

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEDICARE IMPROPERLY PAID
PROVIDERS MILLIONS OF DOLLARS
FOR INCARCERATED BENEFICIARIES
WHO RECEIVED SERVICES
DURING 2013 AND 2014**

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



Daniel R. Levinson
Inspector General

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EXECUTIVE SUMMARY

The data that the Centers for Medicare & Medicaid Services (CMS) uses (and plans to use in the future) to ensure payments are not made for Medicare services rendered to incarcerated beneficiaries are not sufficient for its policies and procedures to comply with Medicare requirements. CMS currently does not perform postpayment edits to detect and recoup improper payments, and CMS plans to use data that are suitable for processing Social Security payments but not Medicare payments.

WHY WE DID THIS REVIEW

The Medicare Access and CHIP [Children’s Health Insurance Program] Reauthorization Act of 2015 (MACRA), signed into law in April 2015, requires the Centers for Medicare & Medicaid Services (CMS) to establish policies and implement claims edits to ensure that payments are not made for Medicare services rendered to incarcerated beneficiaries. In general, policies and procedures should include steps to prevent improper payments from occurring, as well as steps to detect and recoup payments made for instances in which an individual’s incarcerated status is not updated on CMS’s data systems until after a Medicare claim has been processed (including in prior years). Accordingly, we evaluated CMS’s policies and procedures as of July 2015 and reviewed payments made for Medicare services provided during calendar years (CYs) 2013 and 2014.

The U.S. Department of Health and Human Services, Office of Inspector General (OIG), must report to Congress within 18 months of April 2015, and periodically thereafter as OIG deems necessary, on the activities that CMS has undertaken since enactment of MACRA to ensure that Medicare payments are not made for incarcerated beneficiaries. This report addresses that mandate.

Our objective was to determine whether CMS’s policies and procedures to ensure that payments are not made for Medicare services rendered to incarcerated beneficiaries comply with Medicare requirements.

BACKGROUND

Medicare generally does not pay for services rendered to incarcerated beneficiaries. According to Medicare requirements, individuals who are in custody of a governmental entity are defined as individuals who are under arrest, incarcerated, imprisoned, escaped from confinement, under supervised release, on medical furlough, required to reside in mental health facilities, required to reside in halfway houses, or required to live under home detention, or confined completely or partially in any way under a penal statute or rule. For this report, we refer to individuals in any of these circumstances as “incarcerated.” An exception to this rule is that Medicare payments may be made for services if State or local law requires incarcerated beneficiaries to repay the costs of medical services they receive. This exception must apply to all individuals and not be limited to those individuals enrolled in Medicare.

CMS uses data obtained from the Social Security Administration (SSA) to determine the dates of Medicare eligibility of, and the allowability of Medicare payments made for, incarcerated beneficiaries. Medicare contractors process and pay claims submitted by health care providers and initiate recoupment activities to recover improper payments.

Effective April 1, 2003, CMS provided guidelines to its Medicare contractors explaining how to properly adjudicate claims for Medicare services rendered to incarcerated beneficiaries. In April 2013, CMS implemented policies and procedures in response to an audit report that we had issued and created a postpayment claims edit, which allowed CMS to detect and recoup improper payments from providers. In September 2013, CMS updated its policies and procedures and turned off the postpayment edit because it determined that the incarceration data received from SSA did not always include the incarceration release dates, without which CMS could not properly adjudicate claims. CMS determined that although the incarceration data were incomplete, it would nonetheless continue to use the data in its prepayment claims edits.

CMS officials stated that CMS is planning to obtain the dates that SSA uses to suspend benefits and plans to deny Medicare payments for incarcerated beneficiaries for the same periods that SSA suspends its own benefits for the same individuals.

HOW WE CONDUCTED THIS REVIEW

We evaluated the policies and procedures that CMS had in place as of July 2015, as well as its planned revisions to those policies and procedures, and compared both to Medicare requirements that prohibit payment for Medicare services rendered to incarcerated beneficiaries. We determined whether CMS could prevent improper payments for incarcerated beneficiaries and whether CMS could detect and recoup payments for instances in which an individual's incarceration status was not updated until after a Medicare claim had been paid. Because recoupment could involve payments made in prior years, we reviewed Medicare payments for CYs 2013 and 2014. Our review included 63,949 claims, totaling \$34,588,984 in Medicare payments, that were paid on behalf of 11,786 beneficiaries who were, according to CMS's data systems, incarcerated during CYs 2013 and 2014.

WHAT WE FOUND

Both CMS's policies and procedures to ensure that payments are not made for Medicare services rendered to incarcerated beneficiaries and its planned revisions to those policies and procedures, did not comply with Medicare requirements. Specifically:

- CMS's policies and procedures generally prevented improper payments in cases when CMS's data systems identified a beneficiary as incarcerated at the time that a claim was processed.
- CMS's policies and procedures did not allow CMS to detect and recoup improper payments on a postpayment basis when CMS's data systems did not identify a beneficiary as incarcerated at the time that a claim was processed. This nonidentification occurred because CMS turned off its postpayment claims edit. CMS has not taken steps

to determine whether any of the \$34,588,984 in potentially improper payments made in CYs 2013 and 2014 should have been denied.

