Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

MEDICARE IMPROPERLY PAID MEDICARE ADVANTAGE ORGANIZATIONS MILLIONS OF DOLLARS FOR UNLAWFULLY PRESENT BENEFICIARIES FOR 2010 THROUGH 2012

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

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Inspector General

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Office of Inspector General

https://oig.hhs.gov/

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EXECUTIVE SUMMARY

Medicare made improper payments to Medicare Advantage organizations totaling more than $26 million for unlawfully present beneficiaries for calendar years 2010 through 2012.

WHY WE DID THIS REVIEW

Federal health care benefits are generally allowable when provided to a beneficiary who is either a U.S. citizen or a U.S. national or to an alien who is lawfully present in the United States. But when the alien beneficiary is not lawfully present in the United States (unlawfully present), Federal health care benefits are not allowable. We are conducting a series of reviews examining Medicare payments made on behalf of unlawfully present beneficiaries. We previously reported that Medicare made improper Part A and Part B payments totaling $91.6 million to health care providers for services to unlawfully present beneficiaries. This review covers payments made to Medicare Advantage (MA) organizations, through MA, also known as Medicare Part C, for unlawfully present beneficiaries.

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services (CMS) made payments to MA organizations for unlawfully present beneficiaries for calendar years (CYs) 2010 through 2012.

BACKGROUND

CMS's MA program offers beneficiaries managed care options by allowing them to enroll in private health plans rather than having their care covered through Medicare's traditional fee-for-service (FFS) program (also known as Parts A and B). CMS, which administers Medicare, contracts with MA organizations to provide health care services to beneficiaries enrolled in MA.

Enrollment in an MA organization begins on the first day of the month. MA organizations cover all medically necessary services, other than hospice care, that are allowable in the FFS program. CMS makes monthly payments to MA organizations for enrolled beneficiaries. Disenrollment from an MA organization also begins on the first day of the month.

Federal health care benefits are not allowable for services provided to unlawfully present beneficiaries. CMS has, for its FFS program, developed procedures to prevent and detect Federal payments for health care services provided to unlawfully present beneficiaries. These procedures include enhancements that CMS made in response to our previous report.

Using CMS's data systems, we identified 31,303 beneficiaries who had been unlawfully present at some point during CYs 2010 through 2012. We reviewed $26,150,043 that CMS paid to MA organizations for 1,591 of these beneficiaries who were also enrolled in MA organizations.

WHAT WE FOUND

For CYs 2010 through 2012, CMS made $26,150,043 in improper payments to MA organizations for 1,591 unlawfully present beneficiaries. Specifically, CMS did not notify the MA organizations of the unlawful-presence information in its data systems. In the absence of such notification, MA organizations could not prevent unlawfully present beneficiaries from enrolling. For the same reason, MA organizations could not disenroll beneficiaries whose unlawful-presence status changed after they had enrolled.

In contrast to its FFS program, CMS did not have policies and procedures to notify the MA organizations of the unlawful-presence information in its data systems. Had CMS provided this information to the MA organizations, they would have been able to prevent enrollment and to disenroll beneficiaries already enrolled. CMS would then have been able to recoup any improper payments.

WHAT WE RECOMMEND

We recommend that CMS:

- recoup the $26,150,043 in improper payments in accordance with legal requirements;

- implement policies and procedures, consistent with those in effect under its FFS program, to notify MA organizations of unlawful-presence information and thereby prevent enrollment in MA organizations, disenroll beneficiaries already enrolled, and recoup any improper payments; and

- identify and recoup improper payments made to MA organizations for unlawfully present beneficiaries after our audit period and until policies and procedures have been implemented that would ensure Medicare no longer pays for unlawful beneficiaries.

CMS COMMENTS AND OUR RESPONSE

In written comments on our draft report, CMS concurred with our second recommendation and stated that it had proposed regulations that, if finalized, would ensure consistency between the FFS and MA programs regarding payment for unlawfully present beneficiaries. CMS partially concurred with our third recommendation and said that until the proposed regulations are finalized, it could not fully recover the improper payments made after our audit period.

