CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-04 Medicare Claims Processing	Centers for Medicare & Medicaid Services (CMS)
Transmittal 13011	**Date: December 20, 2024**
	Change Request 13903

SUBJECT: Updates to No Legal Obligation to Pay for or Provide Services and Examples of Application of Government Entity Exclusion (Pub. 100-02, chapter 16, sections 40 and 50.3.3 and newly created section 40.7) and Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority (Pub. 100-04, chapter 1, section 10.4)

I. SUMMARY OF CHANGES: The purpose of this Change Request (CR) is to update the internet only manual to make it consistent with our regulations. In the CY 2025 OPPS rule, CMS clarified its regulations at 42 CFR 411.4(b) by stating that for purposes of Medicare payment, an individual is considered to be in the custody of a penal authority if the individual is:

(A) Incarcerated in a jail, prison, penitentiary, or similar institution;

(B) Temporarily outside of a jail, prison, penitentiary, or similar institution on medical furlough or similar arrangement;

(C) Escaped from confinement by a penal authority; or

(D) Required to reside in a mental health facility under a penal statute or rule.

Individuals who are <u>not</u> considered to be in the custody of a penal authority include, but are not limited to, individuals who are—

(A) Released to the community pending trial (including those in pretrial community supervision and those released pursuant to cash bail);

(B) On parole;

(C) On probation;

(D) On home detention or home confinement; or

(E) Required to live in a halfway house or other community-based transitional facility.

Therefore, as a result of the changes to our regulations, CMS is amending Pub. 100-02, chapter 16, sections 40 and 50.3.3, and creating new section 40.7. CMS is amending Pub. 100-04, chapter 1, section 10.4 of the Internet Only Manual in order to make them consistent with 42 CFR 411.4(b).

EFFECTIVE DATE: January 1, 2025
**Unless otherwise specified, the effective date is the date of service.*
IMPLEMENTATION DATE: May 1, 2025

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)
R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	1/10.4/Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority

III. FUNDING:

For Medicare Administrative Contractors (MACs):
The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

Business Requirements
Manual Instruction

Attachment - Business Requirements

Pub. 100-04	Transmittal: 13011	Date: December 20, 2024	Change Request: 13903

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II. GENERAL INFORMATION

A. Background: Section 1862(a)(2) of the Social Security Act ("the Act") prohibits Medicare payment under Part A or Part B for any expenses incurred for items or services for which the individual furnished such items or services has no legal obligation to pay, and which no other person <u>(by reason of such individual's membership in a prepayment plan or otherwise)</u> has a legal obligation to provide or pay for,

except in the case of Federally qualified health center services. Also, under Section 1862(a)(3) of the Act, if services are paid for directly or indirectly by a governmental entity, Medicare does not pay for the services.

B. Policy: In the CY 2025 OPPS rule, CMS clarified its regulations at 42 CFR 411.4(b) by stating that for purposes of Medicare payment, an individual is considered to be in the custody of a penal authority if the individual is:

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III. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								
		A/B MAC			DME	Shared-System Maintainers				Other
		A	B	HHH	MAC	FISS	MCS	VMS	CWF	
13903 - 04.1	Contractors shall refer to Pub. 100-04, chapter 1, section 10.4 for information regarding Medicare's no legal obligation to pay and governmental entity payment exclusions.	X	X	X	X					

IV. PROVIDER EDUCATION

Medicare Learning Network® (MLN): CMS will develop and release national provider education content and market it through the MLN Connects® newsletter shortly after we issue the CR. MACs shall link to relevant information on your website and follow IOM Pub. No. 100-09 Chapter 6, Section 50.2.4.1 for distributing the newsletter to providers. When you follow this manual section, you don't need to separately

track and report MLN content releases. You may supplement with your local educational content after we release the newsletter.

Impacted Contractors: A/B MAC Part A, A/B MAC Part B, A/B MAC Part HHH, DME MAC, CEDI

V. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information:N/A

VI. CONTACTS

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VII. FUNDING

Section A: For Medicare Administrative Contractors (MACs):
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ATTACHMENTS: 0

Medicare Claims Processing Manual

Chapter 1 - General Billing Requirements

Table of Contents

(Rev. 13011; Issued: 12-20-24)

10.4 – Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority

(Rev. 13011; Issued: 12-20-24; Effective: 01-01-25; Implementation: 05-01-25)

Individuals in custody of a penal authority generally have the status of public charges and, as such, have no obligation to pay for the medical care they receive. The special condition at 42 CFR § 411.4(b) for services furnished to individuals in custody of penal authorities operates as a rebuttable presumption. The presumption is that individuals who are in custody, as the term is described in 42 CFR § 411.4(b), have no legal obligation to pay for health care items or services they receive while in custody; therefore, Medicare is prohibited from paying for such health care items or services under the no legal obligation to pay payment exclusion. The presumption can be rebutted by a showing that: (1) the State or local government requires individuals in custody to repay the cost of the medical services they receive while in custody; and (2) the State or local government enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.

