

EFFECTIVE
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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

471 NAC 2

TITLE 471 NEBRASKA MEDICAL ASSISTANCE PROGRAM SERVICES

CHAPTER 2 PROVIDER PARTICIPATION

001. SCOPE AND AUTHORITY. These regulations govern services provided under the Medical Assistance Act, Nebraska Revised Statute (Neb. Rev. Stat.) §§ 68-901 to 68-991.

002. DEFINITIONS. The following definitions apply:

002.01 ABUSE. Practices or actions that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to Medicaid or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. Abuse may include underutilization or overutilization.

002.02 AFFILIATES. Persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

002.03 BILLING. Presenting, or causing to be presented, a claim for payment to the Department, its agents, or assignees.

002.04 BILLING AGENT. An entity that submits or facilitates the submission of claims for payment to the Department.

002.05 CLAIM. A request for payment for services rendered or supplied by a provider to a client.

002.06 CLEARINGHOUSE. An entity that processes or facilitates the processing of information received from another entity in the following formats:

- (A) In a nonstandard format or containing nonstandard data content into a standard transaction; or
- (B) In a standard transaction into nonstandard format or data content.

002.07 CLOSED-END PROVIDER ENROLLMENT. An enrollment that is for a specific period of time.

002.08 EXCLUDED PERSON OR ENTITY. Any individual or entity that is no longer eligible to participate as a provider, owner, managing employee, affiliate, or other individual or entity associated with an enrolled provider in Medicaid due to a sanction.

002.09 EXCLUSION. Prohibition from participating in Medicaid or affiliating with an enrolled provider.

002.10 FRAUD. An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself, herself, or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Fraud includes, but is not limited to, the willful false statement or representation, or impersonation or other device, made by a client, applicant, provider, Department employee, or any other person, for the purpose of obtaining or attempting to obtain, or aiding or abetting any person to obtain:

- (A) An assistance certificate of award to which the individual is not entitled;
- (B) Any commodity, food stuff, food coupon, or payment to which the individual is not entitled or a larger amount of payment than that to which the individual is entitled;
- (C) Any payment made on behalf of a client of medical assistance or social services;
- (D) Any other benefit administered by the State of Nebraska, its agents or assignees; or
- (E) Assistance in violation of any statutory provision relating to programs administered by the Department.

002.11 INITIAL ENROLLMENT. A provider's first time enrolling with Medicaid.

002.12 MANAGING EMPLOYEE. With respect to an entity, an individual, including a general manager, business manager, administrator, or director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.

002.13 MEDICAID EXCLUDED PROVIDERS LIST. List of providers, persons, and entities that have been terminated or excluded from participation with Medicaid.

002.14 OPEN-ENDED PROVIDER ENROLLMENT. An enrollment that has no termination date and continues in force as long as the provider satisfies the applicable eligibility criteria.

002.15 OTHER INDIVIDUALS OR ENTITIES ASSOCIATED WITH THE ENROLLED PROVIDER. Ancillary healthcare professionals or staff who do not see Medicaid patients but are associated with a provider.

002.16 OVERUTILIZATION. Overutilization includes:

- (A) A documented pattern of ordering, performing, or billing tests, examinations, medical visits, surgeries, drugs, or merchandise for which there is no demonstrable need; or
- (B) Inducing, furnishing, or otherwise causing a client to receive services or merchandise not otherwise required by the client, ordered by the attending physician, or deemed appropriate by a utilization review committee.

002.17 OVERPAYMENT. Any erroneous payment to a provider, whether made due to the result of fraud, waste, abuse, inadvertence, or Department error.

002.18 PARTICIPATION. Participation in Medicaid includes providing, referring, furnishing, ordering, or prescribing services to a Medicaid client or causing services to be provided, referred, furnished, ordered, or prescribed for a Medicaid client.

002.19 PAYMENT. Reimbursement or compensation by the Department, its agents, assignees, or managed care plans.

002.20 PERSON. Any individual, company, firm, association, corporation, or other legal entity.

002.21 PERSON WITH AN OWNERSHIP OR CONTROL INTEREST. A person who:

- (A) Has directly or indirectly an ownership interest of five percent or more in the entity;
- (B) Is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds five percent of the total property and assets of the entity;
- (C) Is an officer or director of the entity, if the entity is organized as a corporation; or
- (D) Is a partner in the entity, if the entity is organized as a partnership.

002.22 PATIENT WAIVER. An agreement by which the client agrees to release his or her medical records to state or federal authorities accomplished by the client signing the "Application for Assistance."

