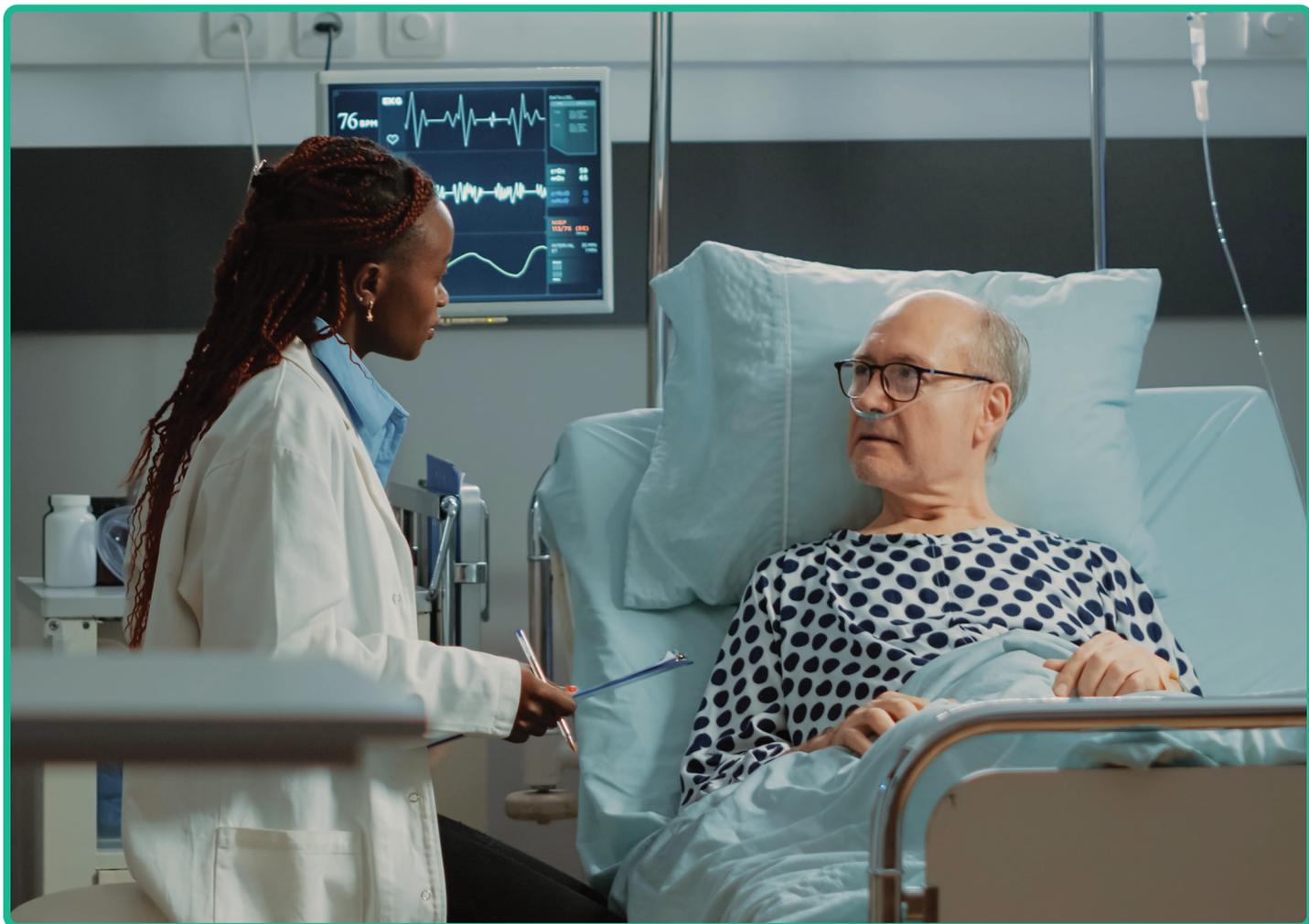




Patients in Custody Under a Penal Authority



What's Changed?

- Starting January 1, 2025, individuals in custody no longer includes those on bail, on parole, on probation, on home detention, or who are required to reside in halfway houses or other community-based transitional facilities (page 2)
- We expanded the eligibility criteria for the special enrollment period for formerly incarcerated individuals (page 5)

Substantive content changes are in dark red.

Medicare Policy

We generally don't pay for medical items and services for a patient who's incarcerated or in custody on the date of service (DOS) according to these regulations:

- [42 CFR 411.4](#): We don't pay for services provided to a patient who has no legal obligation to pay for the service and that patient's other insurance (if they have any) has no legal obligation to provide or pay for the service
- [42 CFR 411.6](#): We don't pay for services from a federal service provider or other federal agency
- [42 CFR 411.8](#): We don't pay for services paid directly or indirectly by a government entity

Definition of Patients Who Are in Custody (or Incarcerated) Under a Penal Statute or Rule

Under [Medicare Program regulations](#), patients in custody (or incarcerated) include, but aren't limited to, individuals who are:

- Incarcerated
- Imprisoned
- Escaped from confinement
- On medical furlough or similar arrangement
- Required to live in mental health facilities

Starting January 1, 2025, patients in custody [no longer includes](#) individuals who are:

- Released to the community pending trial, including those in pretrial community supervision
- On bail
- On parole
- On probation
- On home detention
- Required to live in halfway houses or other community-based transitional facilities

Determining Whether a Patient is in Custody Under a Penal Statute or Rule

[Check patient eligibility](#) with these online tools and services:

- [Medicare Administrative Contractor \(MAC\) secure internet portal](#)
- Billing agencies, clearinghouses, or software vendors

If the patient's status is inactive, the response to your inquiry gives the dates of inactivity but not the reason for it. You may ask the patient about their incarceration status. Refer them to 1-800-MEDICARE (1-800-633-4227) if they don't know the reason for inactivity.