- CMS's planned revisions to its policies and procedures to deny Medicare payments for the same period that SSA suspends its benefits do not comply with Medicare requirements. Medicare payments should not be made for *any* period of incarceration. In contrast, SSA suspends payments for a shorter period than the period for which Medicare does not pay providers because the beneficiary is incarcerated.

CMS officials acknowledged that the data on SSA benefit suspension dates that CMS plans to use will be incomplete and will not comply with the Medicare statute but added that CMS believes these data will offer the best information available (as opposed to the information that it currently obtains from SSA).

When CMS implements its revised policies and procedures, it will, according to CMS officials, further adjudicate the \$34,588,984 in claims, which will result in some previously allowed claims being denied. However, because the data that CMS plans on using will be incomplete, these recoupment efforts will not identify all improper payments.

WHAT WE RECOMMEND

We recommend that CMS:

- develop and implement a system that allows CMS to collect the information necessary to fully comply with Medicare requirements that prohibit payments for Medicare services rendered to incarcerated beneficiaries and, if necessary, seek the appropriate legislation and funding;
- review the \$34,588,984 in claims to determine which portion, if any, was not claimed in accordance with Medicare requirements and direct the Medicare contractors to recoup any ensuing improper payments; and
- identify improper payments made on behalf of incarcerated beneficiaries after our audit period and ensure that Medicare contractors recoup those payments.

CMS COMMENTS AND OUR RESPONSE

In written comments on our draft report, CMS did not concur with our first recommendation and, in concurring with our other two recommendations, stated that in September 2016 it would reinstate its postpayment edit to recoup and identify overpayments.

CMS said that implementing the system that our first recommendation proposes would largely duplicate the data and functions of the current SSA system. CMS stated that it would, instead, obtain and use SSA suspension data to determine when beneficiaries are incarcerated. CMS

added that this effort would better allow it to comply with statutory requirements and is the most efficient use of its resources.

Nothing in CMS's response caused us to change our findings or recommendations. We acknowledge that the development and implementation of a system that fully complies with Medicare requirements could duplicate certain aspects of SSA's system. However, as discussed earlier, SSA suspends payments for a shorter period than the period for which Medicare payments should be denied. As long as Medicare requirements define incarceration differently than SSA does and as long as CMS relies on SSA suspension data to adjudicate claims for incarcerated beneficiaries, CMS will not be in full compliance with those requirements. As such, CMS's adjudication of the \$34,588,984 and of claims beyond our audit period will not identify all improper payments.

TABLE OF CONTENTS

INTRODUCTION	1
Why We Did This Review	1
Objective	1
Background	1
Medicare Program	1
Medicare Payments on Behalf of Beneficiaries Who Are Incarcerated in the United States	2
Obtaining and Processing Information for Incarcerated Beneficiaries	2
CMS’s Policies and Procedures, Including Revisions, Regarding Incarcerated Beneficiaries	2
CMS’s Planned Revisions to Its Policies and Procedures	3
How We Conducted This Review	4
FINDINGS	4
CMS’s Policies and Procedures for Ensuring Payments Are Not Made for Medicare Services Rendered to Incarcerated Beneficiaries Do Not Comply With Medicare Requirements	5
Medicare Requirements	5
CMS’s Policies and Procedures Generally Prevent Improper Payments	6
CMS’s Policies and Procedures Do Not Detect and Recoup Improper Payments on a Postpayment Basis	6
CMS’s Planned Revisions to Its Policies and Procedures Will Not Comply With Medicare Requirements	8
Medicare Requirements	8
CMS’s Planned Revisions to Its Policies and Procedures Could Result in Improper Payments	8
CMS Acknowledges That Its Planned Revisions to Its Policies and Procedures Will Use Incomplete Data but Believes That These Data Are the Best Available	10
RECOMMENDATIONS	10
CMS COMMENTS	11
OFFICE OF INSPECTOR GENERAL RESPONSE	11

APPENDIXES

A: Audit Scope and Methodology12

B: CMS Comments14

INTRODUCTION

WHY WE DID THIS REVIEW

The Medicare Access and CHIP [Children's Health Insurance Program] Reauthorization Act of 2015 (MACRA), signed into law in April 2015, requires the Centers for Medicare & Medicaid Services (CMS) to establish policies and implement claims edits to ensure that payments are not made for Medicare services rendered to incarcerated beneficiaries.¹ In general, policies and procedures should include steps to prevent improper payments from occurring, as well as steps to detect and recoup payments made for instances in which an individual's incarcerated status is not updated on CMS's data systems until after a Medicare claim has been processed (including in prior years). Accordingly, we evaluated CMS's policies and procedures as of July 2015 and reviewed payments made for Medicare services provided during calendar years (CYs) 2013 and 2014.

The U.S. Department of Health and Human Services, Office of Inspector General (OIG), must report to Congress within 18 months of April 2015, and periodically thereafter as OIG deems necessary, on the activities that CMS has undertaken since enactment of MACRA to ensure that Medicare payments are not made for incarcerated beneficiaries.² This report addresses that mandate.

OBJECTIVE

Our objective was to determine whether CMS's policies and procedures to ensure that payments are not made for Medicare services rendered to incarcerated beneficiaries comply with Medicare requirements.

