PUBLICATION

Good Cause Payment Suspension

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Centers for Medicare and Medicaid Services (CMS) recently issued guidance on when a state can continue to make payments to an individual or entity participating in Medicaid despite a pending investigation of a credible allegation of fraud.

The Affordable Care Act[1] earlier amended the Medicaid program integrity provisions to prohibit Federal Financial Participation (FFP) where an individual or entity was under investigation for fraud, unless the state determined there was good cause not to suspend such payments.[2]

In February 2011, CMS published the final rule, which became effective March 25, 2011. On that same date, the Director of the Center for Program Integrity issued an information bulletin providing guidance on good cause exceptions to the rule requiring payment suspension.

The good cause exceptions generally include the following:

1. Specific requests by law enforcement that state officials not suspend payment;
2. A determination by a state that other available remedies implemented by the state could protect Medicaid funds more effectively or quickly than a payment suspension;
3. Provision of written evidence by the affected provider that persuades the state that a payment suspension should be terminated or imposed only in part;
4. A determination by the state agency that certain specific criteria are satisfied by which recipient access to items or services would otherwise be jeopardized;
5. A decision by law enforcement not to certify that a matter continues to be under investigation;
6. A determination by the state agency that payment suspension (in whole or in part) is not in the best interests of the Medicaid program; and
7. The credible allegation of fraud focuses solely on a specific type of claim or arises from only a specific business unit of a provider and the state determines that a suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid.

The information bulletin also included five additional pages of guidance in the form of Frequently Asked Questions (FAQs).

The final rule added the definition of “credible allegation of fraud”:

A credible allegation of fraud may be an allegation, which has been verified by the state, from any source, including but not limited to the following:

(1) Fraud hotline complaints
(2) Claims data mining
(3) Patterns identified through provider audits, civil false claims cases and law enforcement investigation

Allegations are considered credible when they have indicia of reliability and the state Medicaid agency has reviewed all allegations, facts and evidence carefully and acts judiciously on a case-by-case basis.[3]

Once a state verifies an allegation of fraud, it must refer the suspected fraud to the Medicaid Fraud Control Unit (MFCU) or other law enforcement agency for further investigation. The state must also suspend payments unless a good cause exception exists.

The FAQs state that payment suspension is not triggered by an investigation regarding the validity of an allegation of fraud, but only where a state determines that an allegation of fraud is credible and refers the matter to its MFCU or other law enforcement agency for investigation.

If the MFCU declines to accept a referral from a state, even if the declination is due to lack of resources and not a determination that the allegation of fraud lacks credibility, a state may refer the matter to another law enforcement agency that has capacity to accept the referral from the state agency. If the second referral is made, the payment suspension should continue. If a second referral is not made, the payment suspension should be ended.

Once payment is suspended, the states must have a quarterly certification from the MFCU or other law enforcement agency that the matter continues to be under investigation in order for the states to continue the payment suspension.

CMS is in the process of creating a web-based portal for the states to report payment suspensions, and expects that the portal will be functional prior to April 1, 2012. CMS anticipates that states will report payment suspensions imposed on providers during the third and fourth quarters of fiscal year 2011.

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1. Patient Protection and Affordable Care Act, Pub. L. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152.

2. The good cause exception is codified at 42 C.F.R. § 447.90.

3. 42 C.F.R. § 455.2.