare contractors] must deny claims for items and services, rejected by CWF on the basis that the beneficiary was not lawfully present in the U.S. on the date of service.

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 unlawfully present, CMS's controls were not adequate to detect and recoup the improper payment.

CMS received information on dates of unlawful presence after the starting date of unlawful presence. (In one instance, CMS did not receive this information until 1 year after the beneficiary became unlawfully present.) As a result, Medicare contractors received and processed claims from providers before CMS received notification of the beneficiaries' unlawful presence. Contractors incorrectly but unknowingly paid providers for services rendered to unlawfully present beneficiaries. As a result, Medicare payments totaling \$91,620,548 were improperly made to providers for services provided to 2,575 unlawfully present beneficiaries during CYs 2009 through 2011.

CMS does not always receive timely updates regarding unlawful presence information before Medicare contractors pay providers on behalf of unlawfully present beneficiaries. When CMS received untimely information indicating that the beneficiaries' periods of unlawful presence overlapped with the dates of service on previously paid Medicare claims, CMS did not notify contractors of this updated information. In the absence of such notification, the contractors did not detect and recoup the improper payments.

For the 160 claims that we reviewed, we compared the dates on which CMS's data systems were updated with unlawful presence information from SSA to the dates on which Medicare contractors paid providers. For each of the 160 claims, we determined that CMS received the information from SSA after the contractors had paid the claims.

A Medicare contractor confirmed to us that CMS had not notified it of the beneficiaries' dates of unlawful presence for this type of claim and explained that it made the payments because the information in CMS's data systems at the time of payment did not indicate that the beneficiaries were unlawfully present. After analyzing information from us regarding the beneficiaries' unlawful presence statuses, the contractor stated that claims of this type were not allowable for Medicare payment. The contractor stated that it would have retroactively reprocessed such claims and recouped the payments if CMS had notified it of the unlawful presence information.

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

The improper payments remained uncollected because CMS did not have policies and procedures to review unlawful presence 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 the information that CMS receives from SSA 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' statuses 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 Unlawfully Present 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, \$91,620,548 in improper payments for CYs 2009 through 2011 remained uncollected (Table).

Table. Improper Payments That Remained Uncollected

Type of Claim	2009	2010	2011	Total
Inpatient Hospital	\$18,501,533	\$16,401,100	\$7,081,735	\$41,984,368
Outpatient Hospital	12,430,927	8,883,206	2,531,508	23,845,641
Physician and Other Services ³	6,404,982	5,085,796	1,750,540	13,241,318
Skilled Nursing Facility	2,128,523	2,050,564	1,013,645	5,192,732
Home Health Agency	2,175,142	1,236,631	458,862	3,870,635
Durable Medical Equipment	1,389,225	1,120,367	207,161	2,716,753
Hospice	269,584	278,516	221,001	769,101
Total	\$43,299,916	\$35,056,180	\$13,264,452	\$91,620,548

RECOMMENDATIONS

We recommend that CMS:

- ensure that Medicare contractors recoup the \$91,620,548 in improper payments,
- implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to unlawfully present beneficiaries in cases when information relating to unlawful presence is received on previously paid Medicare claims, and
- identify improper payments made on behalf of unlawfully present beneficiaries after our audit period but before implementation of policies and procedures and ensure that Medicare contractors recoup those payments.

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

In written comments on our draft report, CMS concurred with our last two recommendations and 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 \$91,620,548 in improper payments.

CMS's comments appear in their entirety as the Appendix.

³ 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.

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 our review did not consider retroactive updates of beneficiary records to reflect lawfully present status. According to CMS, some of the payments that we had identified as improper may have been appropriate if beneficiary records relating to our audit period had been retroactively updated.

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 disagree with CMS's comment that we did not consider retroactive updates. For our review, we used the most current CMS information available that would have included retroactive updates to that point to determine improper payments. However, we acknowledge that some retroactive adjustments may have occurred after our audit. Therefore, we agree that CMS's recovery efforts should take into account any instances in which beneficiaries' records were retroactively updated to reflect lawfully present status.

Provider Access to Unlawful Presence 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 unlawful presence 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 classified as an "illegal alien," 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 unlawful presence information and after getting further information from CMS, we removed that finding and recommendation from this report.

APPENDIX

APPENDIX: CENTERS FOR MEDICARE & MEDICAID SERVICES COMMENTS



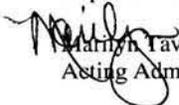
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: NOV 15 2012

TO: Daniel R. Levinson
Inspector General

FROM:  Marilyn Tavenner
Acting Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Medicare Improperly Paid Providers Millions of Dollars for Unlawfully Present Beneficiaries for Calendar Years 2009 Through 2011" (A-07-12-01116)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the subject OIG draft report. The objective of this study is to determine whether CMS had adequate controls to prevent and detect improper payments for Medicare services rendered to unlawfully present beneficiaries.

Medicare does not pay for services rendered to an alien beneficiary who was not lawfully present in the United States (unlawfully present) on the date of service. The Social Security Administration (SSA) is CMS' primary source of information about unlawfully present beneficiaries. SSA collects information from federal agencies, including the Department of Homeland Security, and transmits these data to CMS. With this information, CMS determines which beneficiaries are unlawfully present and the periods for which Medicare will not pay for health care services provided to these individuals.

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 unlawfully present in the United States on the date of service. Based on OIG's recommendation in this report, CMS is developing new instructions and procedures to identify previously paid claims for services furnished to Medicare beneficiaries classified as "unlawfully present" which are scheduled to go into effect April 2013.

OIG Recommendation] ¹

The OIG recommends that CMS change the timing by which it grants providers access to beneficiaries' unlawful presence 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.

¹**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.

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CMS Response

The CMS non-concurs 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 OIG's 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).¹ 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 the reason behind the inactivity is based on one of the following three reasons: (1) the Medicare beneficiary has been classified as an illegal alien; (2) the Medicare beneficiary has been deported; (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 \$91,620,548 of improper payments.

CMS Response

The CMS partially concurs with the recommendation to collect \$91,620,548 in 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. In addition, OIG's review did not consider if the beneficiary records were retroactively updated to reflect a lawfully present status. As a result, some of the claims identified by OIG as improper payments may actually be appropriate.

^[1] 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.

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OIG Recommendation 3

The OIG recommends that CMS implement policies and procedures to detect and recoup improper payments made for Medicare services rendered to unlawfully present beneficiaries in cases when information relating to unlawful presence is received on previously paid Medicare claims.

CMS Response

The CMS concurs and has developed instructions to implement OIG's recommendation. Change Request 8009, entitled "New Informational Unsolicited Response (IUR) Process to Identify Previously Paid Claims for Services Furnished to Medicare Beneficiaries Classified as 'Unlawfully Present' in the United States" is presently scheduled for implementation in April 2013.

OIG Recommendation 4

The OIG recommends that CMS identify improper payments that were made on behalf of unlawfully present 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 OIG's audit period and before the IUR process, noted above, is implemented. CMS projects that recoupment efforts will, tentatively, begin in July 2013.

The CMS thanks OIG for the opportunity to review and comment on this report.