

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THE CENTERS FOR MEDICARE &
MEDICAID SERVICES PROVIDED
MEDICARE PART D COVERAGE
TO BENEFICIARIES CONFINED IN
MENTAL HEALTH FACILITIES
FOR COURT-ORDERED PURPOSES**

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Office of Inspector General

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EXECUTIVE SUMMARY

The Centers for Medicare & Medicaid Services accepted prescription drug event records from Medicare Part D sponsors totaling over \$12.6 million on behalf of beneficiaries who were confined in mental health facilities by court order under a penal code during 2006 through 2011.

WHY WE DID THIS REVIEW

While performing a separate review of Medicare Part D prescription drug payments made on behalf of beneficiaries incarcerated in correctional facilities (incarcerated beneficiaries), we observed that although Part C (i.e., Medicare Advantage) and Part D requirements generally prohibit benefits paid on behalf of incarcerated beneficiaries, the requirements allow benefits paid on behalf of beneficiaries confined in mental health facilities (State hospitals, Institutions for Mental Diseases, psychiatric hospitals, or hospital psychiatric units) by court order under a penal code. (We refer to these individuals as “confined beneficiaries.”) In contrast, Medicare’s traditional fee-for-service program (Part A and Part B) generally does not pay benefits on behalf of incarcerated or confined beneficiaries. Because of this inconsistent policy, we evaluated the impact on Part D of providing coverage to confined beneficiaries.

The objective of this review was to evaluate the impact of the Centers for Medicare & Medicaid Services (CMS) accepting prescription drug event (PDE) records submitted by sponsors for prescription drugs on behalf of confined beneficiaries under the Part D program during calendar years (CYs) 2006 through 2011.

BACKGROUND

Medicare Part D offers prescription drug benefits to individuals entitled to benefits under Medicare Part A or enrolled in Part B, and who live in the service area of a Part D plan. 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, which include drug and payment information.

Federal regulations state that an individual is eligible for Medicare Part D benefits if he or she is entitled to benefits under Part A or enrolled in Part B and lives in the service area of a Part D plan. However, under current policy for the administration of Part D, CMS does not consider confined beneficiaries to be incarcerated for the purpose of Part D eligibility, regardless of the reason for their confinement (*Medicare Prescription Drug Benefit Manual* (the Manual), chapter 3).

For Medicare Parts A and B, beneficiaries in custody of penal authorities include confined beneficiaries. Medicare generally does not pay Part A and Part B benefits to incarcerated beneficiaries, but those beneficiaries retain their entitlement to Part A and can retain their

enrollment in Part B with the payment of premiums. Accordingly, these individuals would be eligible for payments under Part D.

WHAT WE FOUND

CMS accepted PDE records with gross drug costs, totaling \$12,641,770, submitted by Part D sponsors on behalf of 1,388 confined beneficiaries during CYs 2006 through 2011. Had those same persons been enrolled in Medicare Parts A or B, payment for Parts A or B services would generally not have been made. This occurred because CMS policy permits Medicare payments to be made on behalf of confined beneficiaries enrolled in Part D but not on behalf of those enrolled in Part A or Part B. Although the Social Security Act prohibits payment by Medicare Parts A and B when a confined beneficiary has no legal obligation to pay for the services or the services are paid for by a governmental entity, Part D pays benefits on behalf of confined beneficiaries.

WHAT WE RECOMMEND

We recommend that, to be consistent with the relevant provisions of Medicare Part A and Part B, CMS revise the Manual to prohibit Part D payments made on behalf of confined beneficiaries, which could have resulted in cost savings associated with \$12,641,770 in gross drug costs that CMS accepted for the 6-year period we reviewed.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendation and described corrective actions that it had taken or planned to take. Specifically, CMS stated that it had "... recently finalized regulations that expedite the disenrollment of incarcerated individuals based on evidence acceptable to CMS.... CMS believes that these regulations will mitigate improper enrollments" in Medicare Part D for incarcerated individuals.

