

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEDICARE IMPROPERLY PAID
MILLIONS OF DOLLARS FOR
PRESCRIPTION DRUGS PROVIDED
TO UNLAWFULLY PRESENT
BENEFICIARIES DURING
2009 THROUGH 2011**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Daniel R. Levinson
Inspector General

October 2013
A-07-12-06038

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

Medicare Part D accepted prescription drug event records totaling almost \$29 million in unallowable gross drug costs on behalf of unlawfully present beneficiaries during calendar years 2009 through 2011.

WHY WE DID THIS REVIEW

Federal health care benefits are generally allowable when provided to a beneficiary who is either a U.S. citizen or a U.S. national or to an alien who is lawfully present in the United States. But when the alien beneficiary is present in the United States on an unlawful basis (unlawfully present), Federal health care benefits are not allowable. We are conducting a series of reviews examining Medicare payments made on behalf of unlawfully present beneficiaries. We previously reported that Medicare made improper Part A and Part B payments totaling \$91.6 million to health care providers for services to unlawfully present beneficiaries. This is a review of payments made on behalf of unlawfully present beneficiaries in Medicare Part D.

The objective of this review was to determine the extent to which the Centers for Medicare & Medicaid Services (CMS) accepted prescription drug event (PDE) records submitted by sponsors on behalf of unlawfully present beneficiaries during calendar years (CYs) 2009 through 2011.

BACKGROUND

Medicare Part D offers prescription drug benefits to individuals entitled to benefits under Medicare Part A or enrolled in Part B. CMS, which administers Medicare, contracts with private prescription drug plans and Medicare Advantage plans (collectively known as sponsors) to offer prescription drug benefits to eligible individuals. Sponsors are paid prospectively, and CMS makes final payment determinations each year by adjusting the sponsors' payments using information from the PDE records.

Federal health care benefits are not allowable for services provided to unlawfully present beneficiaries. CMS has specifically implemented a policy that bars Federal payments for health care services provided to unlawfully present beneficiaries in Medicare Parts A and B. Furthermore, an individual is eligible for Part D benefits if he or she is entitled to Medicare benefits under Part A or enrolled in Part B and lives in the service area of a Part D plan. Thus, Federal law prohibits Part D payments for prescription drugs provided to unlawfully present beneficiaries.

For CYs 2009 through 2011, sponsors submitted final PDE records to CMS with gross drug costs totaling approximately \$227 billion.

WHAT WE FOUND

Of the PDE records submitted by sponsors for CYs 2009 through 2011, CMS inappropriately accepted 279,056 PDE records with unallowable gross drug costs totaling \$28,990,718 on behalf

of 4,139 unlawfully present beneficiaries and used those records to make its final payment determinations to sponsors.

CMS did not have a policy addressing payments for unlawfully present beneficiaries under Medicare Part D that was equivalent to the existing policy that covers payments for these beneficiaries under Parts A and B. Because CMS did not have such a policy, it did not have internal controls to identify and disenroll unlawfully present beneficiaries and to automatically reject PDE records associated with them. Without such a policy, CMS incorrectly treated unlawfully present beneficiaries as eligible for Part D benefits and did not prevent Part D payments on behalf of them.

WHAT WE RECOMMEND

We recommend that CMS:

- resolve improper Part D payments made for prescription drugs provided to unlawfully present beneficiaries by reopening and revising CYs 2009 through 2011 final payment determinations to remove prescription drug costs for unlawfully present beneficiaries;
- develop and implement controls to ensure that Medicare does not pay for prescription drugs for unlawfully present beneficiaries by preventing enrollment of unlawful beneficiaries, disenrolling any currently enrolled unlawful beneficiaries, and automatically rejecting PDE records submitted by sponsors for prescription drugs provided to this population; and
- identify and resolve improper payments made for prescription drugs provided to unlawfully present beneficiaries by reopening and revising final payment determinations for periods after the period of this review but before implementation of policies and procedures.

