



News Flash – The publication titled *ICD-10-CM/PCS Myths & Facts* (June 2009), which presents correct information in response to some myths regarding the ICD-10-Clinical Modification/Procedure Coding System, is now available in downloadable format from the Centers for Medicare & Medicaid Services Medicare Learning Network at <http://www.cms.hhs.gov/MLNProducts/downloads/ICD-10Mappingfctshst.pdf> on the CMS website.

MLN Matters® Number: MM6544 **Revised**

Related Change Request (CR) #: 6544

Related CR Release Date: September 4, 2009

Effective Date: December 7, 2009

Related CR Transmittal #: R1812CP and R110BP

Implementation Date: December 7, 2009

Note: This article was revised on September 14, 2009, to add DME MACs in the "Provider Affected" section. DME MACs may also receive claims and are included in Change Request 6544. All other information remains unchanged.

Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody under a Penal Authority and Examples of Application of Government Entity Exclusion

Provider Types Affected

This article is for physicians, providers, and suppliers submitting claims to Medicare contractors (carriers, DME Medicare Administrative Contractors (DME MACs), Fiscal Intermediaries (FIs), and/or A/B MACs) for services provided to individuals or groups of individuals who are in "custody" under a penal statute or rule.

Provider Action Needed



STOP – Impact to You

This article is based on Change Request (CR) 6544, which describes special conditions that must be met in order for Medicare to make payment for services provided to individuals or groups of individuals who are in the custody of the police

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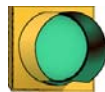
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or other penal authorities or in the custody of a government agency under a penal statute or rule.



CAUTION – What You Need to Know

CR 6544 instructs Medicare contractors that “payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions 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 all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing the collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.”



GO – What You Need to Do

See the Background and Additional Information Sections of this article for further details regarding these changes.

Background

Under the Social Security Act (Section 1862(a)(2); see http://www.ssa.gov/OP_Home/ssact/title18/1862.htm on the Internet), the Medicare program does not pay for services if:

- The beneficiary has no legal obligation to pay for the services, and
- No other person or organization has a legal obligation to provide or pay for that service.

In addition, under the Social Security Act (Section 1862(a)(3)), if services are paid for directly or indirectly by a governmental entity, Medicare does not pay for the services.

In the Fiscal Year (FY) 2008 Inpatient Prospective Payment System (IPPS) final rule published in the Federal Register, Volume 72, Number 162 (72 FR 47409 and 47410 – August 22, 2007; see <http://edocket.access.gpo.gov/2007/07-3820.htm> on the Internet), the Centers for Medicare & Medicaid Services (CMS) clarified the regulations at 42 CFR Section 411.4(b) (See http://edocket.access.gpo.gov/cfr_2002/octqtr/42cfr411.4.htm on the Internet) by stating that for purposes of Medicare payment, individuals who are in “custody” include, but are not limited to, individuals who are:

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- 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.

The *Medicare Claims Processing Manual*, Chapter 1, Section 10.4 describes the **special conditions that must be met** in order for Medicare to make payment for individuals who are in custody as follows:

"Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met:

1. State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody, and
2. The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing the collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts."

Providers and suppliers are reminded that if they render services or items to a prisoner or patient in a jurisdiction that meets these conditions of 42 CFR 411.4(b), they are to include modifier QJ on claims submitted to carriers, A/B MACs, or DME MACs or use condition code 63 on institutional claims sent to Medicare FIs or A/B MACs.

Change Request (CR) 6544 also amends the *Medicare Benefit Policy Manual* (Chapter 16, Section 50.3.3) and the *Medicare Claims Processing Manual* (Chapter 1, Section 10.4) in order to be consistent with 42 CFR Section 411.4(b). These revisions are included as attachments to CR 6544.

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Additional Information

There are two transmittals associated with the official instruction, CR 6544, issued to your carrier, FI, and A/B MAC regarding this change. The first transmittal amends the *Medicare Claims Processing Manual* and it may be viewed at <http://www.cms.hhs.gov/Transmittals/downloads/R1812CP.pdf> on the CMS website. The second transmittal amends the *Medicare Benefit Policy Manual* and it may be viewed at <http://www.cms.hhs.gov/Transmittals/downloads/R110BP.pdf> on the CMS website.

If you have any questions, please contact your carrier, DME MAC, FI, or A/B MAC at their toll-free number, which may be found at <http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

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