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INTRODUCTION

WHY WE DID THIS REVIEW

While performing a separate review of Medicare Part D prescription drug payments made on behalf of beneficiaries incarcerated in correctional facilities (incarcerated beneficiaries),¹ we observed that although Part C (i.e., Medicare Advantage) and Part D requirements generally prohibit benefits paid on behalf of incarcerated beneficiaries, the requirements allow benefits paid on behalf of beneficiaries confined in mental health facilities (State hospitals, Institutions for Mental Diseases (IMDs), psychiatric hospitals, or hospital psychiatric units) by court order under a penal code. (We refer to these individuals as “confined beneficiaries.”) In contrast, Medicare’s traditional fee-for-service program (Part A and Part B) generally does not pay benefits on behalf of incarcerated or confined beneficiaries. Because of this inconsistent policy, we evaluated the impact on Part D of providing coverage to confined beneficiaries.²

OBJECTIVE

Our objective was to evaluate the impact of the Centers for Medicare & Medicaid Services (CMS) accepting prescription drug event (PDE) records submitted by sponsors for prescription drugs on behalf of confined beneficiaries under the Part D program during calendar years (CYs) 2006 through 2011.

BACKGROUND

Medicare Prescription Drug Coverage

Medicare provides health insurance for people aged 65 and over, people with disabilities, and people with permanent kidney disease (Title XVIII of the Social Security Act (the Act)). Under Medicare Part D, which began January 1, 2006,³ individuals entitled to Medicare benefits under Part A or enrolled in Part B and who live in the service area of a Part D plan 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.

¹ *Medicare Improperly Paid Millions of Dollars for Prescription Drugs Provided to Incarcerated Beneficiaries During 2006 Through 2010* (A-07-12-06035), issued January 27, 2014.

² A separate audit, *The Centers for Medicare & Medicaid Services Paid Medicare Advantage Organizations for Services Provided to Beneficiaries Confined in Mental Health Facilities for Court-Ordered Purposes* (A-07-13-06043), will report on the impact on the Part C program.

³ 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) *et seq.*, 42 U.S.C. § 1395w-101(a) *et seq.*) to establish the Voluntary Prescription Drug Benefit Program, known as Medicare Part D.

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.⁴ 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 data to CMS within 6 months after the end of the coverage year (42 CFR § 423.343(c)(1)).

For CYs 2006 through 2011, sponsors submitted final PDE data to CMS with gross drug costs totaling approximately \$419 billion.⁵

CMS pays sponsors for Part D benefits prospectively.⁶ 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.⁷

Medicare Payments on Behalf of Confined Beneficiaries

An individual is eligible for Medicare Part D benefits if he or she is entitled to benefits under Part A or enrolled in Part B and lives in the service area of a Part D plan (42 CFR § 423.30(a)(1)(i-ii)).

Chapter 3 of CMS’s *Medicare Prescription Drug Benefit Manual* (the Manual) uses the term “incarceration” to refer to the status of an individual who has been placed in a correctional facility, such as a jail or a prison. According to the Manual, an individual who is incarcerated is considered to be living outside of any Part D plan’s service area for the purposes of eligibility, even if the correctional facility is located within a plan’s service area. Federal regulations similarly state that facilities in which individuals are incarcerated are not to be regarded as being within service areas for purposes of Part D coverage (42 CFR § 423.4).

The Manual, chapter 3, provides guidance to Part D sponsors as to beneficiary eligibility, enrollment, and disenrollment. Under CMS policy, confined beneficiaries⁸ are not considered to be incarcerated for the purpose of Part D eligibility and are not excluded from the service area for the purposes of Part D coverage (the Manual, chapter 3, § 10.2).

⁴ The Act, §§ 1860D-15(c)(1)(C) and (d)(2); 42 CFR § 423.322.

⁵ 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*, § 7.2.3).

⁶ The Act, §§ 1860D-14 and -15; 42 CFR § 423.315.

⁷ 42 CFR §§ 423.329 and 423.343.

