CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-02 Medicare Benefit Policy	Centers for Medicare & Medicaid Services (CMS)
Transmittal 13011	**Date: December 20, 2024**
	Change Request 13903

Note: This transmittal is being resent to show the correct implementation date. All other information remains the same.

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 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.

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: March 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	16/40/No Legal Obligation to Pay for or Provide Services
N	16/40.7/Individuals in Custody of a Penal Authority
R	16/50.3.3/Examples of Application of Government Entity Exclusion

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. 100-02	Transmittal: 13011	Date: December 20, 2024	Change Request: 13903

Note: This transmittal is being resent to show the correct implementation date. All other information remains the same.

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(C) On probation;

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(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).

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 (by reason of such individual's membership in a prepayment plan or otherwise) 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:

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

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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 newly created section 40.7 of the Internet Only Manual in order to make them consistent with 42 CFR 411.4(b).

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 - 02.1	Contractors shall refer to Pub. 100-02, chapter 16, sections 40 and 50.3.3 and newly created section 40.7 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):
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.

ATTACHMENTS: 0

Medicare Benefit Policy Manual
Chapter 16 - General Exclusions From Coverage

Table of Contents

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

Transmittals for Chapter 16

40 - No Legal Obligation to Pay for or Provide Services

(Rev. 13011; Issued: 12-20-24; Effective: 01-01-25; Implementation: 03-01-25)

A3-3152, HO-260.2, B3-2306

Each of Medicare's payment exclusions (for example, 42 CFR § 411.4, § 411.6, § 411.8, etc.; see §10 of this IOM chapter for a list of the General Exclusions from Coverage) stand on their own; therefore, an analysis of ***each*** *payment exclusion must be made before a determination can be made about whether Medicare can pay. If* ***any*** *payment exclusion applies, then Medicare payment is prohibited.*

Section 1862(a)(2) of the Social Security Act ("the Act") and the regulations at 42 CFR § 411.4 prohibit Medicare payment when neither the individual beneficiary nor any other person or organization (by reason of such individual's membership in a prepayment plan/insurance or otherwise) has a legal obligation to pay for the item or service. This exclusion applies where items and services are furnished *at no cost to an individual or individuals (that is, the provider or supplier does not pursue payment from an individual or individuals and their insurance (if any))*, such as free x-rays or immunizations provided by health organizations. However, Medicare reimbursement is not precluded merely because a provider, physician, or supplier waives the charge in the case of a particular *individual* or group or class of *individuals*, as the waiver of charges for some *individuals* does not impair the right to charge others, including Medicare *beneficiaries*. The determinative factor in applying this exclusion is the reason the particular individual is not charged.

The following sections illustrate the applicability of this exclusion to various situations involving services other than those paid for directly or indirectly by a governmental entity. (For a discussion of the latter, see §50.)

40.7- Individuals in Custody of a Penal Authority

(Rev. 13011; Issued: 12-20-24; Effective: 01-01-25; Implementation: 03-01-25)

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 incarcerated beneficiaries, obtained from SSA, that is used to edit 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."*

50.3.3 - Examples of Application of Government Entity Exclusion

(Rev. 13011; Issued: 12-20-24; Effective: 01-01-25; Implementation: 03-01-25)

The following paragraphs explain the application of the governmental entity exclusion to various situations involving services rendered by governmental and non governmental facilities:

1. State Veterans Homes

Many State governments operate veterans homes and hospitals. These institutions are generally open only to veterans and certain dependents of veterans, and include domiciliary, hospital, infirmary, and/or nursing home type facilities. These institutions are financed primarily from State funds; in addition, most receive nominal per diem payments from the VA for domiciliary care, hospital care, or nursing home type care for each veteran who would also qualify for admission to a VA hospital or domiciliary.

When such a participating institution charges its residents and patients to the extent of their ability to pay, or seeks payment from available sources other than Medicare, benefits are payable for covered items and services furnished to Medicare beneficiaries. However, if it is the policy of the institution to admit and treat

a veteran without charge simply because the individual is a veteran, or because the condition is service-connected, payment would be precluded under title XVIII.

Per diem amounts paid by the VA to State veterans homes on behalf of those patients who are otherwise eligible for care in a VA facility may be credited towards any deductible, coinsurance, or noncovered amounts required to be paid by the patient. However, if a State veterans home collects amounts from the VA in excess of the applicable deductible and coinsurance, the A/B MAC (A) reduces the Medicare payment to the extent of such payments.

2. State and Local Psychiatric Hospitals

In general, payment may be made under Medicare for covered services furnished without charge by State or local psychiatric hospitals which serve the general community. (See §50.3.1.) However, payment may not be made for services furnished without charge to individuals who have been committed under a penal statute (e.g., defective delinquents, persons found not guilty by reason of insanity, and persons incompetent to stand trial). For Medicare purposes such individuals are "prisoners," as defined in subsection 3, and may have services paid by Medicare only under the exceptional circumstances described there.

A psychiatric hospital to which patients convicted of crimes are committed is considered to be serving the general community if State law also provides for voluntary admissions to the institution.

3. *Individuals in Custody of a Penal Authority*

*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. Consequently, under the statutory no legal obligation to pay payment exclusion, Medicare is prohibited for paying for such care. The no legal obligation to pay payment exclusion is the exclusion that is most likely to apply in situations when Medicare denies payment for medical services furnished to an individual in custody of a penal authority (see § 40.7 of this chapter above). However, the payment exclusions at 42 CFR § 411.6 and § 411.8 could also prohibit Medicare from paying for a beneficiary's medical services. When a federal provider or agency actually **furnishes** a medical service to a beneficiary, then Medicare payment is prohibited by the payment exclusion at 42 CFR § 411.6. When a governmental entity actually **pays** for a beneficiary's medical service, then Medicare payment is prohibited by the payment exclusion at 42 CFR § 411.8.*

4. Health Department Outpatient Clinics

Services rendered free of charge by State and local health department outpatient clinics are not covered unless the services are rendered because of the individual's indigence or as a means of controlling infectious diseases. Thus, services rendered by city-operated clinics for the poor and clinics for the detection and treatment of such illnesses as venereal disease and tuberculosis are **not** excluded from Medicare coverage.

5. Vocational Rehabilitation (VR) Agencies

Under the vocational rehabilitation (VR) programs of the various States, vocational training and services, including hospital and medical care, are provided to handicapped persons who qualify under State law. These programs are financed in part by a Federal matching fund program set up under the Vocational Rehabilitation Act.

When items or services are furnished by a State VR agency, title XVIII benefits are payable if the agency charges all clients for its services or makes services available without cost only to medically indigent individuals. If a rehabilitation agency has paid for items and services furnished by nonproviders (e.g., physicians' services and prosthetic appliances), it may claim the Part B payment due the beneficiary if the latter has authorized it to do so. The procedure is similar to that provided for State welfare agencies; the State vocational rehabilitation agency function is comparable to that of a State welfare agency in relation to a welfare recipient.