CMS COMMENTS AND OUR RESPONSE

In written comments on our draft report, CMS concurred with our first two recommendations and described corrective actions that it planned to take. Specifically, CMS indicated that it would first address policy and system changes and would then reopen each year to recover improper payments. CMS did not concur with our third recommendation because, it said, there was no effective way to fully recover the improper payments in question without first implementing the appropriate policies and procedures, including the relevant systems changes.

We acknowledge that CMS is developing and implementing policies and procedures that would address enrollment of unlawful beneficiaries. However, we maintain that once CMS has begun the process of recovering improper payments, it should continue and resolve any improper payments that were incurred after the period of this review until system changes are in place that would effectively prohibit the coverage of these beneficiaries under Medicare Part D.

TABLE OF CONTENTS

INTRODUCTION	1
Why We Did This Review	1
Objective	1
Background	1
Medicare Prescription Drug Coverage.....	1
Prohibition of Federal Health Care Benefits for Unlawfully Present Beneficiaries	2
How We Conducted This Review.....	3
FINDINGS	3
Medicare Paid for Prescription Drugs for Unlawfully Present Beneficiaries	3
Federal Requirements	3
Medicare Accepted Prescription Drug Event Records With Gross Drug Costs Totaling Almost \$29 Million for Unlawfully Present Beneficiaries.....	4
Medicare Had No Policy To Prevent Improper Payments for Prescription Drugs for Unlawfully Present Beneficiaries.....	4
RECOMMENDATIONS	5
CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE	5
APPENDIXES	
A: Audit Scope and Methodology	6
B: CMS Comments	7

INTRODUCTION

WHY WE DID THIS REVIEW

Federal health care benefits are generally allowable when provided to a beneficiary who is either a U.S. citizen or a U.S. national or to an alien who is lawfully present in the United States. But when the alien beneficiary is present in the United States on an unlawful basis (unlawfully present), Federal health care benefits are not allowable. We are conducting a series of reviews examining Medicare payments made on behalf of unlawfully present beneficiaries. We previously reported that Medicare made improper Part A and Part B payments totaling \$91.6 million to health care providers for services to unlawfully present beneficiaries.¹ This is a review of payments made on behalf of unlawfully present beneficiaries in Medicare Part D.

OBJECTIVE

Our objective was to determine the extent to which the Centers for Medicare & Medicaid Services (CMS) accepted prescription drug event (PDE) records submitted by sponsors on behalf of unlawfully present beneficiaries during calendar years (CYs) 2009 through 2011.

BACKGROUND

Medicare Prescription Drug Coverage

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. Under Medicare Part D, which began January 1, 2006,² individuals entitled to benefits under Part A or enrolled in Part B may obtain prescription drug coverage. CMS, which administers Medicare, contracts with private prescription drug plans and Medicare Advantage plans (collectively known as sponsors) to offer prescription drug benefits to eligible individuals.

As a condition of payment, every time a Medicare beneficiary fills a prescription covered under Part D, the sponsor must submit a PDE record to CMS.³ PDE records (which are collectively referred to as “PDE data”) include drug cost and payment information that enables CMS to administer the Part D benefit. Sponsors must submit final PDE records to CMS within 6 months after the end of the coverage year (42 CFR § 423.343(c)(1)).

¹ *Medicare Improperly Paid Providers Millions of Dollars for Unlawfully Present Beneficiaries Who Received Services During 2009 Through 2011*, A-07-12-01116, issued January 23, 2013.

² Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. No. 108-173 § 101) amended Title XVIII of the Act (§ 1860D-1(a); 42 U.S.C. § 1395w-101(a)) to establish the Voluntary Prescription Drug Benefit Program, known as Medicare Part D.

³ The Act, §§ 1860D-15(c)(1)(C) and (d)(2); 42 CFR § 423.322.