⁸ The classification “confined beneficiaries” includes beneficiaries who are confined in mental health facilities by court order under a penal code, including those beneficiaries determined to be incompetent to stand trial, adjudged not guilty by reason of insanity, or awaiting a determination of competence to stand trial.

Section 1862 of the Act provides that no payment will be made under Medicare Parts A or B for services for which a beneficiary has no legal obligation to pay or which are paid for by a governmental entity. Accordingly, Federal regulations (42 CFR § 411.4(b)) generally prohibit Parts A and B payments for services rendered to beneficiaries in custody of penal authorities. Federal regulations provide that, for Parts A and B, beneficiaries in custody of penal authorities include confined beneficiaries. Medicare generally does not pay Part A and Part B benefits to incarcerated beneficiaries, but those beneficiaries retain their entitlement to Part A and can retain their enrollment in Part B with the payment of premiums. Accordingly, these individuals would be eligible for payments under Part D.

Obtaining Information for Confined Beneficiaries

The Social Security Administration (SSA) is CMS's primary source of information about incarcerated beneficiaries. Generally, SSA collects information, such as the names of Medicare beneficiaries and the dates on which beneficiaries begin periods of incarceration, directly from penal authorities. SSA also collects incarceration end dates from beneficiaries' requests for reinstatement of Social Security benefits.

CMS's Enrollment Database (EDB) interfaces with SSA's systems to identify incarcerated beneficiaries.⁹ Each month, CMS receives a file, known as the Prison Reply Data file, from SSA. This file includes information about each incarcerated beneficiary, the incarceration start date and end date (if applicable), and facility information (such as the name and type of facility) that we used to determine whether the facility was a mental health facility.

HOW WE CONDUCTED THIS REVIEW

We identified confined beneficiaries according to CMS's Prison Reply Data file as of November 27, 2012, and used the EDB (as of February 23, 2013) to identify confined beneficiaries (as listed in the Prison Reply Data file) who were confined in mental health facilities at some point during CYs 2006 through 2011.¹⁰

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.

⁹ The EDB uses information from SSA to identify incarcerated individuals. These data are ultimately provided to sponsors to verify a beneficiary's eligibility for Part D.

¹⁰ We based the timeframe of this review on the availability of PDE data that we used during a separate audit; see footnote 1.

FINDING

CMS accepted PDE records with gross drug costs, totaling \$12,641,770, submitted by Part D sponsors on behalf of 1,388 confined beneficiaries during CYs 2006 through 2011. Had those same persons been enrolled in Medicare Parts A or B, payment for Parts A or B services would generally not have been made. This occurred because CMS policy permits Medicare payments to be made on behalf of confined beneficiaries enrolled in Part D but not on behalf of those enrolled in Part A or Part B. Although the Act prohibits payment by Medicare Parts A and B when a confined beneficiary has no legal obligation to pay for the services or the services are paid for by a governmental entity, Part D pays benefits on behalf of confined beneficiaries.

FEDERAL REQUIREMENTS

Section 1862 of the Act and Federal regulations generally prohibit payment for Medicare Part A and Part B services rendered to beneficiaries in custody of penal authorities. Federal regulations, however, allow payment if the State or local law requires these beneficiaries to repay the cost of medical services and if the State or local government entity enforces the requirement to pay (42 CFR § 411.4(b)).

Federal regulations governing Medicare Parts A and B define individuals who are in custody of penal authorities 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" (42 CFR § 411.4(b); emphasis added).

Federal regulations state that an individual is eligible for Part D benefits if he or she is (1) entitled to Medicare benefits under Part A or enrolled in Part B and (2) resides in the service area of a Part D plan (42 CFR § 423.30(a)(1)(i-ii)). Facilities in which individuals are incarcerated are not to be regarded as being within service areas for purposes of Part D coverage (42 CFR § 423.4). A beneficiary who is incarcerated "is considered to be residing outside the plan's service area for purposes of Part D plan eligibility, even if the correctional facility is located within the plan's service area" (the Manual, chapter 3, § 10).