However, CMS stated that it was unable to concur with the specific improper payment amount identified in our first recommendation because the description of our methodology did not contain enough details that would enable CMS to confirm the accuracy of the amount.

We agree that the regulations must change before CMS can fully identify and recoup the improper payments made after our audit period. With regard to the specific improper payment amount identified in the first recommendation, we explained our methodology to CMS officials

before we issued the draft report and are available to discuss it further. Accordingly, we maintain that this recommendation is valid.

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INTRODUCTION

WHY WE DID THIS REVIEW

Federal health care benefits are generally allowable when provided to a beneficiary who is either a U.S. citizen or a U.S. national or to an alien who is lawfully present in the United States. But when the alien beneficiary is not lawfully present in the United States (unlawfully present), Federal health care benefits are not allowable. We are conducting a series of reviews examining Medicare payments made on behalf of unlawfully present beneficiaries. We previously reported that Medicare made improper Part A and Part B payments totaling $91.6 million to health care providers for services to unlawfully present beneficiaries.[1] This review covers payments made to Medicare Advantage (MA) organizations, through MA (also known as Medicare Part C),[2] for unlawfully present beneficiaries.

OBJECTIVE

Our objective was to determine whether the Centers for Medicare & Medicaid Services (CMS) made payments to MA organizations for unlawfully present beneficiaries for calendar years (CYs) 2010 through 2012.

BACKGROUND

Medicare Advantage

CMS's MA program offers beneficiaries managed care options by allowing them to enroll in private health plans rather than having their care covered through Medicare's traditional fee-for-service (FFS) program (also known as Parts A and B). Participating MA organizations include health maintenance organizations, preferred provider organizations, provider-sponsored organizations, and private FFS plans. CMS, which administers Medicare, contracts with MA organizations to provide health care services to beneficiaries enrolled in MA.

An MA organization must accept enrollment requests it receives from beneficiaries, regardless of whether they are received in a face-to-face interview, by mail, by facsimile, or through other mechanisms defined by CMS. Upon receiving an enrollment request, an MA organization must, within 10 calendar days, respond to the beneficiary with either a notice acknowledging enrollment, a request for additional information, or a notice of denial.[3] CMS provides the MA organizations with information needed to make these determinations.

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[1] *Medicare Improperly Paid Providers Millions of Dollars for Unlawfully Present Beneficiaries Who Received Services During 2009 Through 2011* (A-07-12-01116, issued January 23, 2013).

[2] The Balanced Budget Act of 1997, P.L. No. 105-33, established Medicare Part C to offer beneficiaries managed care options through the Medicare+Choice program. Section 201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P.L. No. 108-173, revised Medicare Part C and renamed it the MA program.

[3] CMS, *Medicare Managed Care Manual*, chapter 2, § 40.

Enrollment in an MA organization begins on the first day of the month. MA organizations cover all medically necessary services, other than hospice care, that are allowable in the FFS program. CMS makes monthly payments to MA organizations for enrolled beneficiaries on the basis of the most current information available.[4] If CMS receives information that would increase or decrease the previous payments, it makes retroactive adjustments to those payments. Disenrollment from an MA organization also begins on the first day of the month.

Prohibition of Federal Health Care Benefits for Unlawfully Present Beneficiaries

Federal health care benefits are generally allowable to be paid on behalf of a beneficiary for whom the Social Security Administration (SSA) has evidence that the beneficiary is either a United States citizen or a United States national. Federal law generally prohibits the payment of Federal public benefits, including Federal health care benefits such as Medicare Advantage, on behalf of unlawfully present aliens.[5]

In 2003, CMS issued a Program Memorandum to Medicare administrative contractors (Medicare contractors) that stated this payment policy: "Make no payments for Medicare services furnished to an alien beneficiary who is not lawfully present in the United States."[6] To implement this policy, CMS developed procedures to prohibit payments for FFS claims in instances when the dates of unlawful presence, as shown on CMS's data systems, overlapped with the dates of service on the claims. These procedures include enhancements that CMS made in response to our previous report, which identified $91.6 million of improper payments.