BACKGROUND

Medicare Program

Under the provisions of Title XVIII of the Act, the Medicare program provides health insurance for people aged 65 and over, people with disabilities, and people with permanent kidney disease. 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 health care providers including hospitals, physicians, and suppliers (providers).

¹ MACRA, P.L. No. 114-10 § 502(a), Social Security Act (the Act) § 1874(f).

² MACRA, P.L. No. 114-10 § 502(b).

Medicare Payments on Behalf of Beneficiaries Who Are Incarcerated in the United States

Medicare generally does not pay for services rendered to incarcerated beneficiaries.^{3,4} According to Medicare requirements, individuals who are in custody of a governmental entity are defined as individuals who are under arrest, incarcerated, imprisoned, escaped from confinement, under supervised release, on medical furlough, required to reside in mental health facilities, required to reside in halfway houses, required to live under home detention, or confined completely or partially in any way under a penal statute or rule.⁵ In this report, we refer to individuals in any of these circumstances as “incarcerated.”

An exception to this rule is that Medicare payments may be made for services rendered to these individuals only if (1) State or local law requires incarcerated beneficiaries to repay the cost of medical services they receive while in custody and (2) State or local government enforces the requirement to repay with the same vigor with which it pursues the collection of other debts (42 CFR § 411.4(b)).

Obtaining and Processing Information for Incarcerated Beneficiaries

The Social Security Administration (SSA) is CMS’s primary source of information about incarcerated beneficiaries.⁶ With this information, CMS determines which beneficiaries are incarcerated and the periods for which Medicare will not pay for health care services provided to these individuals. For instances in which Medicare has paid providers for services rendered to beneficiaries who are subsequently determined to have been incarcerated at the time of service, those improper payments should be recouped.⁷ Medicare contractors initiate recoupment activities to recover improper payments.

CMS’s Policies and Procedures, Including Revisions, Regarding Incarcerated Beneficiaries

Effective April 1, 2003, CMS implemented a claims-level edit that compared data from SSA to incoming claims in order to prevent payment of claims for treatment of incarcerated

³ Sections 1862(a)(2) and (3) of the Act.

⁴ CMS presumes that a State or local government that has custody of a Medicare beneficiary under a penal statute has a financial obligation to pay for the cost of healthcare items and services (CMS, *Medicare Claims Processing Manual*, chapter 1, § 10.4).

⁵ 42 CFR § 411.4(b).

⁶ Generally, SSA collects information, such as the names of the individuals and the dates on which they begin and/or end periods of incarceration, directly from penal authorities. SSA also collects incarceration end dates when individuals request reinstatement of their Social Security benefits. SSA maintains the incarceration information in its Prisoner Update Processing System.

⁷ *Medicare Financial Management Manual*, chapter 3, § 10.

beneficiaries.⁸ In doing so, CMS also provided guidelines to its Medicare contractors explaining how to properly adjudicate claims for Medicare services rendered to incarcerated beneficiaries.⁹

Effective April 2013, in response to an audit report that we had issued,¹⁰ CMS implemented policies and procedures through a new postpayment edit process to identify and recoup previously paid claims for services furnished to incarcerated Medicare beneficiaries.¹¹ In that review, we found that when CMS's data systems had been updated by SSA's systems to indicate at the time a claim was processed that a beneficiary was incarcerated, CMS's policies and procedures (through its prepayment claims edit) were adequate to *prevent* payment for Medicare services. However, when CMS's data systems did not indicate until after a claim had been processed that a beneficiary was incarcerated, CMS's policies and procedures were not adequate to *detect and recoup* the improper payment. In response to that previous report's recommendations, CMS stated that it would attempt to recoup \$33,587,634 in improper payments for services rendered during CYs 2009 through 2011. CMS added, though, that it had to consider the cost benefit of recoupment activities on specific claims.

In September 2013, CMS again updated its policies and procedures and turned off the postpayment edit in response to complaints that providers made in which they asserted that the incarceration dates were unreliable. CMS officials stated that CMS determined that the data received from SSA did not always include the incarceration release dates and added that CMS cannot properly adjudicate claims unless it has information on the full period of a beneficiary's incarceration. CMS determined that although the incarceration data were incomplete, it would nonetheless continue to use the data in its prepayment claims edit.

CMS's Planned Revisions to Its Policies and Procedures

CMS officials stated that CMS is planning to revise its policies and procedures because it is not obtaining data on the full period of incarceration. CMS is planning to deny Medicare payments for incarcerated beneficiaries for the same periods that SSA suspends its own benefits for the same individuals. SSA suspends an individual's benefits only after conviction and incarceration for at least 30 days.¹²

⁸ CMS, Program Memorandum AB-02-164 (Change Request 2022; Nov. 8, 2002).

⁹ CMS transferred the Program guidance to the *Medicare Claims Processing Manual* effective April 10, 2006. CMS, Transmittal 2022 (Change Request 4352; Mar. 10, 2006).

¹⁰ *Medicare Improperly Paid Providers Millions of Dollars for Incarcerated Beneficiaries Who Received Services During 2009 Through 2011* (A-07-12-01113), Jan. 23, 2013.