For CYs 2009 through 2011, sponsors submitted final PDE records totaling approximately \$227 billion in gross drug costs to CMS.⁴

CMS pays sponsors for Part D benefits prospectively.⁵ These prospective payments are based on information in the sponsors' approved annual bids. After the close of the coverage year, CMS reconciles the prospective payments with the actual costs incurred by sponsors and determines the amount that each sponsor will owe to or receive from Medicare for the plan year. CMS's reconciliations are based on sponsors' final PDE data. CMS uses these data to make payments to drug sponsors and administer the Part D benefit.⁶

Prohibition of Federal Health Care Benefits for Unlawfully Present Beneficiaries

Federal health care benefits, including benefits under Medicare Parts A and B, are generally allowable when provided to a beneficiary for whom the Social Security Administration (SSA) has evidence in its records that the beneficiary is either a U.S. citizen or a U.S. national but are generally not allowable for unlawfully present aliens. Federal statute prohibits aliens who are not classified as "qualified aliens" from receiving Federal public benefits, to include Federal health care benefits.⁷ Accordingly, CMS has specifically prohibited payments for health care services provided to these unlawfully present aliens under Medicare Parts A and B. Furthermore, an individual is eligible for Part D benefits if he or she is entitled to Medicare benefits under Part A or enrolled in Part B and lives in the service area of a Part D plan. Thus, Federal law prohibits Part D payments for prescription drugs provided to unlawfully present beneficiaries.

In 2003, CMS issued a Program Memorandum⁸ that set forth the following payment policy: "Make no payments for Medicare services furnished to an alien beneficiary who is not lawfully present in the United States."⁹ CMS also implemented a system edit to automatically reject

⁴ CMS defines "gross drug costs" as the sum of the following PDE payment fields: covered plan paid amount, noncovered plan paid amount, patient pay amount, low-income cost-sharing payment, other true out-of-pocket costs, and patient liability reduction as a result of another payer amount (*Instructions: Requirements for Submitting Prescription Drug Event Data*, section 7.2.3).

⁵ The Act, §§ 1860D-14 and 15; 42 CFR § 423.315.

⁶ 42 CFR §§ 423.329 and 423.343.

⁷ Subtitle A of section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. No. 104-193 (PRWORA), 8 U.S.C. § 1611, as subsequently amended by the Balanced Budget Act of 1997, P.L. No. 105-33, § 5561.

⁸ CMS, *Payment Denial for Medicare Services Furnished to Alien Beneficiaries Who Are Not Lawfully Present in the United States*, Program Memorandum Intermediaries/Carriers, Transmittal AB-03-115 (Change Request 2825, August 1, 2003).

⁹ This payment policy was incorporated in the *Medicare Claims Processing Manual* in September 2004 (chapter 1, section 10.1.4.8).

Parts A and B claims for beneficiaries who are, according to CMS's Medicare Enrollment Database, unlawfully present.

HOW WE CONDUCTED THIS REVIEW

We identified PDE records associated with unlawfully present individuals in CMS's Enrollment Database¹⁰ as of May 21, 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 objectives.

Appendix A contains details of our audit scope and methodology.

FINDINGS

Of the PDE records submitted by sponsors for CYs 2009 through 2011, CMS inappropriately accepted 279,056 PDE records with unallowable gross drug costs totaling \$28,990,718 on behalf of 4,139 unlawfully present beneficiaries and used those records to make its final payment determinations to sponsors.

CMS did not have a policy addressing payments for unlawfully present beneficiaries under Medicare Part D that was equivalent to the existing policy that covers payments for these beneficiaries under Parts A and B. Because CMS did not have such a policy, it did not have internal controls to identify and disenroll unlawfully present beneficiaries and to automatically reject PDE records associated with them. Without such a policy, CMS incorrectly treated unlawfully present beneficiaries as eligible for Part D benefits and did not prevent Part D payments on behalf of them.

MEDICARE PAID FOR PRESCRIPTION DRUGS FOR UNLAWFULLY PRESENT BENEFICIARIES

Federal Requirements

Medicare benefits are generally allowable when provided to a beneficiary for whom the SSA has evidence in its records that the beneficiary is either a U.S. citizen or a U.S. national. Medicare

¹⁰ CMS's Enrollment Database uses information from SSA to identify 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 data systems becomes the start date on which these individuals are not eligible to receive Medicare benefits.

payments are also allowable for services furnished to an alien who is *lawfully present* in the United States (the Act, §§ 202, 226, 226A, 1818, and 1818A).