002.23 REACTIVATION. Enrollment of a provider whose previous service provider enrollment was terminated or excluded by the Department, and removal from the Medicaid excluded providers list.

002.24 RE-ENROLLMENT. Enrollment of a provider whose previous service provider enrollment expired or was voluntarily closed by the provider.

002.25 REVALIDATION. Process by which the Department confirms a provider's enrollment-related information is valid, updated, and accurate.

002.26 TERMINATION FROM PARTICIPATION. An exclusion from participation in Medicaid.

002.27 TRADING PARTNER AGREEMENT. An agreement related to the electronic exchange of information between the Department and a trading partner.

002.28 TRADING PARTNER. A health care plan, provider, or clearinghouse that transmits any health information in electronic form.

002.29 UNDERUTILIZATION. Not furnishing required services, or a lack of treatment or referrals when there is a demonstrable need.

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002.30 USUAL AND CUSTOMARY CHARGE. The provider's charges to the general public for equivalent goods or services.

002.31 WITHHOLDING OF PAYMENTS. An adjustment of the amounts paid to the provider on pending and subsequently submitted claims to offset overpayments previously made to the provider.

003. PROVIDER REQUIREMENTS.

003.01 PROVIDER ELIGIBILITY. To be eligible to participate in Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP), the provider must meet the general standards for all providers in 471 Nebraska Administrative Code (NAC) Chapters 1, 2, and 3, if appropriate, and the standards for participation for each provider type included within:

- (A) Each provider specific chapter of Title 471 NAC;
- (B) Title 480 NAC for Home and Community-Based Waiver Services;
- (C) Title 403 and 404 NAC for Community-Based Services for Individuals with Developmental Disabilities; and
- (D) Title 482 NAC for Managed Care Services.

003.02 PROVIDER ENROLLMENT. The Department will not cover services rendered, ordered, or referred by a provider, or pay a provider for services, when that provider is not enrolled with Medicaid in accordance with 471 NAC 2. Each provider business location where services are rendered must be enrolled.

003.02(A) PROVIDER SCREENING. The Department will, at a minimum, screen all providers as provided in 42 Code of Federal Regulations (CFR) Part 455, Subpart E. In accordance with 42 CFR 455.452, the Department may enact additional or more stringent screening methods which will be included within either the NAC or Nebraska state law. The Department will deny or terminate the enrollment of any provider that fails to comply with or meet all applicable screening requirements.

003.02(A)(i) SITE VISITS. A provider must permit the Centers for Medicare and Medicaid Services (CMS) and the Department to conduct unannounced onsite inspections of any and all provider locations. The Department may deny or terminate the enrollment of a provider who fails to permit a site visit. The Department may also deny or terminate a provider if, based on the site visit, the Department determines the provider location does not match the service provider agreement or does not meet the standards for participation.

003.02(A)(ii) CATEGORICAL RISK LEVELS. All provider types are categorized into one of three risk levels based on a determination by the Centers for Medicare and Medicaid Services (CMS) and the state Medicaid agency of the risk of fraud, waste, and abuse. The risk level of a provider will be raised to high risk, regardless of their provider type risk level, when payments are suspended based on a credible allegation of fraud, the provider has an existing Medicaid overpayment, or the provider has been excluded by the Office of the Inspector General or any state's Medicaid program within the last 10 years. Provider types are subject to screening requirements based on their applicable risk level.

003.02(A)(ii)(1) LOW RISK. Low risk screening includes:

003.02(A)(ii)(1)(a) LICENSE. Verification that the provider's applicable license(s) is not expired and has no current limitations.

003.02(A)(ii)(1)(b) DATABASES. Pre- and post-enrollment database checks to confirm the identity and participation eligibility of the provider, owners, and managing employees.

003.02(A)(ii)(2) MODERATE RISK. Moderate risk screening includes all components of low risk screening as well as pre- and post-enrollment site visits.

003.02(A)(ii)(3) HIGH RISK. High risk screening includes all components of low and moderate risk screening as well as fingerprint based criminal background checks of the provider or any person who owns five percent or more direct or indirect ownership interest in the provider.

003.02(A)(iii) CRIMINAL BACKGROUND CHECKS. As a condition of enrollment, providers must consent to criminal background checks including fingerprinting when required to do so under State law or by risk level determined for that category of provider. Failure to consent to criminal background checks will result in the denial or termination of the service provider agreement.

003.02(A)(iv) FINGERPRINT SUBMISSION. Any high risk provider, or any person with a five percent or more ownership interest in a high risk provider, must submit a set of fingerprints, in a form and manner determined by the State Medicaid agency, within 30 days upon request from the Centers for Medicare and Medicaid Services (CMS) or the State Medicaid agency. Failure of the provider or owner, as applicable, to meet this requirement will result in the denial or termination of the service provider agreement.

