

August 23, 2013

Marilyn B. Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Room 445-G, Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Re: Incarcerated Beneficiary Claim Denial

Dear Administrator Tavenner:

On behalf of the physician and medical student members of the American Medical Association (AMA) as well as the undersigned organizations, we write to convey our concerns regarding efforts by the Centers for Medicare and Medicaid Services (CMS) to recoup Medicare payments for services rendered to potentially incarcerated beneficiaries. We understand that Medicare will generally not cover items and services furnished to a beneficiary on a date of service that overlaps with a period of incarceration. However, we believe current efforts to recover these payments are significantly flawed, as described below.

We understand that beneficiary data used by CMS to identify periods of incarcerations was, in some cases, incomplete and that recovery actions may have been inaccurate. This has resulted in CMS seeking to recoup Medicare payments that were in fact correctly paid. Likewise, some state Medicaid programs are attempting to recover payments for co-insurance based on CMS' inaccurate claim denials. CMS has confirmed these errors but does not expect to fully resolve this issue before October. **Recognizing these errors and the burdens placed on providers, we urge CMS to halt its recovery efforts. Instead, CMS should take action to improve the process used to identify periods of incarceration and clarify denial forms and notices so that providers are aware of the explicit reason justifying a recoupment.**

**Further, we oppose the burdensome requirement placed on physicians to confirm the incarceration status of patients.** While under certain circumstances providers may be aware that a patient is incarcerated, in other instances providers may have no indication of a patient's status, especially if the patient is residing in a halfway house, living under home detention, on parole, or unconscious and unable to convey that he or she is in custody. To confirm a patient's status, CMS recommends that providers call their Medicare Administrative Contractor (MAC) to inquire whether a patient is incarcerated. This additional administrative duty, however, interferes with the physician's focus on patient care and is overly burdensome given that these inquiries may only affect a small portion of patients. CMS should therefore consider these challenges and find an alternate, more appropriate way to determine whether a patient is in custody.

Based on reports from physicians and other stakeholders, we believe that providers had little or no knowledge of this payment prohibition or the broad definition of “incarcerated.” This term applies even when an individual is on parole, on a supervised release, on medical furlough, residing in a mental institution, or other similar situation. **Without this clarity, we believe CMS should not unjustly punish physicians and retroactively seek overpayments. Rather, CMS should finalize clear, bright-line guidance to educate providers going forward regarding these types of claims.**

We appreciate CMS’ efforts to issue additional guidance on its incarcerated beneficiary recoupment policy, including removing requirements that physicians contact beneficiaries to determine their incarceration status and clarifying that providers may have good cause for filing a late appeal for these claim denials. We, however, believe that this new recoupment process places inequitable burdens on providers when certain states and other agencies may have the financial obligation to pay for health care items and services rendered to incarcerated individuals. In these circumstances, we suggest CMS consider use of its subrogation rights and seek recovery directly from the state or agency with the financial liability for the incarcerated person(s). Accordingly, we urge CMS to reconsider its existing policy and work with providers to improve this process going forward.

Thank you for your consideration of our concerns regarding this new recoupment policy. We look forward to working with you on this important issue to lessen the obligations on physicians and other providers. Please contact Carol Vargo, Assistant Director, Federal Affairs, at [carol.vargo@ama-assn.org](mailto:carol.vargo@ama-assn.org) or (202) 789-7492, with any questions or to discuss this matter in more detail.

Sincerely,

American Medical Association  
Alaska State Medical Association  
Arizona Medical Association  
Arkansas Medical Society  
California Medical Association  
Colorado Medical Society  
Connecticut State Medical Society  
Florida Medical Association  
Guam Medical Society  
Hawaii Medical Association  
Idaho Medical Association  
Illinois State Medical Society  
Indiana State Medical Association  
Iowa Medical Society  
Kansas Medical Society  
Kentucky Medical Association

Louisiana State Medical Society  
Maine Medical Association  
Massachusetts Medical Society  
MedChi, The Maryland State Medical Society  
Medical Association of Georgia  
Medical Association of the State of Alabama  
Medical Society of Delaware  
Medical Society of New Jersey  
Medical Society of the District of Columbia  
Medical Society of the State of New York  
Medical Society of Virginia  
Michigan State Medical Society  
Minnesota Medical Association  
Mississippi State Medical Association  
Missouri State Medical Association  
Montana Medical Association  
Nebraska Medical Association  
Nevada State Medical Association  
New Hampshire Medical Society  
New Mexico Medical Society  
North Carolina Medical Society  
North Dakota Medical Association  
Ohio State Medical Association  
Oklahoma State Medical Association  
Oregon Medical Association  
Pennsylvania Medical Society  
Puerto Rico Medical Association  
Rhode Island Medical Society  
South Carolina Medical Association  
South Dakota State Medical Association  
Tennessee Medical Association  
Texas Medical Association  
Utah Medical Association  
Vermont Medical Society  
Virgin Islands Medical Society  
Washington State Medical Association  
West Virginia State Medical Association  
Wisconsin Medical Society  
Wyoming Medical Society