

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICARE PAYMENTS
FOR SERVICES PROVIDED TO
INCARCERATED BENEFICIARIES**



**JANET REHNQUIST
INSPECTOR GENERAL**

**OCTOBER 2002
A-07-02-03008**



Refer to:

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106-2896

Date : October 9, 2002

From : James P. Aasmundstad

Regional Inspector General for Audit Services, Region VII

Subject: Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries in Missouri (CIN: A-07-02-03008)

To : Joe L. Tilghman, Regional Administrator
Centers for Medicare & Medicaid Services, Region VII

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 ten states during the three-year period of January 1, 1997 through December 31, 1999 were in compliance with Federal regulations and Centers for Medicare & Medicaid Services (CMS) guidelines. Missouri was one of the ten 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 (A-04-00-05568)*, 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 three-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 their medical and other needs. This is a rebuttable presumption that may be overcome only if certain strict conditions are met. These conditions are that there must be a state or local law requiring all such individuals, or groups of individuals, repay the cost of medical services and the incarcerating entity must enforce 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 ten selected states. 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 three-year period covered in that report.

During our reviews in the ten states, we found that Medicare payments were allowable for some categories of beneficiaries who were in custody under penal statute while unallowable for other categories of beneficiaries in custody under penal statute. This has occurred because regulations and CMS guidelines require that the state or local law

requiring repayment of the costs of medical services and the enforcement requirements may apply to categories of individuals, rather than to all individuals. A category of beneficiaries is comprised of beneficiaries with the same legal status (e.g., not guilty by reason of insanity (NGRI)). Therefore, the allowability of a Medicare payment depends on the beneficiary's specific category of legal status even though he or she is in custody under a penal statute. During our review we found this was an important distinction.

During our review in Missouri we discovered that there were two major groups of incarcerated individuals that potentially could have had improper Medicare claims paid on their behalf. The first group was comprised of state prisoners in state correctional facilities under the control of the Department of Corrections (DOC). The other group was individuals who were residing in state mental health facilities under the control of the Department of Mental Health (DMH). This group of individuals is comprised of forensic patients who had been found either "Not Guilty By Reason Of Insanity" or "Incompetent To Stand Trial" by the court system.

For the first major group of incarcerated individuals, Missouri Statute, Sections 217.829 requires these individuals to reimburse the DOC for the cost of their care while they were incarcerated. This law, if followed, would allow the Missouri state prisons to bill Medicare. However, during our review we learned that the Missouri DOC has a contract with Correctional Medical Services. Under this contract, Correctional Medical Services is required to pay for all care provided to state prisoners. Therefore, the state prisons should not bill any other insurance company, including Medicare, for medical services provided to state prisoners.

For the second major group of incarcerated individuals, forensic patients under the control of the Missouri DMH, Missouri Statute, Section 552.080 requires these individuals to reimburse the DMH for their cost of care. All 100 of Missouri's sample claims were for this group of individuals. We found that DMH follows all of the various laws and regulations regarding the diligent pursuit of payment and therefore all of the payments made by Medicare for these claims were allowable.

Although we did not have any claims in our sample for state prisoners in correctional facilities, we believe that there is a possibility for improper payments to be made on behalf of these individuals. The reason for this is because there are currently no edits in the system to catch Medicare claims submitted on behalf of incarcerated individuals.

As a result of our April 25, 2001 report, the CMS plans to establish an edit in its Common Working File (CWF) that will deny claims for incarcerated beneficiaries. Claims meeting the conditions for payment will not be subject to this edit if the supplier or provider submitting the claim certifies, by using a modifier or a condition code on the claim, that he or she has been instructed by the state or local government component that the conditions for Medicare payment have been met. We believe, when fully implemented, this enhancement will prevent many improper payments for claims submitted for incarcerated beneficiaries. However, we believe the CMS and its contractors will need to educate

suppliers and providers on the proper use of the modifier or condition code. Also, claims with the modifier or condition code must be monitored to assure the conditions for Medicare reimbursement are met.

In response to our draft report, CMS concurred with our audit findings. Their comments are included in their entirety as Appendix A.

BACKGROUND

Under current Federal law and regulations, payments for Medicare claims made on behalf of beneficiaries in the custody of law enforcement agencies or other government entities 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 state that:

- (a) General rule: Except as provided in 411.8(b) (for services paid by a governmental 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 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 made 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 individuals in custody of state or local government entities, the component operating the prison or state mental health facility is presumed to be responsible for the medical needs of its prisoners/patients. 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 the 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 (e.g., NGRI).

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, the SSA, with the assistance of the Federal Bureau of Prisons and various state and local entities, developed and maintains a database of incarcerated individuals.