003.02(B) SERVICE PROVIDER AGREEMENTS. Each provider must have an approved service provider agreement with the Department. By signing the service provider agreement, a provider agrees to comply with all provisions stated therein. A service provider agreement is not an employment agreement or contract, and enrollment as a Medicaid provider does not constitute employment by or with the Department and does not guarantee referrals. Service provider agreements cannot be transferred to any other person or entity.

003.02(B)(i) REQUIRED FORMS. Providers must complete, sign, and submit to the Department the following forms as appropriate:

- (1) MC-19, "Service Provider Agreement";
- (2) MLTC-62, "Nebraska Ownership/Controlling Interest and Convictions Disclosure";
- (3) All applicable addendum forms;
- (4) "United States Citizenship Attestation form"; and
- (5) MS-84 "State of Nebraska ACH/EFT Enrollment form".

Certain providers of home and community-based services must also complete provider agreement forms as indicated in Title 480 NAC. Certain providers of medical transportation services must also complete the service provider agreement form as indicated in Titles 473 and 474 NAC.

The Department may require a provider to periodically complete a new service provider agreement to update information or eligibility, and may terminate the enrollment of a provider that fails to comply with this requirement.

003.02(C) APPROVAL AND ENROLLMENT. The Department will review and screen each submitted service provider agreement and upon approval and enrollment will assign an effective date to the provider and a Medicaid provider number to use when billing Medicaid.

003.02(D) ORDERING AND REFERRING PROVIDERS. Ordering and referring physicians or other professionals providing Medicaid services must be enrolled providers and must include their National Provider Identifier (NPI) on any claims for items or services ordered or referred.

003.02(E) REACTIVATION. At the discretion of the Department, providers who have previously been terminated or excluded may or may not be reactivated as providers of Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP) services. At the end of a technical or time-limited termination period, the provider may request in writing that the Department reactivate the service provider agreement. The Medicaid Division may approve or deny reactivation of the service provider agreement. The provider may be reactivated conditionally with a closed-end service provider agreement or other restrictions or requirements as deemed to be necessary by the Department.

003.02(F) REVALIDATION. The Department must revalidate the enrollment of all providers at least every five years. Providers who do not complete revalidation will not be eligible past their revalidation due date.

003.02(G) APPLICATION FEE. At initial enrollment, re-enrollment, reactivation, and revalidation providers must submit to the Department an application fee before the Department can execute a service provider agreement. Exempt from this application fee requirement are the following:

- (i) Individual physicians and non-physician practitioners;
- (ii) Providers enrolled in or that have paid an application fee to Medicare or another State's Medicaid or Children's Health Insurance Program (CHIP); and
- (iii) Providers or categories of providers that have received an application fee waiver from the Centers for Medicare and Medicaid Services (CMS).

003.02(H) TEMPORARY MORATORIA. A moratorium imposed under this section lasts for an initial period of six months and if necessary may be extended in six-month increments by the Department. Notice of any moratoria issued by the Department will be provided through a provider bulletin. The Department, in its discretion and under mandate from the Secretary of the United States Department of Health and Human Services enforces temporary moratoria under either of the following conditions:

- (i) The Department must impose temporary moratoria on the enrollment of new providers or provider types that pose an increased risk to the Medicaid program as identified by the Secretary of the United States Department of Health and Human Services unless the Department determines that a temporary moratorium would adversely affect access to medical assistance; and
- (ii) The Department may impose temporary moratoria or place numerical caps or other limits on the enrollment of new providers that it and the Secretary of the United States Department of Health and Human Services have identified as having significant potential for fraud, waste, or abuse unless the Department determines that such action would adversely affect access to medical assistance.

003.03 STANDARDS FOR PARTICIPATION. Providers must meet the following minimum requirements:

- (1) Accept the philosophy of service provision which includes acceptance of, respect for, and a positive attitude toward Medicaid clients and the philosophy of client empowerment;
- (2) Meet any applicable licensure or certification requirements and maintain current licensure or certification;
- (3) Obtain adequate information on the medical and personal needs of each client, if applicable;
- (4) Not discriminate against any client, employee, or applicant for employment because of race, age, color, religion, sex, handicap, or national origin, in accordance with 45 CFR Parts 80, 84, 90, and 41 CFR Part 60;
- (5) Agree to a law enforcement criminal background check and Adult Protective Services and Child Protective Services Central Registry checks;
- (6) Operate a drug-free workplace;
- (7) Attend training on Medicaid as deemed necessary by the Department;
- (8) Provide services within the scope of practice identified in state and federal law, and under all applicable state and federal licensure or certification requirements; and
- (9) Agree to maintain up-to-date and accurate service provider agreement information by submitting any changes, within 35 days of the change, to the Department.