Medicare Claims Processing

If you submit a claim for items or services provided to a patient who's in custody (or incarcerated) on the DOS, we deny the claim. You or your billing agent will get a remittance advice (RA) explaining the denial. A remittance advice remark code (RARC) further explains an adjustment or gives informational messages that can't be explained with a claim adjustment reason code.

When denying claims for services provided to patients under penal custody, the RA will include RARC N103.

[42 CFR 405 Subpart I](#) applies to claim denials resulting from patient custody status and MAC-initiated overpayment recoveries based on a review of claims paid before getting notified of a change in the patient's custody status.

Medicare Policy Exceptions

Under [42 CFR 411.4\(b\)](#), we can pay for items and services provided to incarcerated patients only when they meet **both** of these criteria:

- State or local law requires individuals to repay the cost of medical items and services they get while in custody.
- The state or local government entity enforces the payment requirement by billing and seeking collection from all such individuals in custody with the same legal status (for example, not guilty by reason of insanity), whether insured or uninsured. It must also pursue collection of amounts owed in the same manner and with the same effort that it pursues other debt collection. This includes any Medicare [deductible and coinsurance](#) amounts and the costs of items and services we don't cover.

Also, the state or local entity must provide:

- Evidence that routine collection efforts include lawsuits filed to get liens against an incarcerated individual's assets outside the prison and income from non-prison sources
- Rules and procedures used to bill and collect amounts paid for an incarcerated individual's medical expenses (for example, regulations, manual instructions, or directives)

Submitting Claims That Meet an Exception

If you provide items and services meeting the exception criteria outlined above, submit claims using the appropriate CPT or HCPCS code and the QJ modifier.

For inpatient claims when the incarceration period spans only a portion of the stay, hospitals should identify the incarceration period by billing all days, services, and charges that overlap the incarceration period as non-covered.

MACs randomly select a representative case sample (both Medicare and non-Medicare eligible) to determine whether state or local entities appropriately bill and collect amounts paid for incarcerated patients' medical expenses. For more information, find your [MAC's website](#).

Social Security Benefits Policy

Social Security benefits [aren't payable](#) for the months an individual is convicted and confined to jail, prison, or other penal institution for more than 30 continuous days. Benefits can be reinstated starting the month after the individual is released; however, they first need to contact the Social Security Administration (SSA) to request reinstatement and provide a copy of their release documents.

Medicare Data on Incarcerated Individuals

How does CMS know individuals are incarcerated or in custody, and what should patients do to update their data?

CMS gets incarceration and custody data from the SSA. A penal facility's reporting practices may delay the release data. When patients [contact the SSA](#) requesting benefits reinstatement, this also updates the release data in our systems and allows Medicare payments. If our records don't reflect the release within 60 days of benefit reinstatement, the patient should contact 1-800-MEDICARE (1-800-633-4227).



Special Enrollment Period for Formerly Incarcerated Individuals

- Individuals who are [incarcerated or in custody](#) may keep their Medicare coverage by paying their monthly Medicare Part B premiums (and Medicare Part A premiums, if required) while incarcerated. However, we generally won't pay for items or services while an individual is incarcerated.
- If an incarcerated individual's coverage is terminated, or they fail to enroll in Medicare when first becoming eligible, they can enroll (or re-enroll) using the special enrollment period (SEP) for formerly incarcerated individuals. This SEP starts the day the individual is released from incarceration. The SEP ends the last day of the 12th month after the individual is released from incarceration.
- Individuals on parole, on probation, on home confinement, or residing in a halfway house on or after January 1, 2025, are eligible for this SEP.
- The Premium Part A late enrollment penalty (LEP) and Part B LEP don't apply when formerly incarcerated individuals enroll under this SEP.
- Coverage starts the first of the month after the month of enrollment. Individuals can also request retroactive coverage. If the individual requests retroactive enrollment and the application is filed:
 - **Within the first 6 months of the SEP**, their coverage effective date is retroactive to the first day of the month when they were released from incarceration
 - **Within the last 6 months of the SEP**, their coverage effective date is retroactive to the sixth month before the month of enrollment

Note: To sign up for Medicare using this SEP, a patient can complete the [Application For Medicare Part A and Part B Special Enrollment Period \(Exceptional Conditions\) \(CMS-10797\)](#) and fax or mail it to their [local Social Security office](#).

Resources

- [2025 Patients in Custody Under a Penal Authority Policy Updates](#)
- [Benefits after Incarceration: What You Need to Know](#)
- [Medicare Benefit Policy Manual, Chapter 16](#), section 50.3.3
- [Medicare Claims Processing Manual, Chapter 1](#), section 10.4

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