¹¹ CMS, Transmittal 1134 (Change Request 8007; Nov. 1, 2012). It was CMS's intent that the new process "identify and perform retroactive adjustments on any previously paid claims which may have been processed and paid erroneously during periods when the beneficiary data [from SSA] did not reflect the fact that the beneficiary was incarcerated."

¹² The Act § 202(x)(1)(A)(i).

HOW WE CONDUCTED THIS REVIEW

We evaluated the policies and procedures that CMS had in place as of July 2015, as well as its planned revisions to those policies and procedures, and compared both to Medicare requirements that prohibit payment for Medicare services rendered to incarcerated beneficiaries. We determined whether CMS could prevent improper payments for incarcerated beneficiaries and whether CMS could detect and recoup payments for instances in which an individual's incarcerated status was not updated until after a Medicare claim had been paid. Because recoupment could involve payments made in prior years, we reviewed Medicare payments for CYs 2013 and 2014. Our review included 63,949 claims, totaling \$34,588,984 in Medicare payments, that were paid on behalf of 11,786 beneficiaries who were, according to CMS's data systems, incarcerated during CYs 2013 and 2014.

From the 63,949 claims for which Medicare made payments in CYs 2013 and 2014, we judgmentally selected 30 inpatient claims and, for those claims, compared (1) the dates that CMS received incarceration data from SSA to (2) the dates on which Medicare contractors paid providers.

We judgmentally selected an additional 30 inpatient or outpatient claims, obtained the associated documentation from the relevant providers, and evaluated that documentation to determine whether there were any indications that any of the beneficiaries were incarcerated at the time that services were provided.

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

Both CMS's policies and procedures to ensure that payments are not made for Medicare services rendered to incarcerated beneficiaries, and its planned revisions to those policies and procedures, do not comply with Medicare requirements. Specifically:

- CMS's policies and procedures generally prevent improper payments in cases when CMS's data systems identify a beneficiary as incarcerated at the time that a claim is processed.
- CMS's policies and procedures do not detect and recoup improper payments on a postpayment basis in cases when CMS's data systems do not identify a beneficiary as incarcerated at the time that a claim is processed. This nonidentification occurred because CMS turned off its postpayment claims edit. As such, CMS has not taken steps

to determine whether any of the \$34,588,984 in potentially improper payments made in CYs 2013 and 2014 should be denied.

- CMS’s planned revisions to its policies and procedures to deny Medicare payments for the same period that SSA suspends its benefits do not comply with Medicare requirements. Medicare payments should not be made for *any* period of incarceration. In contrast, SSA suspends payments for a shorter period than the period for which Medicare does not pay providers because the beneficiary is incarcerated.

CMS officials acknowledged that the data on SSA benefit suspension dates that CMS plans to use will be incomplete and will not comply with the Medicare statute, but these officials added that CMS believes these data will offer the best information available (as opposed to the information that it currently obtains from SSA).

When CMS implements its revised policies and procedures, it will, according to CMS officials, further adjudicate the \$34,588,984, which will result in some previously allowed claims being denied. However, because the data that CMS plans on using will be incomplete, these recoupment efforts will not identify all improper payments.

CMS’S POLICIES AND PROCEDURES FOR ENSURING PAYMENTS ARE NOT MADE FOR MEDICARE SERVICES RENDERED TO INCARCERATED BENEFICIARIES DO NOT COMPLY WITH MEDICARE REQUIREMENTS

Medicare Requirements

No payment will be made under Medicare Part A or Part B for services for which a beneficiary “has no legal obligation to pay, and which no other person (by reason of such individual’s membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for,…” (the Act § 1862(a)(2)). With limited exceptions, no payment will be made under Medicare Part A or B for services paid for directly or indirectly by a governmental entity (the Act § 1862(a)(3)).

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

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

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

CMS's Policies and Procedures Generally Prevent Improper Payments

We judgmentally selected and reviewed 30 Medicare inpatient claims and determined that when CMS's data systems identify a beneficiary as incarcerated at the time that a claim is processed, CMS's policies and procedures generally prevent improper payments.

However, CMS officials told us that the data that CMS obtained from SSA did not always include individuals' correct periods of incarceration. Specifically, the data did not always include the individuals' release dates. In such cases, the beneficiaries appeared to have been incarcerated when they had, in fact, been released. CMS officials also told us that because their experience had shown that a small number of claims had been incorrectly denied, CMS was willing to further adjudicate these cases on appeal rather than by turning off the prepayment edit.

CMS could improve its prepayment claims edits by collecting more reliable incarceration data. With correct periods of incarceration in its data systems, CMS could more accurately adjudicate claims.