003.03(A) PROVIDER EMPLOYEES. Employees of providers are subject to the same standards.

003.04 DEPARTMENT EMPLOYEES AS PROVIDERS. No employee of the Department and its subdivisions, and Department contractors, except clinical consultants, may serve as providers under Medicaid or as paid consultants to enrolled providers without the express written approval of the Medicaid Director.

003.05 PRINCIPLES OF PROVIDING MEDICAL ASSISTANCE. The amount and type of service required is defined for each case through utilization review. The provider will limit services to essential health care. The plan for providing services within program guidelines through Medicaid is based on the following principles:

- (A) All plans for medical care must provide for essential health services and for integration of treatment with social planning to reduce economic dependency;
- (B) Medical care and services must be coordinated with health services available through existing public and private sources;

- (C) Medical care and services must be provided as economically as is consistent with accepted standards of medical care and fair compensation to providers;
- (D) Medical care and services must be within the licensure of the provider giving the care or service; and
- (E) The client must be allowed, within these limitations, to exercise free choice in the selection of a qualified provider.

003.06 PROVIDER MATERIALS. The provider is responsible for understanding and complying with all applicable regulations and ensuring that employees, consultants, and contractors are informed about all applicable regulations, including:

- (A) 471 NAC 1, 2, and 3;
- (B) Each service specific chapter in Title 403, 404, 471 and 480 NAC that is applicable to services rendered by the provider, and instructions for forms and electronic transactions.

003.07 PROVIDER BULLETINS. The Medicaid Division may issue provider bulletins to inform providers of regulation interpretations.

003.08 ELECTRONIC INFORMATION EXCHANGE. Any entity that exchanges standard electronic transactions with the Department must have an approved trading partner agreement with the Department.

003.09 VERIFICATION OF LAWFUL PRESENCE. Individual providers enrolling as a solo practitioner must attest to:

- (A) United States citizenship; or
- (B) Status as a qualified alien under the Federal Immigration and Nationality Act, including disclosure of the alien number and official immigration documents as needed to verify status and work authorization.

004. SERVICE PROVIDER REQUIREMENTS. The following provider types have additional participation requirements that must be met in order to enroll and remain enrolled.

004.01 SCHOOL-BASED SERVICES. To participate in Medicaid, the Pay-to Provider must be a recognized public school, Educational Services Unit (ESU), or approved cooperative providing special education and related services. The following provider types are eligible to enroll as service rendering providers for school-based services:

- (A) Occupational therapist, physical therapist, speech pathology, and audiologist;
- (B) Mental health services:
 - (i) Physician;
 - (ii) Licensed psychologist;
 - (iii) Provisionally licensed psychologist;
 - (iv) Licensed independent mental health practitioner (LIMHP);
 - (v) Licensed mental health practitioner (LMHP);
 - (vi) Provisionally licensed mental health practitioner (PLMHP);
 - (vii) Licensed alcohol and drug counselor (LADC);
 - (viii) Provisionally licensed alcohol and drug counselor (PLADC);
 - (ix) Board certified behavioral analyst (BCBA);

- (x) Board certified assistant behavioral analyst; and
- (xi) Registered behavioral technician;
- (C) Nursing services:
 - (i) Registered nurse (RN);
 - (ii) Licensed practical nurse (LPN);
 - (iii) Health technician; and
 - (iv) Health paraprofessional;
- (D) Personal assistance service providers: Personal assistance service providers must be age 19 or older. Provider personnel must be employed by or under contract with the school district, Educational Services Unit (ESU), or approved cooperatives providing special education and related services. Nebraska school districts, Educational Services Units (ESUs), and approved cooperatives providing special education and related services must be enrolled in Medicaid as the qualified providers of services;
- (E) Specialized transportation services: Provider personnel, driver, or transportation aide must be employed by or under contract with the school district, Educational Service Unit (ESU), or approved cooperatives providing special education and related services; and
- (F) Optometrist services: Must be provided by a currently licensed optometrist in the school attended by the client. Provider personnel must be employed by or under contract with the school district, Educational Service Unit (ESU), or approved cooperatives providing special education and related services.

