

 HUMAN SERVICES DEPARTMENT Medical Assistance Division	Guideline
Quality Assurance Bureau Program Integrity Unit	
Credible Fraud Referral Guideline	

PURPOSE: Describes the HSD process for addressing allegations of fraud and/or abuse by Medicaid Providers, including the determination of credible allegations, the referral of credible allegations to MFCU, the suspension of payments or consideration of good cause exceptions, and the resolution of suspensions.

PROCEDURE:

1. HSD/QAB RECEIPT OF ALLEGATION(S)

- a. An allegation may originate from any source, including but not limited to the following:
 - Fraud Hotline Complaints
 - Claims Data Mining
 - Patterns Identified by Provider Audits, Civil False Claims, and Law Enforcement Investigations

2. PRELIMINARY INVESTIGATION

42 CFR §455.14 Preliminary Investigation
If the agency receives a complaint of Medicaid fraud or abuse from any source or identifies any questionable practices, it must conduct a preliminary investigation to determine whether there is sufficient basis to warrant a full investigation.

- a. Managed Care Organizations (MCO) and MAD/PIU are required to perform preliminary investigations pursuant to 42 CFR § 455.14; review all allegations, facts and evidence carefully and report all preliminary investigations to MAD\QAB\PIU.

b. MAD/QAB/PIU is responsible for the review of all MCO documentation related to the allegations, facts and evidence.

c. Gather Critical Information:

- Date Reported/Identified
- Source of Report [Name, Address, Phone(s), Relationship to Provider, etc.] (to extent available)
- Provider [Name, ID, Type/Category of Svc., etc.]
- Details of suspected misconduct including:
 - Factual Explanation of the Allegation
 - Specific Medicaid Statutes, Rules, Regulations, and/or Policies Violated
 - Date(s) of Conduct
 - All Communications Between State or MCO and Provider Concerning Conduct at Issue
 - Contact Information for State or MCO Personnel with Practical Knowledge of Workings of the Provider and Relevant Program
 - Estimated Amount [if available] Paid to Provider During the Period of the Alleged Misconduct, or Over the Past 3 Years Whichever is Greater
- Request & Attach Evidence

3. HSD/QAB DETERMINATION OF CREDIBILITY & REFERRAL TO MFCU

- a. The HSD/QAB determines that an allegation is credible if, after a careful review of the available facts and evidence, the allegation is found to have some indication of reliability
- b. Refer to the Credible Evidence of Fraud Suspension of Payment Decision Form (Internal Use Only). [Attachment A]
- c. If HSD/QAB determines that an allegation of fraud is credible then the case is referred to MFCU for consideration of law enforcement investigation and legal action.

4. SUSPENSION OF PAYMENTS TO PROVIDER (OR GOOD CAUSE EXCEPTION)

42 CFR §455.23 Suspension of Payment in Cases of Fraud

The State Medicaid agency must suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program against an individual or entity unless the agency has good cause to not suspend payments or to suspend payment only in part.

- a. A payment suspension is required after a determination by HSD/QAB that an allegation of fraud is credible and the case is referred and accepted by the MFCU or other law enforcement agency for investigation in accordance, unless HSD/QAB identifies a good cause exception to not suspend payments or to suspend payment only in part.
- b. Required Notices:
 - I. HSD/QAB must provide notice of all provider payment suspensions to the Provider with copies to: MCO, MFCU, MAD Director, HSD/OGC [Sample Letter, Attachment B (includes Good Cause Request Form)]. In addition, HSD/QAB notifies PAB for payment suspensions through the Fiscal Agent (For FFS Provider Numbers).
 - WITHIN FIVE (5) DAYS of taking such action unless requested in writing by a law enforcement agency to temporarily withhold such notice:
 - [Delayed Notice] Within Thirty (30) days if requested by law enforcement in writing to delay sending such notice, which request for delay may be renewed in writing up to twice and in no event may exceed 90 days.
 - II. The Notice MUST include:
 - Statement that payments are suspended in accordance with 42 CFR §455.23
 - Specify, when applicable, the type(s) of claims or category of services or business unit(s) of the Provider that are affected by the suspension
 - Set forth the general nature of the allegation(s) [ex. license/certification violation, bundling, coding, billing practices, deception to obtain unauthorized benefit from Medicaid program] – DO NOT disclose any specific information concerning an ongoing allegation
 - Indicate the suspension period and the circumstances under which the suspension will be terminated
 - Inform the Provider of the right to submit written evidence for consideration of a good cause exception by HSD/QAB (see Good Cause Request Form, Attachment B)

