

**SECTION 3 PROGRAM INTEGRITY**

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#### FRAUD

The South Carolina Medicaid program operates under the anti-fraud provisions of 42 US Code §1320a-7b. This federal law relates to both fraud and abuse of the program and identifies illegal acts, penalties for violations, and the individuals and/or entities liable under this section.

The Division of Program Integrity carries out SCDHHS responsibilities concerning suspected Medicaid fraud as required by 42 CFR Part 455, Subpart A. Program Integrity must conduct a preliminary investigation and cooperate with the state and federal authorities in the referral, investigation, and prosecution of suspected fraud in the Medicaid program. SCDHHS refers suspected cases of Medicaid fraud by health care providers to the Medicaid Fraud Control Unit of the State Attorney General's Office for investigation and possible prosecution. SCDHHS also makes referrals to the Bureau of Drug Control for suspected misuse or overprescribing of prescription drugs, especially controlled substances. If a provider suspected of fraud or abuse is also enrolled in a Medicaid Managed Care Organization (MCO), Program Integrity will coordinate the investigation with the MCO(s) involved. Suspected Medicaid fraud on the part of a beneficiary is referred to a Medicaid Recipient Fraud Unit in the State Attorney General's Office for investigation.

#### PAYMENT SUSPENSION

Medicaid payments to a provider may be withheld upon credible allegation of fraud, in accordance with the requirements in 42 CFR §455.23.

#### Suspension of Provider Payments for Credible Allegation of Fraud

SCDHHS will suspend payments in cases of a credible allegation of fraud. A "credible allegation of fraud" is an allegation that has been verified by SCDHHS and that comes from any source, including but not limited to the following:

- Fraud hotline complaints
- Claims data mining
- Patterns identified through provider audits, civil false claims cases, and law enforcement investigations

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#### Suspension of Provider Payments for Credible Allegation of Fraud (Cont'd.)

SCDHHS has flexibility in determining what constitutes a “credible allegation of fraud.” Allegations are considered to be credible when they have indications of reliability based upon SCDHHS’ review of the allegations, facts, and evidence on a case-by-case basis.

#### Notice of Suspension

SCDHHS will 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. Payments may be suspended without first notifying the provider of the intention to suspend payments. SCDHHS will send notice of its suspension of program payments within the following timeframes:

- Within five business days of suspending the payment, unless requested in writing by a law enforcement agency to temporarily withhold such notice
- Within 30 calendar days of suspending the payment, if requested by law enforcement in writing to delay sending such notice

The Notice of Payment Suspension will include all information required to be provided in accordance with 42 CFR §455.23.

All suspension of payment actions will be temporary and will not continue after either of the following:

- SCDHHS 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

#### Referrals to the Medicaid Fraud Control Unit

Whenever an investigation leads to the initiation of a payment suspension in whole or part, SCDHHS will make a fraud referral to the South Carolina Medicaid Fraud Control Unit (“MFCU”).

#### Good Cause not to Suspend Payments or to Suspend Only in Part

SCDHHS may find that good cause exists not to suspend payments, or not to continue a payment suspension previously imposed on an individual or entity regarding a credible allegation of fraud, if any of the following are applicable:

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#### Good Cause not to Suspend Payments or to Suspend Only in Part (Cont'd.)

- o Law enforcement officials have specifically requested that a payment suspension not be imposed because such a payment suspension may compromise or jeopardize an investigation
- o Other available remedies implemented by SCDHHS will more effectively or quickly protect Medicaid funds
- o SCDHHS determines, based upon the submission of written evidence by the individual or entity that is the subject of the payment suspension, that the suspension should be removed
- o SCDHHS determines that beneficiary access to items or services would be jeopardized by a payment suspension for either of the following reasons:
  - o An individual or entity is the sole community physician or the sole source of essential specialized services in a community
  - o The individual or entity serves a large number of beneficiary's within a medically underserved area, as designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services
- o Law enforcement declines to certify that a matter continues to be under investigation
- o SCDHHS determines that payment suspension is not in the best interests of the Medicaid program
- o SCDHHS may also find that good cause exists to suspend payments in part, or to convert a payment suspension previously imposed in whole to one only in part, on any individual or entity regarding a credible allegation of fraud, if any of the following are applicable:
  - o SCDHHS determines that beneficiary access to items or services would be jeopardized by a payment suspension for either of the following reasons:

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#### Good Cause not to Suspend Payments or to Suspend Only in Part (Cont'd.)

- o An individual or entity is the sole community physician or the sole source of essential specialized services in a community
- o The individual or entity serves beneficiaries within a medically underserved area, as designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services
- o SCDHHS determines, based upon the 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
- o SCDHHS determines the following:
  - The credible allegation focuses solely and definitively on only a specific type of claim or arises from only a specific business unit of a provider; and
  - A payment suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid. If this determination is made by SCDHHS, it will be documented in writing.
  - Law enforcement declines to certify that a matter continues to be under investigation
  - SCDHHS determines that payment suspension is not in the best interest of the Medicaid program

Even if SCDHHS exercises the good cause exceptions set forth above, this does not relieve the agency of its obligation to refer a credible allegation of fraud to the Medicaid Fraud Control Unit.

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#### TEMPORARY MORATORIA

##### Federally-Mandated Moratoria

SCDHHS will impose a Temporary Moratorium when such a moratorium is issued by CMS on enrollment of new providers or provider types identified as posing an increased risk to the Medicaid program.

SCDHHS will take action upon notification by CMS regarding the imposition of the temporary moratorium in advance of the imposition of the moratorium.

SCDHHS will impose the temporary moratorium on the enrollment of new providers or provider types, identified by CMS as posing an increased risk to the Medicaid program, with the following exception:

- SCDHHS is not required to impose such a moratorium if it determines that the imposition of a temporary moratorium would adversely affect beneficiaries' access to medical assistance
- If SCDHHS makes such a determination, CMS will be notified in writing.

##### State-Initiated Moratoria

SCDHHS may impose temporary moratoria on enrollment of new providers, or impose numerical caps or other limits, that SCDHHS identifies as having a significant potential for fraud, waste, or abuse and has identified as being a high risk for fraud, waste, or abuse.

SCDHHS, before implementing the moratoria, caps, or other limits, will determine that its action would not adversely impact beneficiaries' access to medical assistance.

SCDHHS will notify CMS in writing in the event the Medicaid program seeks to impose such moratoria, including all details (rationale and justification) of the moratoria; and obtain CMS' concurrence with imposition of the moratoria

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#### Temporary Moratoria Requirements

The temporary moratorium is for an initial period of 6 months.

If SCDHHS determines that it is necessary, the temporary moratorium may be extended in 6-month increments.

SCDHHS will document in writing the necessity for extending the moratoria each time.

SCDHHS will obtain CMS' concurrence with any moratoria extension.

Provider applications pending at the time of imposition of a moratorium will be denied.