005. ADMINISTRATIVE SANCTIONS.

005.01 REASONS FOR SANCTIONS. The Department may, in its discretion, deny enrollment or sanction a provider for any of the following reasons:

- (1) Improper billing and claims payment practices including, but not limited to:
 - (i) Presenting, or causing to be presented, any false or fraudulent claim for goods or services or merchandise for payment;
 - (ii) Submitting, or causing to be submitted, false information for the purpose of obtaining greater payment than that to which the provider is legally entitled;
 - (iii) Billing in excess of the usual and customary charges;
 - (iv) Presenting a claim, billing, or causing a claim to be presented for payment for services not rendered, including "no-shows";
 - (v) Submitting duplicate bills, including billing Medicaid twice for the same service, or billing both Medicaid and another insurer or government program;
 - (vi) Billing before the goods or services are provided or dispensed;
 - (vii) Billing for services provided by non-enrolled providers, certain sanctioned providers, or excluded persons;
 - (viii) Billing for services rendered by someone else as though the provider performed the services himself or herself;
 - (ix) Billing for services provided by an individual who is required to be licensed or certified and who did not meet that requirement when the service was provided;
 - (x) Billing for services provided outside the provider's scope of practice;
 - (xi) Upgrading services billed and rendered from those actually ordered; and
 - (xii) Upcoding services billed or billing a higher level of service than those actually provided;

- (2) Altering medical records to obtain a higher classification of the client than is truly warranted;
- (3) Submitting, or causing to be submitted, false information for the purpose of meeting prior authorization approval requirements, or obtaining payments for services rendered prior to the effective date of the service provider agreement or the date that the client has been determined to be Medicaid eligible;
- (4) Failing to disclose or make available to the Department, or its authorized representatives, the following information:
 - (i) Records of services provided to Medicaid clients;
 - (ii) Records of payments by the Department, its agents, and others made for those services; and
 - (iii) Records that have been lost, misplaced, or destroyed prior to expiration of any applicable records retention period;
- (5) Failing to provide and maintain quality, necessary, and appropriate services within accepted medical standards as determined by a body of peers, as documented by repeat deficiencies noted by the survey and certification agency, a peer review committee, medical review teams, or independent professional review teams, or by the determination of the Medicaid Director and consultants, or the Department or its designee, the Department's Quality Assurance Committee, any Department Inspection of Care, or a managed care plan's quality assurance committee;
- (6) Breaching the terms of the Medicaid service provider agreement or submitting false or fraudulent application, including the service provider agreement and any necessary accompanying information, for participation as a Medicaid enrolled provider;
- (7) Violating any provision of the Nebraska laws regarding Medicaid or any rule or regulation of Medicaid;
- (8) Failing to comply with the terms of the provider certification on the Medicaid claim form as to the truth and accuracy of the information contained therein;
- (9) Overutilization. A determination of overutilization may be based on a comparison of treatment practices of a specific provider compared to peers for similar types of clients;
- (10) Underutilization;
- (11) Rebating or accepting a fee or portion of a fee or charge for a Medicaid patient referral. Soliciting, offering, or receiving a kickback, bribe, or rebate;
- (12) Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions or regulated industries;
- (13) Failing to meet any applicable licensure or certification standard required by state or federal law;
- (14) Not accepting Medicaid as the payor of last resort, and billing Medicaid when the provider has, or reasonably should have had, knowledge of a liable third party;
- (15) Not accepting Medicaid payment as payment in full for covered services, and collecting or attempting to collect additional payment from others, the client or responsible person, or collecting a portion of the service fee from the client or the client's family, except for required co-payments;
- (16) Refusing to execute a new service provider agreement at the Department's request, failing to update a service provider agreement if required to do so by State or Federal law or failing to update service provider agreement information when changes have occurred;

