

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health Care Finance



Subject: Suspension of Payments in Cases of Fraud **Policy Number:**

Policy Scope: Department-wide	Number of Pages: Seven (7)
Responsible Office or Division: Program Integrity	Number of Attachments: four
Supersedes Policy Dated: N/A	Effective Date: 02/01/2014
Cross References and Related Policies: 42 CFR §455.23	Expiration Date, if Any: N/A

1. PURPOSE

The purpose of this policy is to establish guidelines and procedures for the Department of Health Care Finance (DHCF) to suspend payments to providers in cases involving an investigation of a credible allegation of fraud.

2. APPLICABILITY

This policy applies to DHCF and all Medicaid enrolled providers.

3. AUTHORITY

The Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109); Social Security Act § 1102 [42 U.S.C. § 1302]; 42 CFR §431.10(j); 42 CFR § 455.23; 42 CFR § 455.2; the District of Columbia State Plan for Medical Assistance, Section 1.1.

4. DEFINITIONS

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 investigations.
- (4) Allegations are considered to be credible when, after the State Medicaid agency has reviewed all allegations, facts, and evidence carefully, has determined that there is sufficient data to indicate that there is the existence of a pattern of fraud.

5. POLICY

It is the policy of DHCF to comply with federal law and to suspend payments to providers when the agency determines that there is a credible allegation of fraud for which an investigation is pending under the Medicaid program, unless DHCF has good cause to not suspend payments or to suspend payment only in part.

6. PROCEDURE

- a. When the Division of Program Integrity (PI) has completed an investigation PI will document whether or not a credible allegation of fraud (as defined in 42 CFR § 455.2) exists through the evidence presented in the Report on Investigation (ROI). After PI determines that the evidence is sufficient to make the case for the existence of a credible allegation of fraud, depending on the type of service that will be affected, PI shall contact key personnel within DHCF to discuss whether or not there is good cause not to suspend payments or to suspend payments in part. This committee (hereinafter referred to as the Provider Suspension Review Committee) shall have a core group of participants (such as the Senior Deputy Director, the Director of Health Care Operations, the Chief Investigator in Program Integrity, the Director of Health Care Delivery Management Administration (HCDMA) and the Manager for Public and Private Provider Services (hereinafter referred to as the Provider Suspension Review Committee) to discuss whether or not there is good cause not to suspend payments or to suspend payments only in part. This committee shall, on an as needed basis, depending on the provider type under review, include staff such as Director of Long Term Care, or a Pharmacist from HCDMA or the Director of Managed Care. In instances where a Public Provider shall be affected (such as the Department of Behavioral Health), the Director of the agency shall be contacted to request that they participate in the Provider Suspension Review Committee discussion.
- b. The Provider Suspension Review Committee will review the Report on Investigation (ROI) and make a recommendation to the Director of DHCF regarding whether or not there is good cause not to suspend payments or to suspend payments only in part (taking into consideration 42 CFR §§ 455.23(e) and 455.23(f)) and reviewing the facts on a case-by-case basis. After the Provider Suspension Review Committee makes a decision regarding whether or not to recommend to the Director the suspension of payments, the Committee shall complete the Suspension of Payments Recommendation Form and shall sign and date the form. The form shall include the date and time of the meeting and all

persons in attendance. A copy of the form shall be filed in the Provider's case file.

c. Consistent with the requirements set forth in 42 CFR §455.23 (e), the Suspension Review Committee shall consider the following factors in its determination as to whether or not there is good cause to suspend payments:

- (1) Law enforcement officials have specifically requested that a payment suspension not be imposed because such a payment suspension may compromise or jeopardize an investigation.
- (2) Other available remedies implemented by the District of Columbia (District) more effectively or quickly protect Medicaid funds.
- (3) DHCF determines, based upon submission of written evidence by the individual or entity that is the subject of the payment suspension, that the suspension should be removed.
- (4) Beneficiary access to items or services would be jeopardized by a payment suspension because the following:
 - (i) An individual or entity is the sole community physician or the sole source of essential specialized services in the community.
 - (ii) The individual or entity serves a large number of beneficiaries within a HRSA-designated medically underserved area.
 - (iii) There are insufficient qualified providers to ensure adequate access for beneficiaries.
 - (iv) The individual or entity serves a large number of beneficiaries and beneficiaries served by the provider could not be adequately served by other qualified providers.
- (5) Consistent with the requirements set forth in 42 CFR 455.23 (d)(3) law enforcement declines to certify, on a quarterly basis, that a matter continues to be under investigation.
- (6) The District determines that payment suspension is not in the best interests of the Medicaid program.

d. Consistent with the requirements set forth in 42 CFR §455.23 (f), the Suspension Review Committee shall consider the following factors in its determination as to whether or not there is good cause to suspend payments only in part:

