

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEDICARE IMPROPERLY PAID
MILLIONS OF DOLLARS FOR
UNLAWFULLY PRESENT
BENEFICIARIES FOR 2013 AND 2014**

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Daniel R. Levinson
Inspector General

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Office of Inspector General

<http://oig.hhs.gov/>

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EXECUTIVE SUMMARY

The Centers for Medicare & Medicaid Services did not always follow its policies and procedures to ensure that payments are not made for Medicare services rendered to unlawfully present beneficiaries, which resulted in \$9.3 million of improper payments in 2013 and 2014.

WHY WE DID THIS REVIEW

The Medicare Access and CHIP [Children's Health Insurance Program] Reauthorization Act of 2015 (MACRA), signed into law in April 2015, requires the Centers for Medicare & Medicaid Services (CMS) to establish policies and implement claims edits to ensure that payments are not made for Medicare services rendered to individuals who are not lawfully present in the United States (unlawfully present). In general, policies and procedures should include steps to prevent improper payments from occurring, as well as steps to detect and recoup payments made for instances in which an individual's unlawfully present status is not updated on CMS's data systems until after a Medicare claim has been processed (including in prior years). Accordingly, we evaluated CMS's policies and procedures as of July 2015 and reviewed payments made for Medicare services provided during calendar years (CYs) 2013 and 2014.

The U.S. Department of Health and Human Services, Office of Inspector General (OIG), must report to Congress within 18 months of April 2015, and periodically thereafter as OIG deems necessary, on the activities that CMS has undertaken since enactment of MACRA to ensure that Medicare payments are not made for unlawfully present beneficiaries. This report addresses that mandate.

Our objective was to determine whether CMS's policies and procedures to ensure that payments are not made for Medicare services rendered to unlawfully present beneficiaries comply with Medicare requirements.

BACKGROUND

Medicare benefits are generally allowable when rendered to a beneficiary whom the Social Security Administration (SSA) has determined to be a U.S. citizen or U.S. national. Medicare does not pay for services rendered to beneficiaries who are unlawfully present on the date of service. CMS obtains information from SSA to determine which beneficiaries are unlawfully present and the periods for which Medicare will not pay for health care services provided to these individuals.

When Medicare has paid health care providers (providers) for services rendered to beneficiaries who are subsequently determined to have been unlawfully present at the time of service, Medicare requirements state that those improper payments should be recouped. When a provider submits a claim to Medicare based on CMS's information that the beneficiary was lawfully present and that provider is subsequently determined to be without fault (and therefore not liable), the beneficiary is automatically liable for these payments.

Medicare contractors process and pay claims submitted by providers and should initiate recoupment activities to recover improper payments.

In CY 2003, CMS provided guidelines to its Medicare contractors explaining how to properly adjudicate claims for Medicare services rendered to unlawfully present beneficiaries. In April 2013, CMS implemented policies and procedures in response to an audit report that we had issued and created a postpayment claims edit, which allowed CMS to detect and recoup improper payments from providers. In September 2014, CMS updated its policies and procedures based on appeals that providers had filed in response to the postpayment edit. CMS determined that providers in such cases were without fault and turned off the claims edit that detected and recouped improper payments from them. CMS has policies and procedures to recoup improper payments in cases when beneficiaries are automatically liable for these payments.

HOW WE CONDUCTED THIS REVIEW

We evaluated the policies and procedures that CMS had in place as of July 2015 with regard to payment for Medicare services rendered to unlawfully present beneficiaries. Our review included steps to determine whether CMS had recouped payments from beneficiaries when the provider had been determined to be without fault. Because this recoupment could involve payments made in prior years, we reviewed Medicare payments made in CYs 2013 and 2014. As such, our review also included 14,530 claims that were paid on behalf of 481 unlawfully present beneficiaries with \$9,267,392 in associated Medicare payments during CYs 2013 and 2014.

WHAT WE FOUND

CMS had policies and procedures to ensure that payments were not made for Medicare services rendered to unlawfully present beneficiaries in accordance with Federal requirements, but it did not always follow those policies and procedures. When CMS's data systems indicated at the time a claim was processed that the beneficiary was unlawfully present, CMS had policies and procedures to *prevent* payment for Medicare services and CMS followed those procedures.

However, when CMS's data systems did not indicate until after a claim had been processed that a beneficiary was unlawfully present, CMS had policies and procedures to *detect* and *recoup* payment for Medicare services, but it did not follow them. Specifically, CMS determined that beneficiaries were liable for these improper payments, but it did not notify Medicare contractors to initiate recoupment activities with those beneficiaries.