- (17) Failing to correct deficiencies in operations or improper billing practices after receiving written notice of these deficiencies or practices from the Department;
- (18) Being formally reprimanded or censured by an association of the provider's peers for unethical practices;
- (19) Being suspended, excluded, or terminated from participation in another governmental program, being convicted for civil or criminal violations of Medicaid, or any other state's Medicaid program; or having sanctions applied by the Department's agents or assignees or any other state's Medicaid program;
- (20) Failing to repay or make arrangements for the repayment of overpayments or otherwise erroneous payments;
- (21) Solicitation, borrowing, procuring, obtaining, accepting, stealing or otherwise appropriating any client's funds and personal property by any means;
- (22) Any action resulting in a reduction or depletion of a nursing facility or intermediate care facility for individuals with developmental disabilities (ICF/DD) Medicaid client's personal allowance funds or reserve account unless specifically authorized in writing by the client, or legal representative;
- (23) Reporting of unallowable cost items on a provider's cost report;
- (24) Violating conditions of an exclusion;
- (25) Violating conditions of probationary or restricted licensure;
- (26) Not having the appropriate Drug Enforcement Administration (DEA) license or state drug license;
- (27) Loss, restriction, or lack of hospital privileges;
- (28) Failure or inability to provide and maintain quality, necessary and appropriate services due to physical or mental health conditions of the service provider;
- (29) Endangering health and safety of clients;
- (30) Failure to obtain or maintain required surety bond(s);
- (31) Failure to provide the Department with documentation of authorization for third parties to submit claims for the provider for payment to the Department or failing to update this information when changes have occurred;
- (32) Breaching the terms of a trading partner agreement to exchange information electronically;
- (33) Disclosure of information that must be protected in accordance with 42 CFR Part 431, Subpart F;
- (34) Misusing or failing to use electronic records and claims submission systems when required to do so by the Department.
- (35) The provider does not meet the applicable provider standards for participation in Medicaid as listed in Titles 403, 404, 471, 480, and 482 NAC;
- (36) The provider, owner of the provider, or an employee of the provider has been excluded, sanctioned, or terminated from participation by Medicare or Medicaid or Children's Health Insurance Program (CHIP) in any state;
- (37) The provider is the respondent of a protection order;
- (38) The provider, or household member(s) (if services are provided in the provider's home), is on the Adult Protective Services Central Registry, the Child Protective Services Central Registry, or the Sex Offender Registry; or
- (39) The provider, or household member(s) (if services are provided in the provider's home), committed a crime:
 - (i) Against a child or vulnerable adult;

- (ii) Of a nature, duration, or pattern that calls into question his or her regard for the law;
- (iii) Involving the illegal use, possession, or distribution of a controlled substance; or
- (iv) That, if repeated, could injure or harm the Medicaid program or a Medicaid client.

005.01(A) CRIMES. The Department deems a crime to have been committed when a conviction, admission, or substantial evidence of commission exists. In exercising its discretion, the Department considers the severity of the crime(s), the applicability of the crime(s) to the service(s) of the provider, the person's role within the provider entity, and the amount of time that has passed since the commission of the crime(s).

005.01(B) CONVICTION OF INDIVIDUAL WITH AN OWNERSHIP INTEREST IN A PROVIDER. The Department must deny or terminate the enrollment of a provider where any person with a five percent or greater direct or indirect ownership interest in the provider has been convicted of a criminal offense related to that person's involvement with a Medicare, Medicaid or Title XXI program within the last 10 years, unless the Department determines that denial or termination of enrollment is not in the best interest of the Medicaid program.

005.01(C) EXCLUSION OR TERMINATION FROM PARTICIPATION IN MEDICARE OR OTHER STATE MEDICAID OR CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP). The Department must deny or terminate the enrollment of a provider that has been excluded or terminated from participating in Medicare or Medicaid or Children's Health Insurance Program (CHIP) in any State.

005.02 SANCTIONS. The Department may impose one or more of the following sanctions against a provider or any person employed by or contracted with the provider entity responsible for a violation:

- (1) Termination from participation in the Medicaid program;
- (2) Termination from participation in Managed Care;
- (3) Suspension or withholding of payments;
- (4) Recoupment from future payments;
- (5) Transfer to a closed-end service provider agreement not to exceed 12 months, or the shortening of an already existing closed-end service provider agreement;
- (6) Provider education; or
- (7) Exclusion from participation.

005.02(A) TERMINATION FROM PARTICIPATION IN MEDICAID. When terminated, the provider may be subject to the following types of exclusions:

- (1) Permanent;
- (2) Time-limited, which is an exclusion for a specified period of time;
- (3) Technical, which is based on a provider's failure to meet a standard or requirement and remains in effect until the Department determines the provider meets the standard or requirement; and

- (4) Emergency, which is an immediate exclusion based on the Department's determination that client health and safety may be at risk.

005.02(A)(i) CONDITIONS OF TERMINATION AND EXCLUSION. When a provider is terminated or excluded from Medicaid, Medicaid may not make reimbursement for services, items, or drugs that are rendered, referred, ordered, or prescribed by the terminated provider or caused to be rendered, referred, ordered, or prescribed for a Medicaid client. A terminated or excluded person or entity shall not have an ownership interest in a Medicaid enrolled provider entity.

005.02(A)(i)(1) EXCEPTION. Medicaid may pay claims from a submitting provider until the submitting provider and the client are notified of the termination of the rendering, referring, ordering, or prescribing provider. Medicaid may pay claims for emergency medical services when Medicaid staff or consultants determine that the services were medically necessary.

