

Part B Insider (Multispecialty) Coding Alert

Emergency Medicine: Yes You Can Bill Emergency Services for Patients in Custody

Know your rights when submitting claims to Medicare patients brought in by law enforcement personnel

CMS recently released clarifying language on Medicare claims for patients in the custody of law enforcement. While this is presumably intended to just be a clarification of existing CMS policy, the description of "prisoner" seems quite broad. With the exclusions of those actually "imprisoned" in a long term corrections facility; the remainders of these patients typically get their more serious care in the ED. The resulting paradox for ED providers remains the combination of an EMTALA mandate to screen for emergency medical conditions and at least stabilize or transfer the patient and a federal regulation prohibiting payment for those same services.

It will depend on the jurisdiction and local policy, but it is not unusual to have the city/county/state balk at payment, says Michael Granovsky, MD, CPC, President of LogixHealth a coding and billing company in Bedford MA. Managers should work closely with local law enforcement bodies to set up a reasonable system for remuneration related to ED care. These presentations are often fraught with high medical legal risk and a mechanism should be put in place to provide reimbursement to the providers

Just the Facts, Ma'am

Medicare will generally not pay for medical items and services furnished to a beneficiary who was incarcerated or in custody under a penal statute or rule at the time the items and services are furnished.

In most instances, if a beneficiary is incarcerated on the date of service that items and services are furnished, Medicare will not cover such items and services under the following "Code of Federal Regulations" (CFR) citations:

42 CFR 411.4 ☐ Medicare does not pay for services furnished to a beneficiary who has no legal obligation to pay for the service and no other person or organization has a legal obligation to provide or pay for the service;

42 CFR 411.6 ☐ Medicare does not pay for services furnished by a Federal provider of services or other Federal agency; and

42 CFR 411.8 ☐ Medicare does not pay for services that are paid for directly or indirectly by a governmental entity.

Definition of Individuals Who Are in Custody (or Incarcerated)

So how does CMS define Prisoner? Under the Medicare Program, as defined in the current regulation at 42 CFR 411.4(b), beneficiaries who are in custody (or incarcerated) include, but are not limited to, those 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.

Verify Prisoner Status Using These Resources

You can verify a beneficiary's eligibility status through the following automated methods:

- A 270/271 eligibility query in the Health Insurance Portability and Accountability Act (HIPAA) Eligibility Transaction System; and
- Medicare Administrative Contractor (MAC) interactive voice response units and provider internet portals.

If the beneficiary is in an inactive status, the automated response to your inquiry provides the dates for the period of inactivity, but it does not provide the reason for such inactivity. The beneficiary may be incarcerated, and the inactive status response may serve as a reason to ask him or her about such status.

You can also verify the beneficiary's status through your MAC contact center to determine whether Social Security Administration (SSA) records indicate that the beneficiary was incarcerated when items or services were furnished. To find MAC contact information, visit <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Provider-Compliance-Interactive-Map> on the Centers for Medicare & Medicaid Services (CMS) website. Of course you should not delay treatment for an emergency medical condition while you verify coverage or you risk an EMTALA violation, warns Granovsky.

Watch For Remark Code N103

If you submit a claim for items or services furnished to a Medicare beneficiary who is in custody (or incarcerated) on the date of service, the claim will be denied. You or your billing agent will receive a Remittance Advice (RA) that explains the denial. A Remittance Advice Remark Code (RARC) is used in a RA to further explain an adjustment or to relay informational messages that cannot be expressed with a claim adjustment reason code. When denying claims for services furnished to Medicare beneficiaries under penal custody, the RA will include RARC N103 (in addition to RA language already in use). It reads as follows:

"Social Security records indicate that this patient was a prisoner when the service was rendered. This payer does not cover items and services furnished to an individual while he or she is in a Federal facility, or while he or she is in State or local custody under a penal authority, unless under State or local law, the individual is personally liable for the cost of his or her health care while incarcerated and the State or local government pursues such debt in the same way and with the same vigor as any other debt."

Note: The definition of RARC N103 will be changing in the near future. You will begin to see the new definition used no later than April 2014. The new definition is:

"Records indicate this patient was a prisoner or in custody of a Federal, State, or local authority when the service was rendered. This payer does not cover items and services furnished to an individual while he or she is in custody under a penal statute or rule, unless under State or local law, the individual is personally liable for the cost of his or her health care while in custody and the State or local government pursues the collection of such debt in the same way and with the same vigor as the collection of its other debts. The provider can collect from the Federal/State/Local Authority as appropriate."

Read the fine Print For An Exception to the Medicare Policy

Items and services furnished for incarcerated beneficiaries are covered, as specified under 42 CFR 411.4(b), only when both the following criteria are met:

State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody; and

The State or local government entity enforces the requirement to pay by billing and seeking collection from all such individuals or groups of individuals in custody with the same legal status (for example, not guilty by reason of insanity), whether insured or uninsured. It must also pursue collection of the amounts owed in the same manner and with the same vigor that it pursues the collection of other debts. This includes the collection of any Medicare deductible and

coinsurance amounts and the costs of items and services that are not covered by Medicare.

Submitting Claims When the Exception Is Met Requires the QJ Modifier

If you furnished items and services that meet the exception criteria outlined above, you should submit claims using the appropriate CPT® or HCPCS code and the QJ modifier (Services/Items provided to a prisoner or patient in State or local custody, however the State or local government, as applicable, meets the requirements in 42 CFR 411.4 [b]). MACs randomly select a representative sample of cases (both Medicare and non-Medicare eligible) to determine whether State or local entities appropriately bill and collect amounts paid for incarcerated beneficiaries' medical expenses, says Granovsky.

Don't Get Caught in The Database Lag Gap

The Office of Inspector General (OIG) identified a vulnerability where, in some instances, there may be a period of time between when the beneficiary is incarcerated and when the SSA learns of this status and updates its records (and Medicare files are subsequently updated). During this time, Medicare Fee-For-Service claims for items and services may be erroneously paid because the beneficiary's entitlement data in the Enrollment Database is not up to date when claims are adjudicated. The Informational Unsolicited Response (IUR) process, which identifies previously paid claims that contain dates of service that partially or fully overlap when a beneficiary was incarcerated, was implemented in 2013 to mitigate the OIG-identified vulnerability. The IUR process is initiated when there is an automatic update to the beneficiary's record indicating a change to his or her incarcerated start date or end date or when there is a manual update to the beneficiary's record indicating a change to his or her incarcerated start date or end date. Upon receiving an IUR, MACs initiate overpayment recovery procedures to recoup any Part A or Part B payments, Granovsky explains.