- (1) Beneficiary access to items or services would be jeopardized by a

- payment suspension in whole or part because of either of the following:
- (i) An individual or entity is the sole community physician or the sole source of essential specialized services in the community.
 - (ii) The individual or entity serves a large number of beneficiaries within a HRSA-designated medically underserved area.
 - (iii) There are insufficient qualified providers to ensure adequate access for beneficiaries.
 - (iv) The individuals or entity serves a large number of beneficiaries and beneficiaries served by the provider could not be adequately served by other qualified providers.
- (2) The State determines, based upon submission of written evidence by the individual or entity that is the subject of a whole payment suspension, that such suspension should be imposed only in part.
 - (3) (i) The credible allegation focuses solely and definitely on only a specific type of claim or arises from only a specific business unit of a provider; and
(ii) The State determines and documents in writing that a payment suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid.
 - (4) Law enforcement declines to certify, on a quarterly basis, that a matter continues to be under investigation.
 - (5) The State determines that payment suspension only in part is in the best interest of the Medicaid program.
- e. If the Provider Suspension Review Committee determines that there is good cause to recommend that the provider's payments not be suspended, then law enforcement shall be notified of that decision when the case is referred to law enforcement.
- f. If the Provider Suspension Review Committee recommends that the provider's payments shall be suspended, then PI shall draft the notice of suspension. This notice shall include or address all of the following:
- (1) State that payments are being suspended in accordance with 42 CFR §455.23.
 - (2) Set forth the general allegations as to the nature of the suspension action, but need not disclose any specific information concerning an ongoing investigation.

- (3) State that the suspension is for a temporary period, as stated in 42 CFR §455.23(c) and cite the circumstances under which the suspension will be terminated.
 - (4) Specify, when applicable, to which type or types of Medicaid claims or business units of a provider suspension is effective.
 - (5) Inform the provider of the right to submit written evidence for consideration by the State Medicaid Agency.
 - (6) Set forth the applicable State administrative appeals process and corresponding citations to State law.
- g. This notice (along with a copy of the Suspension of Payments Decision Form) shall be routed for sign-off/approval to the Office of General Counsel, the Senior Deputy Director and the Director of DHCF.
 - h. The ROI shall be sent to law enforcement after the Director of DHCF reviews and signs off on the Provider Suspension Review Committee's recommendation to suspend or not to suspend payments to the provider.
 - i. DHCF shall notify law enforcement of the status of the provider suspension when the ROI is submitted to law enforcement. If DHCF decides to suspend payment, DHCF shall request that law enforcement notify PI, in writing, within five business days of receipt of the ROI if they request that DHCF defer suspension of payments.
 - j. If law enforcement, after reviewing the ROI, requests in writing that DHCF defer a payment suspension because it may compromise an investigation, DHCF shall file this request in the provider's file and contact law enforcement in thirty days (consistent with 42 CFR § 455.23(b)(ii)) to determine if DHCF shall continue to defer the suspension of payments.
 - k. After the Director of DHCF signs the notice of suspension of payment, if law enforcement does not request that DHCF defer payment suspension (within five (5) days of receipt of the ROI), Program Integrity shall draft and forward a memo requesting that operations suspend provider payments.
 - l. DHCF, consistent with 42 CFR § 455.23 (b)(1), may deliver notice of the suspension to the provider after the suspension has occurred.
 - m. The notice of suspension must be sent via certified mail, return receipt requested:
 - (1) Within five (5) days after taking such action unless requested in writing by a

- law enforcement agency to temporarily withhold such notice; or
- (2) Within thirty days if law enforcement has requested, in writing, to delay sending such notice, except that the delay may be renewed twice in writing not to exceed ninety (90) days.
- n. A copy of the notice shall be sent to the Director of DHCF, the Senior Deputy Director, the Director of HCDMA, the Ombudsman's Office and the Director of the DHCF Division that has program oversight for the affected service.
 - o. Consistent with the requirements set forth in 42 CFR § 455.23 (c), the duration of the suspension of payments;
 - (1) Will be temporary and will not continue after either of the following:
 - i. DHCF or prosecuting authorities determine that there is insufficient evidence of fraud by the provider;
 - ii. Legal proceedings related to the provider's alleged fraud are completed.
 - p. The DHCF PI shall maintain, for a minimum of five years from the date of issuance, all material documenting the life cycle of a payment suspension that was imposed in whole or in part including the following:
 - (1) All notices of suspension of payment in whole or in part.
 - (2) All fraud referrals to the Medicaid fraud control unit or other law enforcement agency.
 - (3) All quarterly certifications of continuing investigation status by law enforcement.
 - (4) All notices documenting the termination of the suspension.
 - q. DHCF PI shall maintain for a period of five (5) years from the date of issuance all materials documenting each instance where a payment suspension was not imposed, imposed only in part, or discontinued for good cause. This type of documentation must include, at a minimum, detailed information on the basis for the existence of good cause not to suspend payments, to suspend payments in part, or to discontinue a payment suspension, and, where applicable, must specify how long the State anticipates such good cause will exist.

7. RESPONSIBILITY

The Division of Program Integrity is responsible for the implementation of this policy along with the applicable staff from the Office of the Senior Deputy Director, Health Care Operations Administration and the Health Care Delivery Management Administration.



Wayne Turnage
Director

1/17/14
Date