



CPI – CMCS INFORMATIONAL BULLETIN

DATE: March 25, 2011

CPI-B 11-04

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SUBJECT: **Affordable Care Act Program Integrity Provisions - Guidance to States --
Section 6402(h)(2) - Suspension of Medicaid Payments Based Upon Pending
Investigations of Credible Allegations of Fraud**

This Informational Bulletin is part of a series of bulletins intended to provide guidance regarding implementation of certain provisions of the 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, together called the “Affordable Care Act.” Specifically, this bulletin provides guidance on the following program integrity provision in the Affordable Care Act that was included in final regulations CMS-6028-FC, published on February 2, 2011:

- Section 6402(h) regarding suspension of payments pending an investigation of a credible allegation of fraud.

Suspension of Payments

Section 6402(h)(2) of the Affordable Care Act, Suspension of Medicaid Payments Pending Investigation of Credible Allegations of Fraud amends section 1903(i)(2) of the Social Security Act to provide that Federal Financial Participation (FFP) in the Medicaid program shall not be made with respect to any amount expended for items or services (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished by an individual or entity to whom a State has failed to suspend payments under the plan during any period when there is pending an investigation of a credible allegation of fraud against the individual or entity as determined by the State, unless the State determines that good

cause exists not to suspend such payments. On February 2, 2011, CMS published the final rule implementing this provision, with an effective date of March 25, 2011. *See* <http://edocket.access.gpo.gov/2011/pdf/2011-1686.pdf>.

Good Cause Exceptions

There are several circumstances that, under the final rule, constitute “good cause” for a State to determine not to suspend payments, or to discontinue an existing payment suspension, to an individual or entity despite a pending investigation of a credible allegation of fraud. Good cause exceptions to terminate a whole payment suspension or impose a partial suspension generally include the following:

1. Specific requests by law enforcement that State officials not suspend (or continue to suspend) payment.
2. If a State determines that other available remedies implemented by the State could more effectively or quickly protect Medicaid funds than would implementing (or continuing) a payment suspension.
3. If a provider furnishes written evidence 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 State may, at its discretion, discontinue an existing suspension to the extent law enforcement declines to cooperate in certifying that a matter continues to be under investigation and therefore warrants continuing the suspension.
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.
7. The credible allegation 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.

Questions and Answers

Attached to this Informational Bulletin is operational guidance in the form of “Frequently Asked Questions” regarding 6402(h)(2) of the Affordable Care Act.

Thank you for your continued commitment to combating fraud, waste and abuse in the Medicaid and CHIP programs. We look forward to our continuing work together as we implement this important legislation. Questions regarding this information can be directed to Angela Brice-Smith at 410-786-4340 or via email at Angela.Brice-Smith@cms.hhs.gov.