NOTE: *The A/B MAC (A), (B), or (HHH), or DME MAC will require evidence that routine collection efforts include the filing of lawsuits to obtain liens against individuals' assets outside the prison and income derived from non-prison sources.*

- *The State or local entity documents its case with copies of regulations, manual instructions, directives, etc., spelling out the rules and procedures for billing and collecting amounts paid for prisoners' medical expenses. The A/B MAC (A), (B), or (HHH), or DME MAC will inspect a representative sample of cases in which prisoners have been billed and payment pursued, randomly selected from both Medicare and non-Medicare eligible. The existence of cases in which the State or local entity did not actually pursue collection, even though there is no indication that the effort would have been unproductive, indicates that the requirement to pay is not enforced.*

The CMS maintains a file of beneficiaries in custody of a penal authority, obtained from SSA, that is used to edit claims. Specifically, the data contain the names of the Medicare beneficiaries and time periods when the beneficiary is in such Federal, State, or local custody. These data will be compared to the data on the incoming claims. CWF will reject claims where the dates from the SSA file and the dates of service on the claim overlap. Any claims rejected by CWF will contain a trailer to the Medicare contractor indicating the date span covered. Contractors will, in turn, deny payment of such claims.

Providers and suppliers that render items and services to individuals in custody of a penal authority in a jurisdiction that meets the conditions of 42 CFR § 411.4(b)(1)(i) through (iii) should indicate the requirements have been met for payment with the use of a modifier QJ (for A/B MAC (B) or DME MAC processed claims or for outpatient claims processed by A/B MAC (A). Otherwise, the claims are denied.

The regulation at 42 CFR § 411.4(b) states:

"(b) Special conditions for payment for items or services furnished to an individual in the custody of a penal authority.
(1) An individual in the custody of a penal authority is considered to have a legal obligation to pay for items or services furnished to the individual only if the following conditions are met:
(i) State or local law requires the individual to pay the cost of items and services that the individual receives;
(ii) The penal authority enforces the requirement to pay for items or services by billing all individuals who receive such items or services, whether or not covered by Medicare or any other health insurance; and
(iii) The penal authority pursues collection of amounts owed for items or services received in the same way and with the same vigor that it pursues the collection of other debts.

(2) For purposes of this paragraph, a penal authority means a police department or other law enforcement agency, a government agency operating under a penal statute, or a State, local or Federal jail, prison, penitentiary, or similar institution.
(3) For purposes of this paragraph—
(i) an individual is considered to be in the custody of a penal authority if the individual is:
(A) Incarcerated in a jail, prison, penitentiary, or similar institution;
(B) Temporarily outside of a jail, prison, penitentiary, or similar institution on medical furlough or similar arrangement;
(C) Escaped from confinement by a penal authority; or
(D) Required to reside in a mental health facility under a penal statute or rule.
(ii) Individuals who are not considered to be in the custody of a penal authority include, but are not limited to, individuals who are—
(A) Released to the community pending trial (including those in pretrial community supervision and those released pursuant to cash bail);
(B) On parole;
(C) On probation;
(D) On home detention or home confinement; or
(E) Required to live in a halfway house or other community-based transitional facility."

Appeals:

A party to a claim denied in whole or in part under this policy may appeal the initial determination on the basis that, on the date of service, (1) the conditions of § 411.4(b)*(1)(i) through (iii)* were met, or (2) the beneficiary was not, in fact, in custody under authority of a penal statute.

A/B MAC (A)/RHHI Claims Processing Procedures

A/B MACs (A) must deny claims for items and services rendered to beneficiaries under custody when CWF rejects the claim. Provide appeal rights as specified above.

Providers that render *items and services* to *individuals in custody of a penal authority* in a jurisdiction that meets the conditions of 42 CFR 411.4(b)*(1)(i) through (iii)* should indicate *the requirements have been met for payment* on the claim by billing as follows:

For outpatient claims, providers shall append a HCPCS modifier QJ on all lines with a line item date of service during the incarceration period.

For inpatient claims where the incarceration period spans only a portion of the stay, hospitals shall identify the incarceration period by billing as non-covered all days, services and charges that overlap the incarceration period. Non-coverage billing guidelines can be found in Pub. 100-04, Chapter 1, Section 60.

(**NOTE:** When the inpatient claim is correctly billed, the processing contractor will append the payer-only condition code 63, which will allow the claim to process for payment. This condition code indicates that the provider has been instructed by the state or local government agency that requested the healthcare items or services provided to the patient of the State or local government entity that it pursues collection of debts incurred for furnishing such items or services with the same vigor and in the same manner as any other debt.)

A/B MAC (B)/DME MAC Claims Processing Procedures

A/B MAC (B) and DME MACs must deny claims for items and services rendered to beneficiaries when rejected by CWF. Provide appeal rights as specified above.

Physicians and other suppliers that render *items and* services to *individuals in custody of a penal authority* in a jurisdiction that meets the conditions of 42 CFR 411.4(b)*(1)(i) through (iii)* should indicate *the*

requirements have been met for payment on the claim. Providers should use the QJ modifier. Language approved for QJ reads:

"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)*(1)(i) through (iii)*."

This modifier indicates that the physician or other supplier has been instructed by the state or local government agency that requested the healthcare items or services provided to the patient that State or local law makes the prisoner or patient responsible to repay the cost of Medical services and that it pursues collection of debts incurred for furnishing such items or services with the same vigor and in the same manner as any other debt.