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.

First, the Office of Inspector General matched a file of incarcerated Medicare beneficiaries provided by the SSA to the 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 Missouri that included 22,404 claims totaling \$1,989,310. Using the Missouri listing, we selected a random statistical sample of 100 fee-for-services claims totaling \$18,359 paid during January 1, 1997 through December 31, 1999.

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.
- Met with CMS officials in Region VII to discuss Medicare criteria involving incarcerated beneficiaries and to ascertain if any supplier or provider had contacted them to inquire about Medicare guidelines for health care services furnished to incarcerated beneficiaries.
- Reviewed applicable Missouri laws and regulations pertaining to health care cost liabilities for state prisoners and forensic patient beneficiaries.
- Met with various state officials including individuals from the Missouri DOC and the DMH.

- Held discussions with officials of several Medicare fiscal intermediaries and carriers that process claims submitted by providers/suppliers in Missouri to determine if they had controls in place to detect claims submitted on behalf of incarcerated beneficiaries.
- Held discussions with several health care providers to ascertain their understanding of the rules and regulations regarding submitting Medicare claims for incarcerated beneficiaries.
- Verified our sample claims with the Medicare fiscal intermediaries/carriers and health care providers.
- Reviewed the DMH's policies and procedures for collecting reimbursement for a patient's cost of care.
- Reviewed a sample of Medicare and non-Medicare mental health patients' financial records to determine if collection procedures were adequate and applied uniformly for all patients.

We conducted our review in accordance with generally accepted government auditing standards. Our review was limited in scope; therefore, the internal control review was limited to performing inquiries at the contractor level to determine if they have controls in place to detect claims submitted on behalf of incarcerated beneficiaries. Our review was not intended to be a full scale internal control assessment of the suppliers/providers and was more limited than that which would be necessary to express an opinion on the adequacy of the suppliers' or providers' operations taken as a whole. The objectives of our audit did not require an understanding or assessment of the overall internal control structure of the suppliers and providers. We performed our review during the period October 2001 through April 2002.

RESULTS

During our review we found two Missouri Statutes that address the issue of reimbursement for cost of care for state prisoners and state mental health patients. These laws are required by regulation in order for Medicare claims to be allowable for these incarcerated beneficiaries. The first is Missouri Statute, Section 217.829. It requires all state prisoners to reimburse the DOC for their cost of care while they were incarcerated. The second is Missouri Statute, Section 552.080. It requires all state mental health patients to reimburse the DMH for their cost of care.

All of our sample of 100 claims were for forensic patients under the control of the DMH. Our review concluded that the state of Missouri's DMH has adequately met the due diligence requirements that enable them to bill Medicare for forensic patients.

However, we found that incarceration data from the SSA was not contained in the CMS's records. Therefore, the Medicare fiscal intermediaries and carriers that we visited did not have controls in place to detect claims submitted on behalf of incarcerated beneficiaries.

The following table summarizes the results of our review:

<i>Description</i>	<i>Sample Amount</i>	<i>Number of Claims</i>	<i>Number of Beneficiaries</i>
<i>Allowable</i>	\$18,359	100	78
<i>Unallowable</i>	0	0	0
<i>Unable to determine</i>	0	0	0
<i>Total</i>	\$18,359	100	78

ALLOWABLE CLAIMS

Our review showed that the Medicare payments for all 100 claims totaling \$18,359 met Medicare reimbursement requirements. These payments were made on behalf of forensic beneficiaries placed in DMH psychiatric hospitals.

The Medicare regulations state that Medicare claims will only be allowable for incarcerated beneficiaries if “*State or local law requires that individuals in custody repay the cost of the services*”. The regulations also require that “*The State or local government entity enforces the requirement to pay by billing and seeking collection from all individuals in custody with the same legal status (e.g., not guilty by reason of insanity), whether insured or uninsured, 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.*”

Missouri has such a law that requires patients admitted to any state mental health facility to pay their own expenses for their medical and psychiatric care and treatment. Section 552.080(3) and (4) of the Missouri Statute states that:

3. If a person is ordered held or hospitalized by the director of the department of mental health or in one of the facilities of the department of mental health pursuant to the following provisions, the liability for hospitalization shall be paid by the person, his estate or those responsible for his support in accordance with chapter 630, RSMo:

- (1) Following determination of lack of mental fitness to proceed under subsection 7 of section 552.020;*
- (2) Following acquittal because of lack of responsibility due to mental disease or defect under section 552.030, and subsequent order of commitment to the director of the department of mental health under section 552.040.*

4. The method of collecting the costs and expenses herein provided or otherwise incurred in connection with the custody, examination, trial, transportation or treatment of any person accused or convicted of any offense shall not be exclusive and same may be collected in any other manner provided by law.