5. GOOD CAUSE EXCEPTION

- a. Circumstances that constitute "good cause" for HSD/QAB not to suspend payments, or to discontinue an existing payment suspension, or to impose only a partial suspension during the law enforcement investigation, include:
 - Law Enforcement Request Not To Suspend Payments
 - Law Enforcement Declines Investigation
 - Medicaid Funds Are Protected By Other Remedy [ex. Bond]
 - Providers furnishes written evidence that persuades payment suspensions be terminated in whole or part

 - Recipient Access to Items or Services Jeopardized By Suspension
 - Payment suspension is not in the best interest of the Medicaid program
 - [*Partial Suspension*] Investigation Solely on a Specific Type of Claim or from a Business Unit of a Provider
- b. Providers have twenty (20) calendar days to submit a request for good cause exception.
- c. HSD/QAB issues a formal determination of Suspension or Good Cause Exception after consideration of a timely-submitted Good Cause Request Form and supporting evidence submitted by the Provider. [Sample Letter, Attachment C]

6. RELEASE OF SUSPENSION:

- a. All suspensions of payment will be released after either of the following:
 - HSD/QAB or the prosecuting authorities determine that there is insufficient evidence of fraud by the provider
 - Legal proceedings related to the provider's alleged fraud are completed
- b. Written Notice is required by HSD/QAB to the Fiscal Agent and/or the MCO with a specific direction to release the suspension(s) within TEN (10) days.
- c. The MCO or Fiscal Agent must provide written notice to MFCU and HSD when warrant(s) are prepared for release to MFCU or HSD.

EQUIPMENT:

- Medicaid Management Information System (MMIS)
- QAB Fraud & Abuse Tracking Database

ATTACHMENTS:

- A: Credible Evidence of Fraud Suspension of Payment Decision Form (Internal Use)
- B: Sample Letter to Provider of Suspension, w/Good Cause Exception Request Form
- C: Sample Letter to Provider of Good Cause Exception/Suspension Determination
- D: QAB sample memo to PAB to implement provider check withhold via the Fiscal Agent
- E: QAB sample memo to the MCO to implement provider check withhold

CROSS REFERENCES:

- HSD/QAB, HSD/OIG & MFCU Interagency Coordination Implementation Plan
- HSD/QAB Preliminary Investigation Form Guideline
- Joint Protocol of MFCU, HSD, DOH, ALTSD and CYFD for the Investigation of Medicaid Provider Fraud (January 27, 2004)
- Memorandum of Understanding between HSD and MFCU Office Regarding Medicaid Fraud and Abuse (May 20, 2010)
- Centers of Medicare and Medicaid (CMS) – Medicaid Integrity Group Performance Standard for Referrals of Suspected Fraud from a Single State Agency to a Medicaid Fraud Control Unit (September 2008)

Supervisor's Signature _____

Date _____

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Developed By: Quality Assurance Bureau, (QAB)
Revised Date: _____
Reviewed By: Everet Apodaca, Program Integrity Manager, QAB
Approved By: Sandra B. Chavez, Bureau Chief, QAB
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CREDIBLE EVIDENCE OF FRAUD

SUSPENSION OF PAYMENT DECISION FORM

PROVIDER NAME & ID:

I. Basis for Suspension and Referral			
Check the applicable box, initial, date and describe in detail.			
<p>Is there a CREDIBLE ALLEGATION of fraud?* (42 CFR §455.23(a)(1))</p> <p><small>*Definition: an allegation that has been verified by a State and that has indicia of reliability that comes from any source; fraud includes willful misrepresentation; an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law (See also 42 CFR §455.2)</small></p>	<p>YES</p> <input type="checkbox"/>	<p>NO</p> <input type="checkbox"/>	<p>If yes, a referral to MFCU shall be made and suspension of payments implemented, absent good cause exception (see below).</p>
II. Suspension of payment			
<p>If Part I answer is "yes" enter the date the suspension will take effect absent a "good cause" exception.</p> <p><small>(42 CFR §455.23(a)(1))</small></p>			<p>Suspension date: _____</p>
<p>A suspension will take effect unless the MFCU invokes the law enforcement exception of 42 CFR 455.23(e)(1), or the Department determines one of the other five exceptions contained in 42 CFR 455.23(e) should be triggered.</p>			
III. Good Cause exceptions to total suspension			
<p>Is there good cause not to suspend payment?</p>	<p>YES</p> <input type="checkbox"/>	<p>NO</p> <input type="checkbox"/>	<p>If yes, Complete Section III or IV.</p>
<p>Has law enforcement specifically requested in writing that a payment suspension not be imposed because it might compromise or jeopardize an investigation? (42 CFR §455.23(e)(1))</p>	<p>YES</p> <input type="checkbox"/>	<p>NO</p> <input type="checkbox"/>	

Would recipient access to items or services be jeopardized because the Provider is the sole community physician or the sole source of essential specialized services? (42 CFR §455.23(e)(4)(i))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Would recipient access to items or services be jeopardized because the Provider serves a large number of recipients within a HRSA-designated medically underserved area? (42 CFR §455.23(e)(4)(ii))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Are there other available remedies that could be more effectively or quickly implemented to protect Medicaid funds? (E.g. termination of provider ID, provider on prepayment review, etc.) (42 CFR §455.23(e)(2))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
Is payment suspension not in the best interests of the Medicaid program? (42 CFR §455.23(e)(6))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
IV. Good Cause exceptions for partial suspension only			
Is there good cause to suspend payment, but only in part?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Is the alleged fraud apparent only with certain specific types of claims <u>and</u> there is written documentation that a partial suspension will prevent the payment of the potentially fraudulent claims? (42 CFR §455.23(f)(3))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
Is the alleged fraud committed by a specific business unit or location <u>and</u> there is written documentation that a partial suspension will prevent the payment of the potentially fraudulent claims? (42 CFR §455.23(f)(1))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
If the Provider is the sole community physician or the sole source of essential specialized services, would a partial suspension allow the Provider to still see recipients and also adequately protect Medicaid funds? (42 CFR §455.23(f)(1))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
If the Provider serves a large number of recipients within a HRSA-designated medically underserved area, would a partial suspension allow the Provider to see recipients and also adequately protect Medicaid funds? (42 CFR §455.23(f)(1)(ii))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Has the Provider submitted written evidence justifying something less than a full suspension? (42 CFR §455.23(f)(2))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the written evidence.

Is a partial suspension in the best interests of the Medicaid Program? (42 CFR §455.23(f)(5))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
V. Termination of Suspension:			
Has MFCU subsequently determined that there is insufficient evidence of fraud by the provider and provided that opinion to the Department in writing? (42 CFR §455.23(c)(1)(i))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
Has the Department subsequently determined that there is insufficient evidence of fraud by the provider? (42 CFR §455.23(c)(1)(i))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Has MFCU rejected the referral/case? (42 CFR §455.23(d)(4))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Are the investigation and any associated enforcement proceedings complete? (42 CFR §455.23(d)(3)(i))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Are the legal proceedings related to the fraud complete? (42 CFR §455.23(c)(1)(ii))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Has the Provider submitted written evidence justifying the termination of the suspension? (42 CFR §455.23(e)(3))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, attach the explanation.
Has MFCU declined to certify that that the matter continues to be under investigation? (42 CFR §455.23(d)(4) & (e)(5))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
Has an Administrative Law Judge ordered the resumption of payments in an administrative review. (42 CFR §455.23(a)(3))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
VI. Documentation Requirements: (must be maintained for 5 years)			
Referral made to MFCU within 24 hours? (42 CFR §455.21(a)(1))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Date:
<i>If payment suspension is done, MFCU quarterly certification of continued investigation</i>			Next Date due:
Notice of suspension sent to provider within 5 days of withholding action? (42 CFR §455.23(g)(1)(ii))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Date:
Documentation of termination of suspension and notice sent to provider? (42 CFR §455.23(g)(1))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Date:
Good Cause to not suspend or suspend in part documented in detail? (42 CFR §455.23(g)(2))	YES <input type="checkbox"/>	NO <input type="checkbox"/>	