005.02(A)(i)(2) SUBMISSION OF CLAIMS. Termination or exclusion from participation will preclude a provider from submitting claims for payment, either personally or through any clinic, group, corporation, or other association, to the Department for any services or supplies provided under Medicaid, except for those services or supplies provided before the termination or exclusion.

005.02(A)(ii) EXCLUSION. The Department may impose the sanction of exclusion upon:

- (1) Providers who allow service provider agreements to lapse or expire; and
- (2) Other individuals or entities associated with an enrolled provider or provider whose service provider agreement has lapsed or has been terminated.

005.02(A)(iii) EXCLUDED PERSON OR ENTITY. No clinic, group, corporation, or other association which is a provider of services shall submit claims for payment to the Department for any services or supplies provided by a person within the organization who has been excluded from participation in Medicaid except for those services or supplies provided before the termination. A provider will not submit any claims to Medicaid that contain the costs of services provided by excluded persons or entities. If these provisions are violated by a clinic, group, corporation, or other association, the Department may sanction the organization and any individual person within the organization responsible for the violation.

005.02(B) SUSPENSION OR WITHHOLDING PAYMENTS. To prevent inappropriate Medicaid payments or to avoid further overpayments, the Department may sanction a provider by suspending the provider's payments with an immediate effective date. The Department will notify the provider by letter that its payments have been suspended. The provider may file an appeal regarding this action; however, the suspension of payments will remain in effect until the hearing decision is made. If a provider participates under one or more provider number, or changes numbers, the Department may, within its sole discretion suspend, withhold, or recoup payments from one or all of the provider numbers.

005.02(C) PROVIDER EDUCATION. A provider who has been sanctioned may be required to participate in a provider education program as a condition of participation.

005.03 IMPOSITION OF A SANCTION. The decision on the sanction to be imposed is at the discretion of the Medicaid Director. The following factors are considered in determining the sanctions to be imposed:

- (1) Seriousness of the offenses;
- (2) Extent of violations;
- (3) History of prior violations;
- (4) Prior imposition of sanctions;
- (5) Prior provision of provider education;
- (6) Provider willingness to comply with program rules;
- (7) Whether a lesser sanction will be sufficient to remedy the problem; and
- (8) Actions taken or recommended by peer review groups and licensing boards.

005.03(A) NOTICE TO THE PROVIDER. The Department will notify the provider at least 30 days before the effective date of the sanction, unless extenuating circumstances exist. The Department may impose a sanction on an emergency basis with immediate effect if, in the Department's discretion, the provider's continued enrollment and participation places a client's health or safety at risk. The provider may file an appeal of the sanction; however, the sanction will remain in effect until the hearing decision is made.

005.03(B) NOTICE TO THE PUBLIC. When a sanction is imposed, the Department will give general notice to the public of the restriction, its basis, and its duration.

005.03(C) NOTIFICATION OF OTHER AGENCIES. When a provider has been sanctioned, the Department will notify, as appropriate, the applicable professional society, board of registration or licensure, and federal or state agencies. The notification will include a summary of the findings made and the sanctions imposed.

005.03(D) NOTIFICATION OF LOCAL DEPARTMENT OFFICES. When a provider's participation in Medicaid has been terminated, the Department will notify the local Department offices of the termination.

005.03(E) MEDICAID EXCLUDED PROVIDERS LIST. Terminated and excluded persons and entities will be placed on the Medicaid Excluded Providers list for the duration of the prohibition from participation.

005.04 SANCTION OF AFFILIATES AND ASSOCIATES. The Department may sanction all known affiliates of a provider or other persons associated with an enrolled provider. Each decision to sanction an affiliate or other person associated with an enrolled provider is made on a case by case basis after considering all relevant facts and circumstances. The Department may determine the violation, failure, or inadequacy of performance, which resulted in a provider sanction, took place in the course of the affiliate or otherwise associated person's official duty or with the knowledge or approval of the affiliate or associated person.

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005.05 REACTIVATION. Persons and entities that have been terminated or excluded may request reactivation in writing once the exclusionary period has passed. Reactivation is at the discretion of the Department.

006. AUDITS. All services for which claims for payment are submitted to the Department are subject to audit. During a review audit, the provider must furnish to the Department, or its authorized representative, pertinent information regarding claims for payment. If an audit reveals that incorrect payments were made or that the provider's records do not support payments that have been made, the provider shall make restitution.

006.01 SAMPLING AND EXTRAPOLATION. The Department's procedure for auditing providers may involve the use of sampling and extrapolation. The provider shall pay to the Department the entire extrapolated amount of incorrect payments calculated under this procedure after notice and opportunity for hearing.