CMS officials explained that although CMS has not attempted to collect improper payments from unlawfully present beneficiaries, CMS is reviewing the feasibility of pursuing recoupment from these beneficiaries. In this regard, CMS officials said that CMS's review will identify individuals for whom CMS can direct its contractors to pursue recoupment, including the \$9,267,392 in improper payments made for Medicare services rendered to 481 unlawfully present beneficiaries in CYs 2013 and 2014.

WHAT WE RECOMMEND

We recommend that CMS direct its Medicare contractors, to the maximum extent feasible, to initiate recoupment activities:

- against the 481 unlawfully present beneficiaries on whose behalf Medicare made \$9,267,392 in improper payments and
- for improper payments made after our audit period on behalf of any beneficiaries who are detected to be unlawfully present.

CMS COMMENTS

In written comments on our draft report, CMS concurred with both of our recommendations and described corrective actions that it planned to take. Specifically, CMS said that it would review the improper payments that we had noted, identify cumulative overpayments (per beneficiary) that were greater than or equal to \$1,000, and attempt to recoup these overpayments. In addition, CMS stated that it would “perform a cost-benefit analysis to determine if CMS should pursue similarly situated overpayments in the future.”

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INTRODUCTION

WHY WE DID THIS REVIEW

The Medicare Access and CHIP [Children’s Health Insurance Program] Reauthorization Act of 2015 (MACRA), signed into law in April 2015, requires the Centers for Medicare & Medicaid Services (CMS) to establish policies and implement claims edits to ensure that payments are not made for Medicare services rendered to individuals who are not lawfully present in the United States (unlawfully present).¹ In general, policies and procedures should include steps to prevent improper payments from occurring, as well as steps to detect and recoup payments made for instances in which an individual’s unlawfully present status is not updated on CMS’s data systems until after a Medicare claim has been processed (including in prior years). Accordingly, we evaluated CMS’s policies and procedures as of July 2015 and reviewed payments made for Medicare services provided during calendar years (CYs) 2013 and 2014.

The U.S. Department of Health and Human Services, Office of Inspector General (OIG), must report to Congress within 18 months of April 2015, and periodically thereafter as OIG deems necessary, on the activities that CMS has undertaken since enactment of MACRA to ensure that Medicare payments are not made for unlawfully present beneficiaries.² This report addresses that mandate.

OBJECTIVE

Our objective was to determine whether CMS’s policies and procedures to ensure that payments are not made for Medicare services rendered to unlawfully present beneficiaries comply with Medicare requirements.

BACKGROUND

Medicare Program

Under the provisions of Title XVIII of the Act, the Medicare program provides health insurance for people aged 65 and over, people with disabilities, and people with permanent kidney disease. CMS administers the program. Medicare Part A provides inpatient hospital insurance benefits and coverage of extended care services for patients after hospital discharge. Medicare Part B provides supplementary medical insurance for medical and other health services, including coverage of hospital outpatient services. CMS contracts with Medicare contractors to, among other things, process and pay claims submitted by health care providers including hospitals, physicians, and suppliers (providers).

¹ MACRA, P.L. No. 114-10 § 502(a), Social Security Act (the Act) § 1874(f).

² MACRA, P.L. No. 114-10 § 502(b).

Medicare Payments on Behalf of Beneficiaries Who Are Not Lawfully Present in the United States

Medicare benefits are generally allowable when rendered to a beneficiary whom the Social Security Administration (SSA) has determined to be a U.S. citizen or U.S. national. Medicare payments are also allowable for services furnished to an alien who is lawfully present in the United States (the Act §§ 202, 226, 226A, 1818, and 1818A). Medicare benefits are not allowable for aliens who are not lawfully present in the United States as determined by the Attorney General (8 U.S.C. § 1611).^{3,4} In this report, we refer to these individuals as “unlawfully present.”

Obtaining and Processing 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 U.S. Department of Homeland Security and other Federal agencies. For these individuals, SSA also collects the dates on which their lawful presence status ended and, if applicable, restarted. When SSA’s information indicates that a beneficiary’s lawful presence has ended, CMS’s data systems classify 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.