However, Federal law prohibits CMS from making payments to sponsors on behalf of unlawfully present Part D beneficiaries (8 U.S.C. § 1611(a), enacted as part of the PRWORA).¹¹ Specifically, this statute states: “... an alien who is not a qualified alien ... is not eligible for any Federal public benefit...”

Medicare Accepted Prescription Drug Event Records With Gross Drug Costs Totaling Almost \$29 Million for Unlawfully Present Beneficiaries

Contrary to Federal requirements, CMS accepted 279,056 PDE records with unallowable gross drug costs totaling \$28,990,718 on behalf of 4,139 unlawfully present beneficiaries and used those records to make its final payment determinations to sponsors.¹²

MEDICARE HAD NO POLICY TO PREVENT IMPROPER PAYMENTS FOR PRESCRIPTION DRUGS FOR UNLAWFULLY PRESENT BENEFICIARIES

CMS has implemented a policy regarding the prohibition of Medicare Parts A and B payments for unlawfully present beneficiaries. However, CMS did not have a similar policy for unlawfully present beneficiaries under Medicare Part D. Because CMS did not have such a policy, it did not have internal controls in place to prevent payments on behalf of these unlawfully present beneficiaries. CMS implemented internal controls for Parts A and B in the form of a system edit to automatically reject Parts A and B claims for unlawfully present beneficiaries, as shown in CMS’s Enrollment Database. However, CMS did not have similar controls for Part D to disenroll unlawfully present beneficiaries and to automatically reject PDE records associated with them.

Without such a policy, CMS incorrectly treated unlawfully present beneficiaries as eligible for Part D benefits and did not prevent Part D payments on behalf of them.

¹¹ 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 (whose functions are now handled by the Department of Homeland Security). This regulation identifies and defines five broad categories of lawfully present aliens, including “qualified aliens” (8 U.S.C. § 1641(b)).

¹² As stated in “Background,” CMS is responsible, after the close of a coverage year, for reconciling the prospective payments with the actual costs incurred by sponsors and for determining the amount that each sponsor will owe to or receive from Medicare for the plan year. According to the Congressional Budget Office, beneficiaries’ premium payments cover about one-quarter of the overall costs of the basic Part D benefit and Federal payments to sponsors cover the other three-quarters of these costs. Furthermore, in some cases, some beneficiaries receive additional Federal assistance based on their financial status. Because Part D is funded in this way, the \$28,990,718 in inappropriately accepted PDE records that this report has identified does not represent the total amount funded by the Federal Government.

RECOMMENDATIONS

We recommend that CMS:

- resolve improper Part D payments made for prescription drugs provided to unlawfully present beneficiaries by reopening and revising CYs 2009 through 2011 final payment determinations to remove prescription drug costs for unlawfully present beneficiaries;
- develop and implement controls to ensure that Medicare does not pay for prescription drugs for unlawfully present beneficiaries by preventing enrollment of unlawful beneficiaries, disenrolling any currently enrolled unlawful beneficiaries, and automatically rejecting PDE records submitted by sponsors for prescription drugs provided to this population; and
- identify and resolve improper payments made for prescription drugs provided to unlawfully present beneficiaries by reopening and revising final payment determinations for periods after the period of this review but before implementation of policies and procedures.

CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, CMS concurred with our first two recommendations and described corrective actions that it planned to take. Specifically, CMS indicated that it would first address policy and system changes and would then reopen each year to recover improper payments. CMS did not concur with our third recommendation because, it said, there was no effective way to fully recover the improper payments in question without first implementing the appropriate policies and procedures, including the relevant systems changes.

CMS's comments are included in their entirety as Appendix B.

We acknowledge that CMS is developing and implementing policies and procedures that would address enrollment of unlawful beneficiaries. However, we maintain that once CMS has begun the process of recovering improper payments, it should continue and resolve any improper payments that were incurred after the period of this review until system changes are in place that would effectively prohibit the coverage of these beneficiaries under Medicare Part D.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

The audit scope covered approximately \$227 billion in gross drug costs reflected in sponsors' final PDE records for CYs 2009 through 2011. We did not review CMS's overall internal control structure because our objective did not require us to do so. We reviewed only the internal controls directly related to our objective.