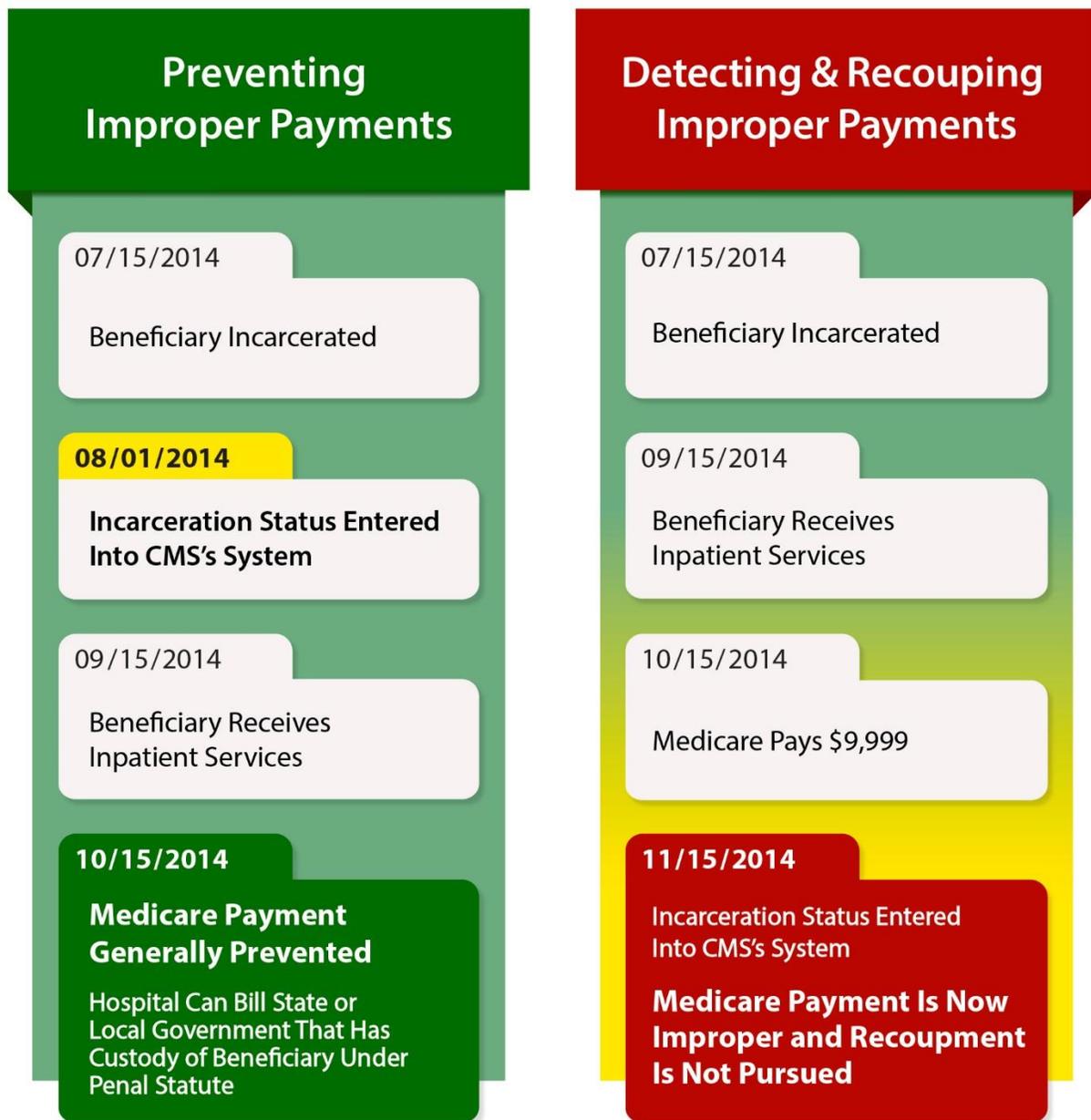
CMS's Policies and Procedures Do Not Detect and Recoup Improper Payments on a Postpayment Basis

When CMS's data systems did not identify a beneficiary as incarcerated at the time that a claim is processed, CMS's policies and procedures did not allow CMS to detect and recoup improper payments. This noncompliance with Medicare requirements occurred because CMS turned off the postpayment claims edit and, thus, it could not detect and recoup the improper payments.

CMS officials stated that the incarceration data that it receives from SSA were not suitable for the postpayment claims edit. The purpose of the postpayment edit was to match periods of incarceration with paid claims in order to identify improper payments and allow recoupment. According to CMS officials, the data often showed beneficiaries as incarcerated when they were not, and as a result, the postpayment edit often identified claims as improper when they should have been allowed and, thus, paid. For this reason, CMS turned off the postpayment edit and stopped its efforts to recoup improper payments.

Figure 1 shows an example of a process through which CMS generally prevents an improper Medicare payment. The figure also shows an example of an improper payment that results when CMS's data systems do not identify a beneficiary as incarcerated at the time that a claim is processed.

Figure 1: Examples Showing CMS's Process of Preventing Improper Payments on a Prepayment Basis and Detecting and Recouping Improper Payments on a Postpayment Basis



Because CMS was no longer detecting and recouping improper payments on a postpayment basis, it had not taken steps to determine whether any of the \$34,588,984 in potentially improper

payments made in CYs 2013 and 2014 should be denied because of the incarceration status of the beneficiaries in question.¹³

CMS'S PLANNED REVISIONS TO ITS POLICIES AND PROCEDURES WILL NOT COMPLY WITH MEDICARE REQUIREMENTS

Medicare Requirements

No payment will be made under Medicare Part A or Part B for services for which a beneficiary “has no legal obligation to pay, and which no other person (by reason of such individual’s membership in a prepayment plan or otherwise) has a legal obligation to provide or pay,…” (the Act § 1862(a)(2)). With limited exceptions, no payment will be made under Medicare Part A or B for services paid for directly or indirectly by a governmental entity (the Act § 1862(a)(3)).