Obtaining Information for Unlawfully Present Beneficiaries

SSA is CMS's primary source of information about unlawfully present beneficiaries. SSA collects the names of Medicare beneficiaries who lose their status of being *lawfully* present in the United States from the Department of Homeland Security and other Federal agencies. For these individuals, SSA also collects the dates on which their lawful-presence status ended and, in some instances, restarted. When SSA's information indicates that a beneficiary's lawful presence has ended, CMS classifies the individual as unlawfully present for Medicare purposes. The end date of lawful presence as indicated by SSA's systems becomes the start date on which these individuals are not eligible to receive Medicare benefits.

[4] The monthly payments are based on each beneficiary's demographic and health-status information.

[5] 8 U.S.C. § 1611.

[6] CMS, *Payment Denial for Medicare Services Furnished to Alien Beneficiaries Who Are Not Lawfully Present in the United States*, Program Memorandum Intermediaries/Carriers, Transmittal AB-03-115 (Change Request 2825, August 1, 2003). Under Medicare contracting reform, the functions previously executed by fiscal intermediaries and carriers are now executed by Medicare contractors. The payment policy from this memorandum was incorporated in the *Medicare Claims Processing Manual* in September 2004 (chapter 1, § 10.1.4.8).

CMS's data systems interface with SSA's data systems to identify and classify individuals as unlawfully present. Using CMS's data systems, we identified 31,303 beneficiaries who had been unlawfully present at some point during CYs 2010 through 2012.

HOW WE CONDUCTED THIS REVIEW

CMS made monthly payments to MA organizations associated with 1,591 unlawfully present beneficiaries. For CYs 2010 through 2012, these payments totaled $26,150,043. We reviewed these payments.

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.

FINDINGS

For CYs 2010 through 2012, CMS made $26,150,043 in improper payments to MA organizations for 1,591 unlawfully present beneficiaries. Specifically, CMS did not notify the MA organizations of the unlawful-presence information in its data systems. In the absence of such notification, MA organizations could not prevent unlawfully present beneficiaries from enrolling. For the same reason, MA organizations could not disenroll beneficiaries whose unlawful-presence status changed after they had enrolled.

In contrast to its FFS program, CMS did not have policies and procedures to notify the MA organizations of the unlawful-presence information in its data systems. Had CMS provided this information to the MA organizations, they would have been able to prevent enrollment and to disenroll beneficiaries already enrolled. CMS would then have been able to recoup any improper payments.

FEDERAL REQUIREMENTS

Medicare benefits are not payable to any alien in the United States for any month during which the alien is not lawfully present in the United States.[7] These benefits include health care services provided to beneficiaries enrolled in MA organizations.

The Presidential memorandum *Finding and Recapturing Improper Payments*[8] directs Federal agencies, including CMS, to use every tool available to identify and reclaim the funds associated

[7] 8 U.S.C. § 1611.

[8] 75 Fed. Reg. 12119 (Mar. 15, 2010).

with improper payments that the Federal Government has made. The memorandum notes that reclaiming these funds is a critical component of the proper stewardship and protection of taxpayer dollars. In addition, Federal guidelines direct Federal agencies to take all necessary steps to prevent, detect, and collect improper payments.[9]

CMS MADE IMPROPER PAYMENTS TO MEDICARE ADVANTAGE ORGANIZATIONS FOR UNLAWFULLY PRESENT BENEFICIARIES

CMS made improper payments of $26,150,043 to MA organizations for 1,591 unlawfully present beneficiaries for CYs 2010 through 2012. For these beneficiaries, CMS did not notify MA organizations of the unlawful-presence information in its data systems.

When unlawfully present beneficiaries requested enrollment in MA organizations, CMS did not share unlawful-presence information with the MA organizations. Therefore, the MA organizations did not have the information that they needed to prevent these beneficiaries from enrolling. Consequently, CMS made improper payments for the months that these individuals were enrolled.

When beneficiaries became unlawfully present while they were enrolled in MA organizations, CMS did not notify the MA organizations of changes to those beneficiaries' unlawfully present status. Therefore, MA organizations did not have the information that they needed to disenroll these beneficiaries. Because the beneficiaries remained enrolled in the MA organizations, CMS did not detect and recoup the associated improper payments.