We performed fieldwork from May through September 2012.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- held discussions with CMS officials to gain an understanding of CMS's controls related to unlawfully present beneficiaries;
- used the Enrollment Database (as of May 21, 2012) to identify the 279,056 PDE records (with gross drug costs totaling \$28,990,718) associated with unlawfully present individuals for CYs 2009 through 2011;¹³ and
- discussed the results of our review with CMS officials, and gave them detailed data on our findings, on March 12, 2013.

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 objectives.

¹³ These numbers reflect only covered drugs. We had previously adjusted the PDE records by removing all PDE records for noncovered drugs, such as over-the-counter drugs.

APPENDIX B: CMS COMMENTS




DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: AUG -9 2013

TO: Daniel R. Levinson
Inspector General

FROM: Marilyn Tavenner 
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Medicare Improperly Paid Millions of Dollars for Prescription Drugs Provided to Unlawfully Present Beneficiaries During 2009 Through 2011" (A-07-12-06038)

Thank you for the opportunity to review and comment on this OIG draft report aimed at determining the extent to which the Centers for Medicare & Medicaid Services (CMS) accepted prescription drug event (PDE) records submitted by sponsors on behalf of individuals who are not lawfully present in the United States. Generally, entitlement to the Medicare program is dependent upon eligibility to Social Security benefits regardless of lawful presence status. However the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) states that unlawfully present individuals are not eligible for any federal public benefits, including federal health care benefits.

The CMS supports the report's recommendations to strengthen internal controls as applicable to help ensure that payment for Medicare Part D services comply with Federal requirements to the extent that information is available to do so. Accordingly, we agree that in cases where the information indicates an individual is not lawfully present in the United States, that individual should not be permitted to enroll or to remain enrolled in a Part D plan during the period where he or she is not eligible to receive federal benefits in accordance with PRWORA.

The CMS is taking steps to address this issue and ensure that the intent of PRWORA is executed in accordance with the information we receive from the Department of Homeland Security and the Social Security Administration regarding individuals not lawfully present in the United States.

Below are the CMS' responses to the OIG recommendations in the draft report.

OIG Recommendation

The OIG recommends CMS resolve improper Part D payments made for prescription drugs provided to unlawfully present beneficiaries by reopening and revising CYs 2009 through 2011

final payment determinations to remove prescription drug costs for unlawfully present beneficiaries.

CMS Response

The CMS concurs with this recommendation. After implementing regulations clarifying the relevant policy, CMS will update the applicable eligibility and enrollment systems. This in turn will facilitate the appropriate changes to the prescription drug event (PDE) data. CMS will conduct a reopening on each year to recover the overpayments.

OIG Recommendation

The OIG recommends CMS develop and implement controls to ensure that Medicare does not pay for prescription drugs for unlawfully present beneficiaries by preventing enrollment of unlawful beneficiaries, disenrolling any currently enrolled unlawful beneficiaries, and automatically rejecting PDE records submitted by sponsors for prescription drugs provided to this population.

CMS Response

The CMS concurs with this recommendation to prevent improper payments of Part D services to individuals not lawfully present in the United States. CMS will seek to codify the eligibility requirements in regulation, and establish an operational mechanism to relay lawful presence status to plans for their use in determining eligibility for new and/or continued enrollment and receipt of Medicare covered services. Upon disenrollment from a Medicare prescription drug plan sponsor, CMS will no longer pay for services rendered to the individual.

OIG Recommendation

The OIG recommends CMS identify and resolve improper payments made for prescription drugs provided to unlawfully present beneficiaries by reopening and revising final payment determinations for periods after the period of this review but before implementation of policies and procedures.

CMS Response

The CMS non-concurs with this recommendation. There is no effective way of fully recovering these payments without first implementing the appropriate policies and procedures including the relevant systems changes.

We appreciate the effort that went into this report. Again, we thank you for the opportunity to review and comment.