006.02 HEARINGS. The Department must allow the provider an opportunity to rebut the Department's audit findings. If the findings are based on sampling and extrapolation, in lieu of accepting the Department's sampling and extrapolation, the provider may present an audit of 100 percent of the claims filed and services rendered during the audit period. This audit must be completed by an independent auditor with no affiliation to the provider. Any audit of this type must demonstrate that the provider's records for the unaudited services provided during the audit period were in compliance with the Department's regulations. The provider must be prepared to submit supporting documentation to demonstrate this compliance.

007. APPEAL RIGHTS. Any adverse action under Title 471 NAC may be appealed to the Medicaid Director by the person or entity against whom the action was taken.

007.01 HEARING REQUEST PROCEDURE. The person or entity appealing an adverse action must submit a written hearing request to the Medicaid Director.

007.01(A) DEADLINES. The following deadlines apply when submitting an appeal request:

- (i) Administrative sanctions must be appealed within 30 days of the date of the action;
- (ii) Refund requests must be appealed within 30 days of the date of the action; and
- (iii) All other actions must be appealed within 90 days of the date of the action.

007.01(B) APPEALING BEFORE EFFECTIVE DATE. A person or entity may appeal a termination or exclusion before the effective date of the proposed termination or exclusion. A termination or exclusion appealed before its effective date will not take effect until the appeal has been decided, unless the termination or exclusion is being imposed pursuant to 42 C.F.R. 455.416(c) or has an immediate effective date because of a threat to client health and safety.

007.02 HEARINGS. Appeal and hearing procedures are governed by 465 NAC 6.

008. DISCLOSURE OF INFORMATION BY PROVIDERS. Under 42 CFR 455, Subpart B, the Department requires providers to disclose the following information:

- (1) Ownership and control;

- (2) Business transactions; and
- (3) The providers' owners and other persons convicted of crimes against Medicare, Medicaid, or Title XX (Social Services Block Grant) programs.

008.01 OWNERSHIP AND CONTROL. For each managing employee, person or entity with an ownership or control interest in the provider, and subcontractor of which the provider owns at least five percent, a provider must disclose the following:

- (1) The name, address including, as applicable, the primary business address, every business location, and P.O. Box address, date of birth or incorporation, and Tax Identification Number or social security number as applicable;
- (2) Whether anyone is related to another as spouse, parent, child, or sibling; and
- (3) The name of any other disclosing entity in which a person named in this chapter has an ownership or controlling interest.

008.01(A) PERIODIC SURVEY AND CERTIFICATION. Any provider that is subject to periodic survey and certification of its compliance with Medicaid standards must supply this information to the Department at the time it is surveyed. Any provider that is not subject to periodic survey and certification must supply the information before entering into a service provider agreement with the Department as a part of the initial enrollment, re-enrollment, reactivation, or revalidation.

008.01(B) DISCLOSURE OF OWNERSHIP. The Department must not approve a service provider agreement, and must terminate an existing service provider agreement, if the provider fails to disclose ownership or control information. The Department shall not pay a provider who fails to disclose ownership or control information.

008.01(C) CHANGE OF INFORMATION. A provider must notify the Department of any changes or updates to the information supplied under 471 NAC 2 not later than 35 days after such changes or updates take effect.

008.02 BUSINESS TRANSACTIONS. Under 42 CFR 455.105(b) when requested, a provider must disclose, within 35 days of the date on the request, the following information:

- (1) The ownership of any subcontractor with whom the provider has had business transactions totaling more than \$25,000 during the 12-month period ending with the date of the request; and
- (2) Any significant business transaction between the provider and any wholly-owned supplier, or between the provider and any sub-contractor, during the five-year period ending on the date of the request.

008.02(A) PAYMENT FOR SERVICES. The Department shall not pay providers who fail to comply with a request for this information, or pay for services provided during the period beginning on the day following the date the information was due to the Department and ending on the day before the date the Department received the information.

008.03 PERSONS CONVICTED OF CRIMES. Before the Department enters into or renews a service provider agreement, or upon request by the Department, the provider must disclose to the Department the identity of any person who:

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- (1) Has ownership or control interest in the provider, or is an agent or managing employee of the provider; and
- (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, Title XXI Children's Health Insurance Program (CHIP), or the Social Services Block Grant (Title XX) programs.

008.03(A) ENROLLMENT TERMINATION. The Department may refuse to enter into or renew a service provider agreement if any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, Title XXI Children's Health Insurance Program (CHIP), or the Social Services Block Grant (Title XX). The Department may deny or terminate enrollment if it determines that the provider did not fully and accurately disclose this information.