On the basis of the foregoing provisions of the Act, CMS implementing regulations provide that no Medicare payments will be made on behalf of beneficiaries who are under arrest, incarcerated, imprisoned, escaped from confinement, under supervised release, on medical furlough, required to reside in mental health facilities, required to reside in halfway houses, required to live under home detention, or confined completely or partially in any way, irrespective of whether the individual has been convicted or the length of confinement (42 CFR § 411.4(b)).

Conversely, the Act states that no Social Security benefits shall be paid to any individual who is confined in a jail, prison, or other penal institution or correctional facility for more than 30 days pursuant to a conviction of a criminal offense (the Act § 202(x)(1)(A)(i)). Accordingly, SSA suspends an individual’s benefits (retroactive to the conviction date) only after he or she has been convicted and incarcerated for at least 30 days and restores those benefits once the individual has been released from incarceration and requests reinstatement of them.

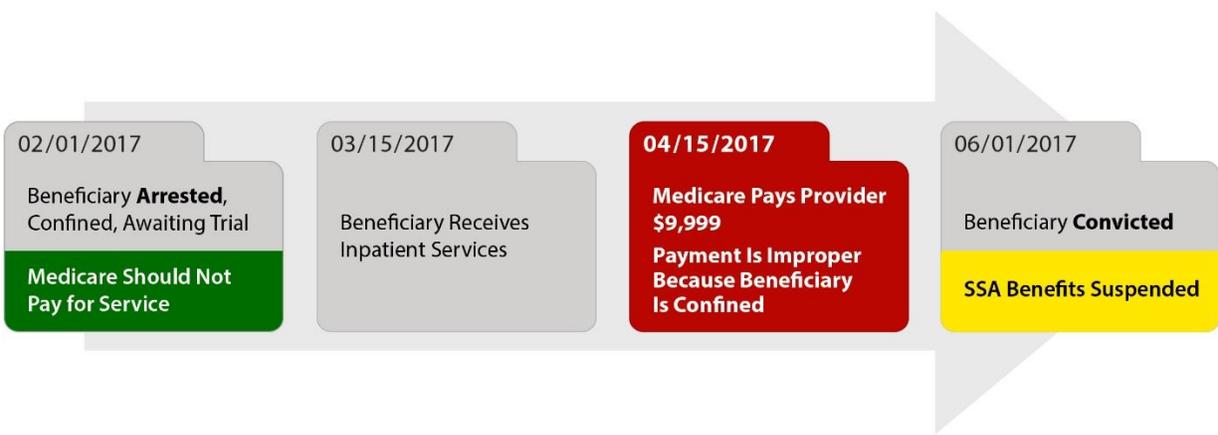
CMS's Planned Revisions to Its Policies and Procedures Could Result in Improper Payments

CMS’s planned revisions to its policies and procedures, which plan to use SSA benefit suspension dates to determine the incarceration status of Medicare beneficiaries, will not comply with Medicare requirements. Specifically, the Act and its implementing regulations stipulate that Medicare should not pay for services provided during any period of incarceration. By contrast, SSA benefit suspension dates do not fully encompass the entire incarceration period for which CMS must deny Medicare payments.

¹³ The \$34,588,984 is composed of 2,486 Part A claims totaling \$24,405,352 and 61,463 Part B claims totaling \$10,183,632.

By relying solely on SSA benefit suspension dates, CMS will not be complying with Medicare requirements. Medicare requirements generally bar payment for health services provided to a Medicare beneficiary who is incarcerated, irrespective of conviction and days of confinement. Instead, the government entity that incarcerated the beneficiary—not Medicare—has the obligation to pay for the services. In contrast, SSA does not collect data or suspend benefits for periods in which a Medicare beneficiary is incarcerated before being convicted. For example, as shown in Figure 2, if an individual is confined in a penal facility on February 1, 2017, but is not convicted until June 1, 2017, SSA does not suspend benefits until June 1, whereas Medicare should not make payments for services occurring as of February 1.

Figure 2: Example Showing That Use of Social Security Administration Benefit Suspension Dates To Determine the Incarceration Status of Medicare Beneficiaries Does Not Comply With Medicare Requirements



In addition, SSA does not obtain data on, or suspend benefits for, instances of home detention.

To determine the potential impact of CMS’s planned revisions, we reviewed an additional 30 judgmentally selected Medicare inpatient or outpatient claims¹⁴ and evaluated the associated documentation to determine whether there were any indications that any of the beneficiaries were incarcerated at the time that services were provided. We found notations in the documentation that 15 of the beneficiaries who had received Medicare services were incarcerated (as defined by Medicare requirements). SSA did not suspend benefits for 10 of the 15 beneficiaries because, according to an SSA official, SSA’s systems did not have a conviction date. We found examples in the documentation reviewed of beneficiaries who were confined but not yet convicted:

- “The patient was admitted for a court-ordered evaluation.... The patient was admitted ... on a conditional release after he was picked up on charges of failure to appear in court.... He was released off of his court-ordered evaluation *and sent back to jail.*” (Emphasis added.)

¹⁴ These claims were different from the 30 judgmentally selected Medicare inpatient claims that we discussed earlier; see “CMS’s Policies and Procedures Generally Prevent Improper Payments” and Appendix A.