The Manual, chapter 3, provides guidance to Part D sponsors as to beneficiary eligibility, enrollment, and disenrollment. Individuals who fall within the classification of confined beneficiaries⁸ are not considered to be incarcerated for the purpose of Part D eligibility (the Manual, chapter 3, § 10.2).

DIFFERING POLICY ALLOWS CMS TO PROVIDE MEDICARE PART D COVERAGE TO CONFINED INDIVIDUALS

CMS accepted PDE records submitted by sponsors for prescription drugs provided to confined beneficiaries because CMS policy is different for Medicare Part D than it is for Parts A and B. This policy difference allows confined beneficiaries to receive Part D benefits even though

Federal requirements prohibit coverage under Parts A and B (the Act, § 1862; 42 CFR § 411.4(b)). Although Medicare Parts A and B generally prohibit payments for both incarcerated and confined individuals, CMS does not consider confined beneficiaries to be incarcerated for the purposes of Part D. Both incarcerated and confined beneficiaries have no legal obligation to pay for services or the services are paid for by a governmental entity.

Because of the foregoing policy differences, CMS accepted PDE records with gross drug costs totaling \$12,641,770 during CYs 2006 and 2011 on behalf of 1,388 confined beneficiaries who would not have been eligible for services under Parts A or B. The absence of a consistent payment policy across the various Medicare programs works to prevent those programs from achieving the uniformity they need to be administered efficiently.

RECOMMENDATION

We recommend that, to be consistent with the relevant provisions of Medicare Part A and Part B, CMS revise the Manual to prohibit Part D payments made on behalf of confined beneficiaries, which could have resulted in cost savings associated with \$12,641,770 in gross drug costs that CMS accepted for the 6-year period we reviewed.

CMS COMMENTS

In written comments on our draft report, CMS concurred with our recommendation and described corrective actions that it had taken or planned to take. Specifically, CMS stated that it had "... recently finalized regulations that expedite the disenrollment of incarcerated individuals based on evidence acceptable to CMS (79 FR [Federal Register] 29843)... CMS believes that these regulations will mitigate improper enrollments" in Medicare Part D for incarcerated individuals.

CMS also stated that while it agrees with what this report says regarding confined individuals, "... we do want to clarify that CMS continues to believe that it is appropriate for beneficiaries confined to IMDs, not based on criminal offenses, to be included within the Part D sponsor's service area. This is because there are individuals who are confined by court order to an IMD for which no penal codes were violated." CMS added that to ensure understanding by Part D sponsors, it would update the Manual to clarify when Part D enrollment is permitted in cases of confinement to an IMD.

CMS's comments appear in their entirety as Appendix B.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered \$12,641,770 in gross drug costs reflected in final PDE records that sponsors submitted on behalf of confined beneficiaries for CYs 2006 through 2011.¹¹ 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 did not verify the confinement status or dates of confinement of the beneficiaries whom we identified as confined.

We conducted this audit from October 2012 through August 2013.

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 internal controls related to incarcerated beneficiaries and its policies for eligibility of confined beneficiaries;
- held discussions with SSA officials to gain an understanding of SSA's systems and processes for obtaining data on incarcerated individuals;
- obtained CMS's Prison Reply Data file (received monthly from SSA) to identify (as of November 27, 2012) confined beneficiaries;
- used the EDB (as of February 23, 2013) to identify confined beneficiaries (from CMS's Prison Reply Data file) who were confined in mental health facilities at some point during CYs 2006 through 2011;
- obtained PDE records for these confined beneficiaries for CYs 2006 through 2011;
- modified our population by:
 - removing all duplicate PDE records and
 - removing all PDE records for "non-covered" drugs (e.g., over-the-counter drugs);

¹¹ We based the timeframe of this review on the availability of PDE data that we used during a separate audit; see footnote 1.

- calculated the gross drug costs totaling \$12,641,770 for prescription drugs provided to confined beneficiaries; and
- discussed the results of our review and provided detailed information to CMS officials 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.