With this information, CMS determines which beneficiaries are unlawfully present and the periods for which Medicare will not pay for health care services provided to these individuals:

- When CMS’s data systems indicate that at the time a claim is processed the beneficiary is unlawfully present, CMS prevents payment to the provider.
- For instances in which Medicare has paid providers for services rendered to beneficiaries who are subsequently determined to have been unlawfully present at the time of service, Medicare requirements state that those improper payments should be recouped. When a provider submits a claim to Medicare based on CMS’s information that the beneficiary was lawfully present and that provider is subsequently determined to be without fault in causing the improper payment (and therefore not liable), the beneficiary is automatically liable for these payments.⁵ Medicare contractors should initiate recoupment activities to recover improper payments.

³ Enacted by the Personal Responsibility and Work Opportunity Act of 1996, P.L. No. 104-193 § 401, as amended by the Balanced Budget Act of 1997, P.L. No. 105-33 § 5561.

⁴ The Attorney General defined the phrase “lawfully present in the United States” in regulations published on September 6, 1996, by the Immigration and Naturalization Service (now part of the U.S. Department of Homeland Security). This regulation identifies five broad categories of lawfully present aliens, including “qualified aliens” as defined in 8 U.S.C. § 1641(b).

⁵ The Act § 1870; 42 CFR § 405.350(a)(2); and CMS, *Medicare Financial Management Manual* (the Manual), chapter 3, § 70.

CMS's Policies and Procedures, Including Revisions, Regarding Unlawfully Present Beneficiaries

In CY 2003, CMS provided guidelines to its Medicare contractors explaining how to properly adjudicate claims for Medicare services rendered to unlawfully present beneficiaries.⁶

In April 2013, CMS implemented policies and procedures in response to an audit report we had issued.⁷ In that review, we found that when CMS's data systems had been updated by SSA's systems to indicate that at the time a claim was processed a beneficiary was unlawfully present, CMS's policies and procedures (through a prepayment claims edit) were adequate to *prevent* payment for Medicare services. However, when CMS's data systems did not indicate until after a claim had been processed that a beneficiary was unlawfully present, CMS's policies and procedures were not adequate to *detect* and *recoup* the improper payment. In response to that previous report's recommendations, CMS stated that it would attempt to recoup \$91,620,548 in improper payments for services provided during CYs 2009 through 2011. CMS added, though, that it had to consider the cost benefit of recoupment activities on specific claims. CMS also created a postpayment claims edit, which allowed CMS to detect and recoup improper payments from providers.⁸

In September 2014, CMS again updated its policies and procedures based on appeals that providers had filed in response to the postpayment claims edit. Specifically, providers disagreed with the recoupment of Medicare payments and asserted that the information available to them at the times of service indicated that the beneficiaries were lawfully present. CMS officials explained to us that after studying the recoupments in light of these appeals, CMS determined that providers in such cases were without fault; CMS therefore turned off the claims edit that detected and recouped improper payments from providers.⁹ CMS has policies and procedures to recoup improper payments in cases when beneficiaries are automatically liable for these payments.

⁶ CMS published Transmittal AB-03-115, which modified CMS's claim processing system to reject claims for a beneficiary who was not lawfully present in the U.S. on the date of service (CMS Transmittal AB-03-115 (Change Request 2825, Aug. 1, 2003)).

⁷ *Medicare Improperly Paid Providers Millions of Dollars for Unlawfully Present Beneficiaries Who Received Services During 2009 Through 2011* (A-07-12-01116), Jan. 23, 2013.

⁸ CMS published Transmittal 1133, which modified CMS's claims processing system "to identify and perform retroactive adjustments on any previously paid claims which may have been paid erroneously during periods when the beneficiary data in the EDB [Medicare's Enrollment Database] did not reflect the fact that the beneficiary was unlawfully present in the United States," (CMS Transmittal 1133 (Change Request 8009; Nov. 1, 2012)).

⁹ Section 1870 of the Act provides that the Medicare program shall not recover overpayments from providers who are "without fault" with respect to the overpayment.

HOW WE CONDUCTED THIS REVIEW

We evaluated the policies and procedures that CMS had in place as of July 2015 with regard to payment for Medicare services rendered to unlawfully present beneficiaries. Our review included steps to determine whether CMS had recouped payments from beneficiaries when the provider had been determined to be without fault. Because this recoupment could involve payments made in prior years, we reviewed Medicare payments made in CYs 2013 and 2014. As such, our review also included 14,530 claims that were paid on behalf of 481 unlawfully present beneficiaries with \$9,267,392 in associated Medicare payments during CYs 2013 and 2014.

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.