- “It felt that it was safe enough to send [the patient] back to jail to wait for his trial in a secure area where he can be monitored.... The patient also has been calling many people from the hospital to bail him out.... The patient was *discharged back to jail.*” (Emphasis added.)

If CMS had implemented its planned revisions, Medicare would still have made improper payments for the 10 beneficiaries.

CMS ACKNOWLEDGES THAT ITS PLANNED REVISIONS TO ITS POLICIES AND PROCEDURES WILL USE INCOMPLETE DATA BUT BELIEVES THAT THESE DATA ARE THE BEST AVAILABLE

SSA does not capture the data that CMS needs to deny Medicare payments for incarcerated beneficiaries. SSA collects the information necessary to comply with SSA requirements, not Medicare requirements.

CMS officials acknowledged that the data on SSA benefit suspension dates that CMS officials have stated that it plans to use in its revised policies and procedures will be incomplete and will not comply with the Medicare statute. These officials added, however, that CMS believes that these data will offer the best, most accurate information available (as opposed to the information that it currently obtains from SSA) to ensure that CMS complies with Medicare requirements.

CMS officials have also told us that when CMS completes the revisions to its policies and procedures, it will implement edits to prevent, as well as to detect and recoup, potentially improper payments. CMS officials stated that these edits will help CMS further adjudicate the \$34,588,984 that Medicare paid in CYs 2013 and 2014, which will result in some previously allowed claims being denied. However, because the data that CMS plans on using will be incomplete, these recoupment efforts will not identify all improper payments.

RECOMMENDATIONS

We recommend that CMS:

- develop and implement a system that allows CMS to collect the information necessary to fully comply with Medicare requirements that prohibit payments for Medicare services rendered to incarcerated beneficiaries and, if necessary, seek the appropriate legislation and funding;
- review the \$34,588,984 in claims to determine which portion, if any, was not in accordance with Medicare requirements and direct the Medicare contractors to recoup any ensuing improper payments; and
- identify improper payments made on behalf of incarcerated beneficiaries after our audit period and ensure that Medicare contractors recoup those payments.

CMS COMMENTS

In written comments on our draft report, CMS did not concur with our first recommendation. CMS concurred with our second and third recommendations and described corrective actions that it planned to take to implement them.

Regarding its nonconcurrence with our first recommendation, CMS said that it takes a risk-based approach to determining priorities and allocation of resources. CMS also stated that developing and implementing the system that our recommendation proposed would require CMS to make agreements to collect information from every penal facility in the United States. According to CMS, “this system would be largely duplicative of the data and functions of the current SSA system.” CMS stated that it would, instead, obtain and use SSA suspension data to determine when beneficiaries are incarcerated in order to more accurately adjudicate claims for payment. CMS added that this effort would better allow it to comply with statutory requirements and is the most efficient use of its resources. CMS concurred with our second and third recommendations, stating, “In September 2016, CMS will reinstate a post-payment edit to identify and recoup overpayments....”

CMS also provided technical comments, which we addressed as appropriate. CMS’s comments, excluding the technical comments, are included as Appendix B.

OFFICE OF INSPECTOR GENERAL RESPONSE

Nothing in CMS’s comments caused us to change our findings or recommendations.

We recognize that CMS is using a risk-based approach to determine its priorities and acknowledge that CMS believes that using SSA suspension data is the most efficient use of its resources. We also acknowledge that the development and implementation of a system that fully complies with Medicare requirements could duplicate certain aspects of SSA’s system. However, as discussed earlier, SSA does not suspend benefits when a person is incarcerated unless the person has been convicted. By contrast, Medicare requirements state that CMS does not pay for Medicare services for *any* period of incarceration.

As long as Medicare requirements define incarceration differently than SSA does and as long as CMS relies on SSA suspension data to adjudicate claims for incarcerated beneficiaries, CMS will not be in full compliance with those requirements. For example, the 10 incarcerated beneficiaries described on pages 9 and 10 would not be identified as incarcerated under CMS’s planned revisions to its policies and procedures. As such, CMS’s adjudication of the \$34,588,984 and of claims beyond our audit period will not identify all improper payments.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We evaluated the policies and procedures that CMS had in place as of July 2015, as well as its planned revisions to those policies and procedures, and compared both to Medicare requirements that prohibit payment for Medicare services rendered to incarcerated beneficiaries. We determined whether CMS could prevent improper payments for incarcerated beneficiaries and whether CMS could detect and recoup payments for instances in which an individual's incarcerated status was not updated until after a Medicare claim had been paid. Because recoupment could involve payments made in prior years, we reviewed Medicare payments for CYs 2013 and 2014. Our review included 63,949 claims, totaling \$34,588,984 in Medicare payments, that were paid on behalf of 11,786 beneficiaries who were, according to CMS's data systems, incarcerated during CYs 2013 and 2014.

We limited our review of internal controls to those directly related to our objective.

We performed audit work from July 2015 to March 2016.