APPENDIX B: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

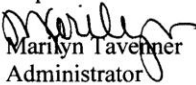
Centers for Medicare & Medicaid Services

Administrator

Washington, DC 20201

DATE: JUN - 9 2014

TO: Daniel R. Levinson
Inspector General

FROM: 
Marilyn Tavenner
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: The Centers for Medicare & Medicaid Services Provided Part D Coverage to Beneficiaries Confined in Mental Health Facilities for Court-Ordered Purposes (A-07-13-06041)

The Centers for Medicare & Medicaid Services (CMS) thanks OIG for the opportunity to review and comment on the above subject draft report. The purpose of this report is to determine the extent to which CMS paid Part D sponsors for individuals confined in mental health facilities by court order for violations of the penal code.

Individuals may enroll in Part D plans if they meet the eligibility requirements, which include residing within the plan's service area. Consistent with this policy, and as outlined in 42 CFR 423.4, an individual who is incarcerated does not reside in any plan's service area. However, not all individuals confined in Institutions for Mental Disease (IMDs) are placed there due to violations of the jurisdiction's penal code. A number of individuals are confined by other types of court orders for which there is not another appropriate payer for services. Thus, the current Medicare Prescription Drug Benefit Manual outlines our policy to allow individuals confined to IMDs to reside within the Part D sponsor's service area.

The status of incarceration comes from data provided by the Social Security Administration (SSA) based on information it receives from penal facilities. That information is used to apply payment rules for the Fee-for-Service (FFS) Medicare program. To help align the Part D program with the FFS Medicare program, CMS recently finalized regulations that expedite involuntary disenrollment of incarcerated individuals based on evidence acceptable to CMS (79 FR 29843). Incarcerated individuals will lose enrollment eligibility or be involuntarily disenrolled from their Part D plans based on the data provided to CMS by SSA. In such cases, these individuals will be determined to be out of the plan's service area.

We strive to ensure payments are not made for individuals who are not eligible for Part D enrollment. Accordingly, we agree that in cases where the information indicates an individual is incarcerated due to penal code violations, that individual is determined to no longer reside in the plan's service area and should be disenrolled in accordance with regulatory requirements.

Below is CMS response to OIG's recommendation in the report.

OIG Recommendation

The OIG recommends, to be consistent with the relevant provisions of Medicare Part A and B, CMS revise the Manual to prohibit Part D payments made on behalf of confined beneficiaries, which could have resulted in cost savings associated with \$12,641,770 in gross drug costs that CMS accepted for the 6-year period reviewed.

CMS Response

The CMS concurs with this recommendation. We agree with OIG that individuals confined to IMDs as a result of violations of the penal code are not eligible for enrollment in Part D plans, as they are considered to be out of any plan's service area. To this end, CMS has recently finalized regulations that expedite the disenrollment of incarcerated individuals based on evidence acceptable to CMS (79 FR 29843). Through these regulations, CMS will share confirmed incarceration data with Part D sponsors so that eligibility for enrollment can be determined appropriately and disenrollments can occur based on the data regarding the incarceration provided by SSA. The loss of eligibility due to incarceration will include those criminally confined to IMDs. CMS believes that these regulations will mitigate improper enrollments and meets OIG's goal of limiting Part D capitation payments for known incarcerated individuals.

While we agree with OIG regarding individuals defined as "confined" for the purposes of this report, we do want to clarify that CMS continues to believe that it is appropriate for beneficiaries confined to IMDs, not based on criminal offenses, to be included within the Part D sponsor's service area. This is because there are individuals who are confined by court order to an IMD for which no penal codes were violated. Thus, some enrollments of individuals residing in IMDs are appropriate, and these individuals will remain able to enroll and obtain services through the Part D sponsor. To ensure understanding by Part D sponsors, CMS will update the Manual to include the policy and clarify when Part D enrollment is permitted in cases of confinement in an IMD.

The CMS appreciates the time and effort that went into developing this report and look forward to continuing to work with OIG on this issue.