FINDING

CMS had policies and procedures to ensure that payments *were not made* for Medicare services rendered to unlawfully present beneficiaries in accordance with Federal requirements, but it did not always follow those policies and procedures. When CMS's data systems indicated that at the time a claim was processed the beneficiary was unlawfully present, CMS had policies and procedures to *prevent* payment for Medicare services and CMS followed those procedures.

However, when CMS's data systems did not indicate until after a claim had been processed that a beneficiary was unlawfully present, CMS had policies and procedures to *detect* and *recoup* payment for Medicare services, but it did not follow them. Specifically, CMS determined that beneficiaries were liable for these improper payments, but it did not notify Medicare contractors to initiate recoupment activities with those beneficiaries.

CMS officials explained that although CMS has not attempted to collect improper payments from unlawfully present beneficiaries, CMS is reviewing the feasibility of pursuing recoupment from these beneficiaries. In this regard, CMS officials said that CMS's review will identify individuals for whom CMS can direct its contractors to pursue recoupment, including the \$9,267,392 in improper payments made for Medicare services rendered to 481 unlawfully present beneficiaries in CYs 2013 and 2014.

FEDERAL REQUIREMENTS

Federal Requirements Regarding Medicare Payments on Behalf of Unlawfully Present Individuals

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 (8 U.S.C. § 1611). CMS must establish policies and implement claims edits to ensure that payments are not made for Medicare services rendered to unlawfully present beneficiaries (MACRA § 502(a), the Act § 1874(f)).

Federal Requirements Regarding “Without Fault”

The Act and implementing Federal regulations state that recovery of overpayments shall not be made against providers when it is subsequently determined that the “provider of services or other person was without fault with respect to the payment of such excess over the correct amount ...” (the Act § 1870; 42 CFR § 405.350).

The Manual states that a provider is without fault if “it exercised reasonable care in billing for, and accepting, the payment; i.e., ... [o]n the basis of the information available to it, including, but not limited to, the Medicare instructions and regulations, it had a reasonable basis for assuming that the payment was correct ...” (chapter 3, § 90).

The Manual also states: “If the [Medicare contractor] determines that an overpaid provider or physician was without fault and therefore not liable for the overpayment, it relieves the provider of liability for the overpayment. The beneficiary *automatically* becomes liable, whether or not the beneficiary was at fault” (chapter 3, § 70). (Emphasis added.)

WHEN CMS RECEIVED INFORMATION RELATING TO UNLAWFUL PRESENCE AFTER CLAIMS WERE PAID, IT DID NOT FOLLOW ITS POLICIES AND PROCEDURES TO INITIATE RECOUPMENT ACTIVITIES WITH BENEFICIARIES FOR OVER \$9 MILLION IN IMPROPER PAYMENTS

When CMS’s data systems did not indicate until after a claim had been processed that a beneficiary was unlawfully present, CMS had policies and procedures to detect and recoup improper payments for Medicare services, but it did not follow them. For these instances, CMS determined that the providers were without fault because they had exercised reasonable care by relying on the lawfully present status information that CMS had made available when the providers billed for the services. Accordingly, CMS determined that beneficiaries were liable for these improper payments, but it did not notify Medicare contractors to initiate recoupment activities with those beneficiaries.

We identified Medicare payments totaling \$9,267,392 (associated with 14,530 claims) during CYs 2013 and 2014 for services rendered to 481 unlawfully present beneficiaries.¹⁰ For these instances, CMS did not notify the Medicare contractors to pursue recoupment from the beneficiaries directly.

In the example shown in the Figure, CMS should, but did not, initiate recoupment activities from the beneficiary for a \$34,978 improper payment.

The Manual Includes Instructions for Medicare Contractors To Collect Overpayments From Unlawfully Present Beneficiaries Identified as Liable

CMS officials explained to us that CMS is reviewing the feasibility of pursuing recoupment from the unlawfully present beneficiaries, including possible recovery from the individual’s SSA benefits or railroad retirement benefits.¹¹ In this context, we note that CMS guidelines already include specific steps for

Figure: Example of CMS Procedure When Not Lawfully Present Information Is Updated After Payment

01/18/2013 – 01/24/2013

Beneficiary A:
Inpatient Hospital Stay

03/23/2013

CMS systems show Beneficiary A as lawfully present
Hospital submits claim to the Medicare contractor

04/22/2013

Medicare contractor pays hospital \$34,978

12/09/2013

CMS system updates and shows Beneficiary A as unlawfully present from 08/01/2007 – 11/25/2013

\$34,978 is now improper

CMS determined the hospital was without fault

CMS should pursue recoupment from beneficiary

¹⁰ The \$9,267,392 is composed of 372 Part A claims totaling \$4,595,085 and 14,158 Part B claims totaling \$4,672,307.