CMS DID NOT HAVE POLICIES AND PROCEDURES TO NOTIFY MEDICARE ADVANTAGE ORGANIZATIONS OF UNLAWFUL-PRESENCE INFORMATION

The improper payments occurred because CMS did not have policies and procedures to notify MA organizations of the unlawful-presence information in its data systems. Had CMS provided this information to the MA organizations, they would have been able to prevent enrollment and to disenroll beneficiaries already enrolled. CMS would then have been able to recoup any improper payments.

This absence of policies and procedures stands in contrast to CMS's FFS program, which has procedures that prohibit Parts A and B payments for unlawfully present beneficiaries.

Thus, it was possible for a beneficiary to enroll in an MA organization after being prohibited from having Medicare payments made on his or her behalf under the FFS program. In fact, we identified 10 beneficiaries whose FFS claims were denied by CMS because those beneficiaries were unlawfully present. CMS subsequently allowed these individuals to enroll in MA organizations to receive Medicare services.

[9] Office of Management and Budget Circular A-123, Appendix C, *Requirements for Effective Measurement and Remediation of Improper Payments*, part I, section A.15.

Because CMS relies on the unlawful-presence information that it receives from SSA for its FFS program, using the same information in the administration of its MA program is a reasonable extension of its efforts to ensure that payments to MA organizations are proper.

RECOMMENDATIONS

We recommend that CMS:

- recoup the $26,150,043 in improper payments in accordance with legal requirements;

- implement policies and procedures, consistent with those in effect under its FFS program, to notify MA organizations of unlawful-presence information and thereby prevent enrollment in MA organizations, disenroll beneficiaries already enrolled, and recoup any improper payments; and

- identify and recoup improper payments made to MA organizations for unlawfully present beneficiaries after our audit period and until policies and procedures have been implemented that would ensure Medicare no longer pays for unlawful beneficiaries.

CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, CMS concurred with our second recommendation and stated that it had proposed regulations that, if finalized, would ensure consistency between the FFS and MA programs regarding payment for unlawfully present beneficiaries.

CMS partially concurred with our third recommendation and said that until the proposed regulations are finalized, it could not fully recover the improper payments made after our audit period. To this point, CMS stated that these measures would "… also allow CMS to appropriately adjust any payments made to plans for those beneficiaries."

However, CMS stated that it was unable to concur with the specific improper payment amount identified in our first recommendation because the description of our methodology "…is not detailed enough for CMS to determine how the amount was derived, and to therefore confirm its accuracy."

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

With regard to our third recommendation, we agree that the regulations must change before CMS can fully identify and recoup the improper payments made after our audit period. We continue to recommend that CMS recover these improper payments when possible.

With regard to the specific improper payment amount identified in the first recommendation, we conducted a formal conference with CMS officials at the end of our fieldwork—as is our standard practice on any audit—on July 8, 2013, which was before we issued our draft report. As part of the conference, we provided a detailed spreadsheet of our audit findings that identified each unlawfully present beneficiary and the related improper payment. During the conference,

we discussed our audit methodology. If CMS officials still have questions about the finding or our methodology, we are available to discuss them further. Accordingly, we maintain that this recommendation is valid.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

The audit scope covered $26,150,043 that CMS paid to MA organizations for unlawfully present beneficiaries for CYs 2010 through 2012. 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 conducted this audit from March through May 2013.

METHODOLOGY

To accomplish our objective, we performed the following steps:

- We reviewed applicable Federal laws, regulations, and guidance.

- We held discussions with CMS officials to gain an understanding of CMS's controls related to unlawfully present beneficiaries.

- We used CMS's Enrollment Database[10] (as of February 23, 2013) to identify 31,303 beneficiaries who had been unlawfully present at some point during CYs 2010 through 2012. We compared this information to records from CMS's Medicare Advantage Prescription Drug system[11] (as of March 31, 2013) and found that CMS paid MA organizations $26,150,043 (on behalf of 1,591 beneficiaries) for which the unlawful-presence dates overlapped with the dates of MA enrollment.

