

NEW MEXICO'S FOREFRONT LEGISLATION

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DISCLAIMER

These legislative materials are designed to provide an overview of general legal principles and should not be relied on as legal advice. You should seek advice from an attorney if you have particular factual situations related to these materials.

THE ONGOING SEARCH FOR FRAUDULENT BEHAVIOR

42 CFR 455.23 - SUSPENSION OF
PAYMENTS IN CASES OF FRAUD.



42 CFR 455.23

- >The State Medicaid agency must suspend all Medicaid payments to a provider
- >For credible allegations of fraud
- >Unless the agency has good cause to not suspend payments or to suspend payment only in part

Self-funding

Fraud, waste, abuse

CREDIBLE ALLEGATION OF FRAUD

- > Verified allegation that has “indicia of reliability”
- > Can come from any source:
 - Complaint made by former employee
 - Fraud hotline
 - Claims data mining
 - Patterns identified through:
 - audits
 - civil false claims
 - investigations

CONSEQUENCES TO A PROVIDER

- > Depends on percentage of Medicaid
- > De facto termination
- > 15 Behavioral health care providers

42 CFR 455.13

§ 455.13 Methods for identification, investigation, and referral.

The Medicaid agency must have—

- (a) Methods and criteria for identifying suspected fraud cases;
- (b) Methods for investigating these cases that—

(1) Do not infringe on the legal rights of persons involved;
and

(2) Afford due process of law...

NEW MEXICO DUE PROCESS



Supremacy Clause

- "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land... anything in the constitution or the laws of any state to the contrary notwithstanding."
– Article 6, section 2

THANKS TO SEN. PAPEN AND TEAM

> New Bill

> **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

> Senate Bill



NEW MEXICO DEFINITIONS

- > A. "credible allegation of fraud" means:
- > an allegation of Medicaid fraud, as defined in Subsection A of Section 30-44-7 NMSA 1978, that has been verified as credible by the department:

NEW MEXICO DEFINITION

- > (1) considering the totality of the facts and circumstances surrounding any particular allegation or set of allegations;
- > (2) based upon a careful review of all allegations, facts and evidence; and
- > (3) accompanied by sufficient indicia of reliability to justify a decision by the department to refer a Medicaid provider or other person to the attorney general for further investigation;

ADDITIONAL SAFEGUARDS

- > Prior to determining the existence of credible allegations of fraud, State must:
 1. Auditors must be licensed and credentialed
 2. Written notice of tentative finding
 3. Explain specific allegations
 4. Allow informal or formal process
 5. Allow correction of scrivener's errors
 6. All administrative remedies must be exhausted

RELEASE OF SUSPENSION

- > Shall release suspension no later than 7 days following the earlier of:
 1. Posting a bond
 2. AG states no legal action
 3. Administrative action in providers favor becomes final

ADDITIONAL REMEDIES

- > Judicial review
- > Injunctive relief
- > Attorneys' fees and witness fees

WHY?

- > Medicaid providers
- > Employees/staff
- > Family/Community
- > Medicaid recipients

EXAMPLES OF ALLEGED “FRAUD”

1. Home care agency failed to put shoes on consumer when the plan of care indicated the consumer needed help dressing.
 1. No feet
2. Staff was not credentialed.
 1. Could not read the signature
3. Billed for codes that are not compensated by Medicaid
 1. Provider billed correctly (non-Medicaid). The contracted vendor/payor submitted the claim incorrectly.

EXAMPLES OF ALLEGED “FRAUD”

4. No authorizations for a service that required prior authorization (CCME)
 4. CCME authorized the services

5. Subjective determinations of medical necessity
 4. The treating physician ordered the service

6. Inadvertent mistakes as to gender, DOS, or other typing errors
 4. Medically necessary services were rendered to those in need. Typos do not equal fraud.

NEW MEXICO'S DEFINITION OF FRAUD

- > B. The following do not constitute Medicaid fraud:
 - > (1) mere errors found during the course of an audit;
 - > (2) billing errors that are attributable to human error;
 - > (3) inadvertent billing and processing errors;
 - > (4) inadvertent failure to maintain complete credentialing, licensure or training records; and
 - > (5) failure to comply with a regulatory standard that is not a condition of payment.

JUSTICE



MEDICAIDLAW-NC

The screenshot shows the homepage of the MedicaidLaw-NC blog. At the top, there is a navigation bar with the site name 'medicaidlaw-nc', a 'Following' status, and a 'New Post' button. Below this is a header area with a wood-grain background. The main title 'MEDICAIDLAW-NC' is prominently displayed, followed by a subtitle: 'A NC Medicaid Legal Blog for health care providers, Medicaid recipients, and politically-interested persons by Knicole C. Emanuel, attorney at Williams Mullen in Raleigh, NC.' A navigation menu below the header includes links for 'HOME', 'ABOUT KNICOLE', 'ACRONYM GLOSSARY', 'RESOURCES', and 'BLOGROLL'. The main content area features a featured article titled 'Haven't Fixed Medicaid Yet...But I Haven't Gotten Bucked Off Yet', posted on 'SEP 5' by 'kemanuel'. The article's text begins with: 'There are a number of federal regulations that, if I were in charge, would be immediately amended. Obviously, I am not in charge, so despite my best blogging efforts, my blogs do not change federal law. Today, however, I had the honor and privilege to speak to someone who may have the clout and political pull to fix some of the calamities found in the Code of Federal Regulations (CFRs) that are so detrimental to health care providers who accept Medicare and Medicaid across the country.' To the right of the article, there is an 'RSS FEED' section with an RSS icon and a 'SEARCH THE LAW' section with a search input field. A portrait of Knicole C. Emanuel is also visible on the right side of the page.