¹¹ SSA and railroad retirement benefits are suspended for unlawfully present beneficiaries. If these individuals become lawfully present, their benefits are restored.

Medicare contractors to follow when overpayments reach certain thresholds (\$50 and \$1,000).^{12, 13}

Of the \$9,267,392 in improper payments made for unlawfully present beneficiaries for CYs 2013 and 2014 that we reviewed, \$9,225,946 was for 335 beneficiaries whose cumulative overpayments exceeded the \$1,000 threshold.

The Social Security Administration Receives and Transmits Updated Information to CMS When a Beneficiary's Status Changes From Unlawfully Present to Lawfully Present

CMS can attempt to recoup improper payments from unlawfully present beneficiaries who have taken steps to become lawfully present. SSA requires that an individual who wishes to change his or her status from unlawfully present to lawfully present furnish updated information, in person, at a local SSA office. This information includes proof that the individual is residing in the United States legally as well as proof of his or her current address. When the individual becomes eligible for Medicare benefits, CMS uses that address so that its Medicare contractor can, among other things, send an explanation of medical benefits (EOMB) to the individual when services are provided.

In our previous review, we identified improper payments made on behalf of 2,575 unlawfully present beneficiaries. After we completed that review, 363 of these beneficiaries, for whom CMS made improper payments totaling \$7,003,668 during CYs 2009 through 2011, became lawfully present. Since becoming lawfully present, these individuals have incurred a total of \$27,701,174 for allowable Medicare services received. Although the Medicare contractors had contact information to send EOMBs for these services, CMS did not use the same information to pursue recoupment from these individuals of the \$7,003,668 in improper payments.

CMS Is Reviewing the Feasibility of Recouping Improper Payments From Unlawfully Present Beneficiaries

Notwithstanding Federal requirements that were in place before the enactment of the MACRA, CMS officials stated that CMS has not attempted to collect improper payments from unlawfully present beneficiaries but is reviewing the feasibility of pursuing recoupment from these beneficiaries. This review, according to CMS officials, will identify individuals for whom CMS can direct its contractors to pursue recoupment, including the \$9,267,392 in improper payments made for Medicare services rendered to 481 unlawfully present beneficiaries in CYs 2013 and 2014. CMS is also, according to these officials, reviewing the feasibility of pursuing recoupment of any other improper payments made in the future on behalf of unlawfully present beneficiaries.

¹² For overpayments of \$50 or more, CMS requires its Medicare contractor to send a recovery letter to the beneficiary upon identification of the improper payment. If there is no response within 30 days, the contractor is to send a follow-up letter and arrange to begin recoupment of the overpayment against any Medicare payments that became due from the beneficiary on day 60 (the Manual, chapter 3, § 110.2(B)).

¹³ For overpayments of \$1,000 or more for which the beneficiary has not refunded the overpayment or requested a reconsideration, hearing, or waiver within 90 days of sending the initial recovery letter, CMS requires its Medicare contractor to prepare the case for referral to SSA for possible recovery from the individual's Social Security benefits (the Manual, chapter 3, § 110.2(C)).

RECOMMENDATIONS

We recommend that CMS direct its Medicare contractors, to the maximum extent feasible, to initiate recoupment activities:

- against the 481 unlawfully present beneficiaries on whose behalf Medicare made \$9,267,392 in improper payments and
- for improper payments made after our audit period on behalf of any beneficiaries who are detected to be unlawfully present.

CMS COMMENTS

In written comments on our draft report, CMS concurred with both of our recommendations and described corrective actions that it planned to take. Specifically, CMS said that it would review the improper payments that we had noted, identify cumulative overpayments (per beneficiary) that were greater than or equal to \$1,000, and attempt to recoup these overpayments. In addition, CMS stated that it would “perform a cost-benefit analysis to determine if CMS should pursue similarly situated overpayments in the future.”

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We evaluated the policies and procedures that CMS had in place as of July 2015 with regard to payment for Medicare services rendered to unlawfully present beneficiaries. Our review included steps to determine whether CMS had recouped payments from beneficiaries when the provider had been determined to be without fault. Because this recoupment could involve payments made in prior years, we reviewed Medicare payments made in CYs 2013 and 2014. As such, our review also included 14,530 claims that were paid on behalf of 481 unlawfully present beneficiaries with \$9,267,392 in associated Medicare payments during CYs 2013 and 2014.

