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 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