Our review of the DMH's collection policies and procedures and of a sample of Medicare and non-Medicare mental health patient financial records showed that collection procedures were adequate and applied uniformly for all patients. We believed that payments made on the beneficiaries' behalf were allowable and consistent with Medicare reimbursement requirements because all DMH patients were liable for their health care costs under the Missouri Statute and uniform collection procedures were enforced.

CONCLUSIONS AND RECOMMENDATIONS

Our review concluded that all 100 Medicare payments in the amount of \$18,359 made on behalf of forensic patients in DMH psychiatric hospitals in Missouri were allowable because the DMH actively followed the Missouri Statute that required these individuals to pay for their medical care. We found that the DMH psychiatric hospitals' actively attempted to seek reimbursement from their patients. However, we believe that the CMS, through its regional offices, needs to require the Medicare contractors to monitor these claims in the future to ensure these conditions for payment continue to be met.

Our review also concluded that since incarceration data from the SSA was not contained in CMS's records, the Medicare fiscal intermediaries and carriers that we visited did not have controls in place to detect claims submitted on behalf of incarcerated beneficiaries. However, as a result of our April 25, 2001 report, we have been informed that the CMS plans to establish an edit in the CWF that will deny claims for incarcerated beneficiaries. Claims meeting the conditions for payment will not be subject to this edit if the supplier or provider submitting the claim certifies, by using a modifier or condition code on the claim, that he or she has been instructed by the state or local government component that the conditions for Medicare payment have been met. The modifier or condition code will be pivotal in paying or denying claims for incarcerated beneficiaries.

We, therefore, recommend that the CMS regional office:

- require its Medicare contractors to monitor future claims submitted on behalf of forensic patients in DMH psychiatric hospitals to ensure the conditions for payment continue to be met.
- make a concerted effort through its contractors to educate suppliers and providers on the meaning of the modifier or condition code and circumstance relating to their proper use.
- require its contractors to monitor claims with the modifier or condition code after implementation to assure the conditions required in 42 CFR 411.4(b) are met.

AUDITEE RESPONSE

CMS concurred with our audit findings. Their comments are included in their entirety as Appendix A.

* * * * *

In accordance with the principles of the Freedom of Information Act, 5 U.S.C. 552, as amended by Public Law 104-231, Office of Inspector General, Office of Audit Services reports are made available to the public to the extent information contained therein is not subject to exemptions in the Act. (See 45 CFR Part 5). As such, within ten business days after the final report is issued, it will be posted on the world-wide-web at <http://oig.hhs.gov/>.

To facilitate identification, please refer to Common Identification Number A-07-02-03008 in all correspondence relating to this report.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Memorandum

Refer to:
DHPP/DJ
5.273

Region VII
Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106-2898

Date : September 11, 2002

From : Richard P. Brummel, Acting Regional Administrator
Centers for Medicare & Medicaid Services, Region VII

Subject: Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries
in Missouri (CIN: A-07-02-03008)

To : James P. Aasmundstad
Regional Inspector General for Audit Services, Region VII

We have reviewed the subject draft report and offer the following for your consideration:

We understand that the Centers for Medicare & Medicaid Services (CMS) plans to establish an edit in the Common Working File (CWF) to prohibit payment of claims for services to incarcerated beneficiaries absent appropriate modifiers indicating that the conditions for payment are met. When such actions are taken, we generally inform our claims processing contractors via a Program Memorandum (PM). The PM is also used to convey to our contractors any necessary related actions on their part such as the establishment of appropriate administrative procedures and the conduct of provider communication and education activities. These activities include the issuance of provider bulletins, posting of information on the contractor's website and direct education through seminars and other outreach events. Once CMS issues a PM or other instructions, this regional office will work with our contractors to assure that the necessary administrative procedures are established and related responsibilities carried out.

We agree that, once CWF edits and claims processing procedures are established, monitoring should be conducted. Not only should contractors establish a process for monitoring claims, but, we believe contractors should monitor state laws for changes that could impact the appropriateness of Medicare payment for services to incarcerated beneficiaries.

*The Health Care Financing Administration (HCFA) was renamed to the Centers for Medicare & Medicaid Services (CMS).
We are exercising fiscal restraint by exhausting our stock of stationery.*

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Thank you for the opportunity to comment on this draft report. We apologize for the delay in our response.

A handwritten signature in black ink, appearing to read "Richard P. Brummel". The signature is written in a cursive style with a large initial "R" and "B".

Richard P. Brummel