

Frequently Asked Questions

Payment Holds Due to a Credible Allegation of Fraud

Q. What is a payment hold?

- A. A payment hold is a temporary suspension of all payments from the Medicaid program to a Medicaid provider.

Q. What law requires Health & Human Services/Office of the Inspector General (HHSC-OIG) to suspend payments to a provider due to a credible allegation of fraud?

- A. Federal regulations pursuant to 42 CFR § 455.23 (2011) require that the state Medicaid agency must suspend all Medicaid payments to a provider after the agency verifies a “credible allegation of fraud” under the Medicaid program.

Also, Texas Government Code section 531.102(g)(2), allows a payment hold “on receipt of reliable evidence that the circumstances giving rise to the hold on payment involve fraud or willful misrepresentation under the state Medicaid program in accordance with 42 C.F.R. 455.23, as applicable.”

Several amendments are currently being proposed to HHSC administrative rules governing the imposition of sanctions against Providers. These proposed amendments include a mandatory payment hold that is to be imposed on a provider upon OIG’s receipt of reliable evidence that verifies a credible allegation of fraud. The citation to this provision, if adopted, will be 1 TAC 371.1709(b) (3). This rule, if adopted, will become effective in April, 2012.

Q. What constitutes a “credible allegation of fraud,” and how is an allegation verified?

- A. Federal law defines a “credible allegation of fraud” as an “allegation, which has been verified by the State, from any source.” 42 CFR § 455.2 states that the source of these allegations may include, but are not limited to, “(1) fraud hotline complaints, (2) claims data mining, (3) patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered credible when they have indicia of reliability and the State Medicaid Agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis.”

OIG is required to conduct a preliminary investigation on each credible allegation it receives. A preliminary investigation may include:

- verification of professional credentials, enrollment and/or licensing;
- collection from the claims administrator of medical records relating to a provider;
- preliminary review and assessment of medical records and documentation by a medical expert reviewer and/or consultant;
- claims sampling/comparison to billing for services;

- interviews with patients and/or other providers or suppliers;
- consultation with medical experts and consultants, if necessary.

Q. When HHSC-OIG institutes a hold on a provider's Medicaid payments, when does the hold take effect?

A. The hold takes effect immediately.

Q: Is the provider entitled to receive notice of a payment hold? If so, what information does the notice include?

A: Yes. Federal regulations require that we send notice of any withholding of program payments within 5 days of taking such action. The notice must include the general allegations that led to the withholding. However, the notice is not required to include specific information concerning any ongoing investigation.

Each notice must:

- Specify that payments are being withheld in accordance with 42 CFR 455.23(b),
- State that the withholding is for a temporary period and specify the circumstances under which withholding will be terminated;
- Describe which types of Medicaid claim payments are being withheld; and
- Inform the provider of his or her right to submit written evidence for consideration by the agency.

Q. How long does a payment hold last?

A. Federal law allows a payment hold to continue until the agency or prosecutors determine that there is insufficient evidence of fraud, or until the legal proceedings related to the provider's alleged fraud are completed.

Under certain circumstances, such as a request from the Medicaid Fraud Control Unit, this notice may be withheld for a period of up to 30 days. The withholding of this notice can be extended twice, for a maximum period of 90 days.

Q. Is a provider placed on payment hold allowed a due process hearing, or other legal remedy?

A. Yes. A provider may request, and must be granted, an administrative review of the payment hold.

Q. Who should a provider contact in your office to discuss options for an administrative review, or to schedule an administrative review?

A. The provider should contact the attorney whose signature and contact information appears on the notice letter for the payment hold.

Q. What happens after HHSC-OIG institutes a payment hold?

A. In accordance with federal rules, the allegation will also be referred to the Office of Attorney General's Medicaid Fraud Control Unit, which investigates and prosecutes criminal fraud in the Medicaid program.

Q. Does HHSC-OIG have to prove a criminal allegation of fraud “beyond a reasonable doubt” before it places a payment hold on a provider?

A. No. HHSC-OIG reviews all allegations, facts, and evidence carefully and acts judiciously on a case by case basis to determine whether the allegation can be verified, and has “indicia of reliability.”

Q. Are there exceptions to the rule requiring HHSC-OIG to suspend payments to a provider due to a credible allegation of fraud?

A. Yes. The Affordable Care Act provisions establish the following “good cause” exceptions by which a State may determine good cause exists not to suspend payments:

- Upon a specific request by a law enforcement agency; (for example, when a suspension might alert a violator at a critical stage of an undercover investigation or compromise the identity of an informant);
- If the state determines that another remedy could more effectively protect Medicaid funds (for example, through an injunction or court intervention);
- If the state determines that the suspension is not in the best interests of the Medicaid program; and
- If the state determines that a suspension will have an adverse effect on beneficiaries' access to care.

Also, we may discontinue a suspension if a law enforcement agency declines to certify that a matter is still under investigation.