METHODOLOGY

To accomplish our objective, we performed the following steps:

- We reviewed applicable Federal laws, regulations, and guidance.
- We held discussions with CMS officials to gain an understanding of CMS's policies and procedures, including its planned revisions, regarding compliance with MACRA legislation for incarcerated beneficiaries.
- We held discussions with SSA officials to gain an understanding of when SSA suspends benefits for incarcerated beneficiaries.
- We used CMS's Enrollment Database (EDB)¹⁵ (as of August 15, 2015) to identify 165,293 beneficiaries who had been incarcerated at some point during CYs 2013 and 2014. We then compared the EDB to CMS's National Claims History file (as of March 4, 2015, and September 5, 2015) and determined that in CYs 2013 and 2014, Medicare contractors paid 63,949 claims (with \$34,588,984 in associated payments) on behalf of 11,786 beneficiaries whose incarceration dates overlapped with the dates on which they received Medicare services. From the 63,949 claims:

¹⁵ CMS's EDB interfaces with SSA's data systems to identify and classify individuals as incarcerated. CMS officials stated that the systems generally make these classifications on the same day that CMS receives the information from SSA. The dates of incarceration are then accessible by several applications, including CMS's Common Working File. The Medicare contractors use the Common Working File to process Medicare Part A and Part B claims from providers.

- We judgmentally selected 30 inpatient claims and, for those claims, compared (1) the dates that CMS received incarceration data from SSA to (2) the dates on which Medicare contractors paid providers.
- We judgmentally selected an additional 30 inpatient or outpatient claims, obtained the associated documentation from the relevant providers, and evaluated that documentation to determine whether there were any indications that any of the beneficiaries were incarcerated (and, if so, the type of incarceration) at the time that services were provided. We also held discussions with SSA officials to determine whether SSA benefits had been suspended because of these individuals' incarcerations.
- We provided detailed data on the \$34,588,984 in Medicare payments to CMS officials on February 26, 2016, and discussed the results of our review with CMS officials on March 25, 2016.

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 B: CMS COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

AUG 15 2016

DATE:

TO: Daniel R. Levinson
Inspector General

FROM: Andrew M. Slavitt 
Acting Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: Medicare Payments for Services Rendered to Incarcerated Beneficiaries (A-07-15-01158)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to preventing improper payments for services ostensibly provided to incarcerated beneficiaries.

Medicare policy generally does not allow for payment for services rendered to incarcerated beneficiaries. CMS uses data provided by the Social Security Administration (SSA) to identify incarcerated beneficiaries. As OIG notes in its report, this process is effective in preventing improper payments in cases when CMS has data at the time a claim is processed indicating a beneficiary was incarcerated during the date of service.

The information CMS currently receives from SSA is not sufficient to allow Medicare to fully comply with the statutory requirements, and OIG has not been able to identify a more accurate or complete data source CMS could rely on for these purposes.

CMS has worked with SSA to identify data that will better allow CMS to comply with its statutory requirements. CMS is working to obtain and use SSA suspension data to determine whether beneficiaries are incarcerated. This data will allow CMS to more accurately adjudicate claims for payment.

While CMS works to obtain this new data from SSA, CMS will reinstate the previously existing post-payment edit to identify and recoup overpayments for services ostensibly provided to beneficiaries when CMS receives SSA data after a claim was processed indicating the beneficiaries were incarcerated during the date of service. CMS has reviewed and revised its policies and procedures regarding incarceration data to address concerns that arose when this postpayment edit was implemented previously. CMS will reinstate this edit in September 2016. As is the case with any post-payment claim denials or recoupments, providers and suppliers who believe such actions are inappropriate can file an appeal.

OIG's recommendations and CMS' responses are below.

OIG Recommendation

Develop and implement a system that allows CMS to collect the information necessary to fully comply with Medicare requirements that prohibit payments for Medicare services rendered to incarcerated beneficiaries and, if necessary, seek the appropriate legislation and funding.

CMS Response

CMS does not concur with OIG's recommendation. CMS takes a risk-based approach to determining priorities and allocation of resources. Developing and implementing the system OIG proposes would require CMS to make agreements to collect information from every penal facility in the United States. This system would be largely duplicative of the data and functions of the current SSA system. CMS is working with SSA to obtain better data that will allow CMS to improve its efforts to prevent, as well as identify and recoup, improper payments in this area. CMS has identified this effort as the most efficient use of resources.

OIG Recommendation

Review the \$34,588,984 in claims to determine which portion, if any, was not in accordance with Medicare requirements and direct the Medicare contractors to recoup any ensuing improper payments.

CMS Response

CMS concurs with OIG's recommendation. In September 2016, CMS will reinstate a post-payment edit to identify and recoup overpayments for services ostensibly provided to beneficiaries when CMS receives data after a claim was processed indicating the beneficiaries were incarcerated during the date of service. In addition, CMS is working with SSA to identify data that will better allow CMS to comply with its statutory requirements and more accurately adjudicate claims for payment.

OIG Recommendation

Identify improper payments made on behalf of incarcerated beneficiaries after our audit period and ensure that Medicare contractors recoup those payments.

CMS Response

CMS concurs with OIG's recommendation. In September 2016, CMS will reinstate a post-payment edit to identify and recoup overpayments for services ostensibly provided to beneficiaries when CMS receives data after a claim was processed indicating the beneficiaries were incarcerated during the date of service. In addition, CMS is working with SSA to identify data that will better allow CMS to comply with its statutory requirements and more accurately adjudicate claims for payment.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.