We limited our review of internal controls to those that are directly related to our objective.

We performed audit work from July 2015 to March 2016.

METHODOLOGY

To accomplish our objective, we performed the following steps:

- We reviewed applicable Federal and State laws, regulations, and guidance.
- We held discussions with CMS officials to gain an understanding of how CMS processed Medicare claims for unlawfully present beneficiaries and how CMS responded to the MACRA.
- We used CMS's EDB¹⁴ (as of August 15, 2015) to identify 76,263 beneficiaries who had been unlawfully present at some point during CYs 2013 and 2014. Our comparison to CMS's National Claims History file (as of March 4, 2015, and September 5, 2015) showed that Medicare contractors paid 14,530 claims (on behalf of 481 beneficiaries with \$9,267,392 in associated payments) for which the unlawful presence dates overlapped with the dates of service.
- We judgmentally selected 30 claims and, for those claims, compared (1) the dates on which CMS's data systems were updated with information related to unlawful presence from SSA to (2) the dates on which Medicare contractors paid providers.

¹⁴ The EDB (footnote 8) interfaces with SSA's data systems to identify and classify individuals as unlawfully present. CMS officials stated that the systems generally make these classifications on the same day that CMS receives the information from SSA. The dates of unlawful presence are then accessible by several applications, including CMS's Common Working File. Medicare contractors use the Common Working File to process Medicare Part A and Part B claims from providers.

- We reviewed 363 beneficiaries who were unlawfully present in CYs 2009 through 2011 and who became lawfully present after that time and received Medicare services during CYs 2013 and 2014.
- We provided detailed data on the \$9,267,392 in Medicare payments to CMS officials on December 10, 2015, and discussed the results of our review with CMS officials on March 11, 2016.

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 B: CMS COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

DATE: JUL 12 2016

TO: Daniel R. Levinson
Inspector General

FROM: Andrew M. Slavitt 
Acting Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: Medicare Improperly Paid Millions of Dollars for Unlawfully Present Beneficiaries for 2013 and 2014 (A-07-15-01159)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to making sure that improper payments are not made for health care services provided to unlawfully present beneficiaries.

Medicare does not pay for services rendered to beneficiaries who are not lawfully present in the United States on the date of service. The Social Security Administration (SSA) is CMS's primary source of information about unlawfully present beneficiaries. SSA collects information from federal agencies, including the Department of Homeland Security, and transmits these data to CMS. With this information, CMS determines which beneficiaries are unlawfully present and the periods for which Medicare will not pay for health care services provided to these individuals.

As OIG notes in its report, there was an Informational Unsolicited Response (IUR), created in November 2012, that allowed CMS to detect and recoup overpayments from providers and suppliers during periods when CMS's beneficiary data did not reflect the fact that the beneficiary was unlawfully present in the United States. In September 2014, CMS determined that providers and suppliers who had received payment for treating unlawfully present beneficiaries were without fault, because there was no way for them to know those beneficiaries were unlawfully present on the date of service. At that time, CMS turned off the IUR that allowed CMS to detect and recoup overpayments from providers.

OIG's recommendations and CMS's responses are below.

OIG Recommendation

CMS should direct its Medicare contractors, to the maximum extent feasible, to initiate recoupment activities against the 481 unlawfully present beneficiaries on whose behalf Medicare made \$9,267,392 in improper payments.

CMS Response

CMS concurs with OIG's recommendation. As OIG notes in its report, there was an Informational Unsolicited Response (IUR), created in November 2012, that allowed CMS to detect and recoup overpayments from providers and suppliers during periods when CMS's beneficiary data did not reflect the fact that the beneficiary was unlawfully present in the United States. CMS will review the overpayments referred by OIG and identify overpayments greater than or equal to \$1,000 that were not subject to the IUR. CMS will attempt to recoup these overpayments. At the conclusion of this collection effort, CMS will perform a cost-benefit analysis to determine if CMS should pursue similarly situated overpayments in the future.

OIG Recommendation

CMS should direct its Medicare contractors, to the maximum extent feasible, to initiate recoupment activities for improper payments made after our audit period on behalf of any beneficiaries who are detected to be unlawfully present.

CMS Response

CMS concurs with OIG's recommendation. At the conclusion of the collection effort detailed in our response to the first recommendation, CMS will perform a cost-benefit analysis to determine if CMS should pursue similarly situated overpayments in the future.

CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.