- We judgmentally selected 10 unlawfully present beneficiaries who had Medicare coverage through CMS's MA program and FFS program (but not at the same time). For these beneficiaries, a Medicare contractor denied FFS payments because of unlawful-presence status. These beneficiaries subsequently enrolled in MA organizations to receive Medicare coverage. We held discussions with a Medicare contractor to gain an understanding of how it processed claims for unlawfully present beneficiaries.

- We discussed the results of our review with CMS officials on July 8, 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.

[10] The Enrollment Database is a CMS data system that identifies and classifies beneficiaries as unlawfully present.

[11] The Medicare Advantage Prescription Drug system contains CMS's monthly payments to MA organizations for each enrolled beneficiary.

APPENDIX B: CMS COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: JAN 15 2014

TO: Daniel R. Levinson
Inspector General

FROM: Marilyn Tavenner
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Medicare Improperly Paid Medicare Advantage Organizations Millions of Dollars for Unlawfully Present Beneficiaries for 2010 Through 2012" (A-07-13-00125)

Thank you for the opportunity to review and comment on this OIG draft report aimed at determining the extent to which the Centers for Medicare & Medicaid Services (CMS) paid Medicare Advantage Organizations (MAOs) for individuals who are not lawfully present in the United States. Generally, entitlement to the Medicare program is dependent upon eligibility to Social Security benefits regardless of lawful presence status, however the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dictates that unlawfully present individuals are not eligible for any federal benefits.

The CMS supports the report's recommendations to strengthen internal controls as applicable to help ensure that payment to MAOs comply with Federal requirements to the extent that information is available to do so. Accordingly, we agree that in cases where the information indicates an individual is not lawfully present in the United States, that individual should not be permitted to enroll or to remain enrolled in a Medicare Advantage plan during the period where he or she is not eligible to receive federal benefits in accordance with PRWORA.

The CMS has been concerned about the absence of internal processes regarding the unlawfully present individuals' access to services under the Medicare Advantage program. CMS is taking steps to address this issue and ensure that the intent of PRWORA is executed in accordance with the information we receive by the Department of Homeland Security and the Social Security Administration.

Below is the CMS response to the OIG recommendations in the draft report.

OIG Recommendation

The OIG recommends CMS recoup the $26,150,043 in improper payments in accordance with legal requirements.

CMS Response

The CMS is unable to concur with the specific improper payment amount identified in the report because the description of the OIG's methodology is not detailed enough for CMS to determine how the amount was derived, and to therefore confirm its accuracy.

OIG Recommendation

The OIG recommends CMS implement policies and procedures, consistent with those in effect under its fee-for-service (FFS) program, to notify MA organizations of unlawful-presence information and thereby prevent enrollment in MA organizations, disenroll beneficiaries already enrolled, and recoup any improper payments.

CMS Response

The CMS concurs with the recommendation. On January 10, 2014, CMS proposed regulations to codify the MA eligibility requirements in order to implement procedures for relaying lawful presence status to MA organizations for their use in determining eligibility for new and/or continued enrollment and receipt of Medicare covered services. (http://www.gpo.gov/fdsys/pkg/FR-2014-01-10/pdf/2013-31497.pdf) The proposed regulations clarify the relevant policy so that individuals who are not lawfully present will not be able to enroll in MA organizations, and those currently enrolled in an MA organization will be involuntarily disenrolled. If the proposed rule is finalized, it will ensure proper payment for those entitled to receive services under the law and establish consistency between the FFS and Medicare Advantage programs.

OIG Recommendation

The OIG recommends CMS identify and recoup improper payments made to MA organizations for unlawfully present beneficiaries after our audit period and until policies and procedures have been implemented that would ensure Medicare no longer pays for unlawful beneficiaries.

CMS Response

The CMS partially concurs with the recommendation. There is no effective way of fully recovering these payments without first implementing the appropriate policies and procedures including the relevant eligibility and enrollment systems changes. However, CMS recently proposed regulations clarifying the relevant policy and, once finalized, will establish procedures allowing CMS to provide MA organizations with unlawful-presence information and prevent new or continued enrollment in MA organizations. This will also allow CMS to appropriately adjust any payments made to plans for those beneficiaries.

We appreciate the effort that went into this report. Again, we thank you for the opportunity to review and comment.