

PUBLICATION

Expect Increased Medicare Denials for Incarcerated Beneficiaries and Unlawful Aliens [Ober|Kaler]

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The Department of Health and Human Services' Office of Inspector General (OIG) recently published two reports finding Medicare improperly paid providers millions of dollars for incarcerated beneficiaries and unlawful aliens during calendar years (CYs) 2009 through 2011. [OIG Report A-07-12-01113 \(Jan. 2013\)](#) and [OIG Report A-07-12-01116 \(Jan. 2013\)](#). The [OIG](#) recommended that CMS not only recoup the monies identified but also revise its systems, so that Medicare does not continue to pay these types of claims going forward.

Medicare does not generally pay for services rendered to incarcerated beneficiaries. 42 U.S.C. § 1395y. The Medicare Claims Processing Manual (MCPM) instructs that CMS presumes that when a state or local government has custody of a Medicare beneficiary, then the state or local government has the obligation to pay for the beneficiary's medical items and services, which nullifies any payment obligation Medicare might have. MCPM, ch. 1, § 10.4. If, however, state or local law requires incarcerated beneficiaries to repay these costs, then the provider should indicate this with an exception code on the claim, and Medicare will provide payment. 42 C.F.R. § 422.4(b).

Similarly, Medicare does not pay for services or items rendered to alien beneficiaries unlawfully present in the United States. 42 U.S.C. §§ 402, 426, 426-1, 1395i-2, 1395i-2a; 8 U.S.C. § 1611.

The [OIG](#) found in both reports that when accurate information regarding the beneficiary's status, either as an incarcerated or an unlawful alien, was provided at the time the claim was initially processed, CMS's controls were adequate to prevent payment for the services. The problem came when the beneficiary's status was not identified until after payment by Medicare. In this situation, the [OIG](#) found CMS did not have adequate controls in place to detect and recoup the improper payment. The [OIG](#) identified \$33,587,634 in improper payments for incarcerated beneficiaries and \$91,620,548 in improper payments for unlawful aliens.

The [OIG](#) made the following recommendations in the reports:

- Ensure that Medicare contractors recoup the identified improper payments;
- Implement policies and procedures to recoup such payments going forward when information is identified after payment that the patient is either an incarcerated beneficiary or an unlawful alien; and
- Identify and ensure recoupment of payments for incarcerated beneficiaries and unlawful aliens for the period after the [OIG](#) audit but before new policies and procedures are implemented to correct the problem.

With regard to incarcerated beneficiaries, the [OIG](#) also recommended that CMS:

- Work with other entities, including the Social Security Administration, to improve the timeliness with which CMS receives accurate information regarding incarcerated beneficiaries, in order to get as much of this information as possible before claims are initially processed; and
- Work with Medicare contractors to ensure that all claims with exceptions codes are processed consistently and pursuant to federal requirements.

CMS concurred with all of the OIG's recommendations except the one related to recoupment of the identified overpayments. CMS stated that although it is committed to recouping the overpayments, it must take into consideration the cost benefit of recoupment activities, including potential appeal costs and the cost of manually reopening the claims. CMS asserted that it has already started recoupment procedures for the CY 2009. Lastly, CMS stated that in April of this year, it intends to implement a process for detecting and recouping improper payments for previously paid Medicare claims.

Ober|Kaler's Comments

Providers should expect to see increased denials for incarcerated beneficiaries and unlawful aliens. Look for new rules from CMS in April on how CMS intends to identify these individuals and make sure payments for them are properly recouped. Providers in states or local municipalities where the state or local municipality requires an incarcerated individual to repay the government for the individual's health care costs, should make sure the providers' coders include the appropriate exception code on the claims, so payment can be made to the providers. Additionally, providers should review their systems to make sure they are not improperly claiming payment for incarcerated beneficiaries or unlawful aliens.