

114TH CONGRESS
2D SESSION

S. 2701

To require consideration of the impact on beneficiary access to care and to enhance due process protections in procedures for suspending payments to Medicaid providers.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2016

Mr. HEINRICH (for himself and Mr. UDALL) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To require consideration of the impact on beneficiary access to care and to enhance due process protections in procedures for suspending payments to Medicaid providers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicaid Program In-
5 tegrity Enhancement Act of 2016”.

6 **SEC. 2. REVISION OF REGULATIONS.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of enactment of this section, the Secretary shall re-

1 vise part 455 of title 42, Code of Federal Regulations re-
 2 lating Medicaid program integrity as follows:

3 (1) Section 455.2 relating to the definition of
 4 credible allegation of fraud to comply with the re-
 5 quirements described in subsection (b).

6 (2) Section 455.23 relating to the suspension of
 7 Medicaid payments to a provider by a State Med-
 8 icaid agency to comply with the requirements de-
 9 scribed in subsection (c).

10 (b) REQUIREMENT TO CONSIDER IMPACT ON BENE-
 11 FICIARY ACCESS TO CARE IN DETERMINING A CREDIBLE
 12 ALLEGATION OF FRAUD.—The revised section 455.2 shall
 13 provide that an allegation shall be considered to be a cred-
 14 ible allegation of fraud only if—

15 (1) the allegation has indicia of reliability;

16 (2) the State Medicaid agency has reviewed all
 17 allegations, facts, and evidence carefully and acts ju-
 18 diciously on a case-by-case basis; and

19 (3) the State Medicaid agency has taken into
 20 consideration the potential impact a payment sus-
 21 pension may have on beneficiary access to care.

22 (c) DUE PROCESS REQUIREMENTS FOR PAYMENT
 23 SUSPENSION BASED ON CREDIBLE ALLEGATION OF
 24 FRAUD.—

1 (1) PROCESS REQUIRED BEFORE SUSPEN-
2 SION.—A State Medicaid agency that has received
3 an allegation of fraud against a provider shall not
4 suspend payments to such provider until the agency
5 takes the following actions:

6 (A) The State Medicaid agency consults
7 with the Medicaid fraud control unit for the
8 State or, if the State has no Medicaid fraud
9 control unit, the State attorney general, before
10 suspending payments and receives a written
11 verification from the Medicaid fraud control
12 unit or attorney general, in such form as the
13 Secretary may require, confirming that such
14 consultation took place.

15 (B) The State Medicaid agency certifies to
16 the Secretary that it has considered whether—

17 (i) beneficiary access to items or serv-
18 ices would be jeopardized by a payment
19 suspension;

20 (ii) a good cause not to suspend pay-
21 ments exists under section 455.23(e) of
22 title 42, Code of Federal Regulations (as
23 revised after the application of this Act);
24 and

1 (iii) a good cause to suspend pay-
 2 ments only in part exists under section
 3 455.23(f) of such title of such Code (as so
 4 revised).

5 (C) The State Medicaid agency furnishes
 6 the provider with the agency's reasons for find-
 7 ing that there is no good cause to refrain from
 8 suspending payments in whole or part.

9 (2) PROCESS REQUIRED AFTER SUSPENSION.—
 10 After a State Medicaid agency suspends payments
 11 (in whole or part) to a provider on the basis that the
 12 agency has determined that there is a credible alle-
 13 gation of fraud against a provider for which an in-
 14 vestigation is pending under the Medicaid program,
 15 the agency shall take the following actions:

16 (A) At the beginning of each fiscal quarter
 17 that begins after payments to the provider have
 18 been suspended, the State Medicaid agency
 19 shall—

20 (i) certify to the Secretary that it has
 21 considered whether the suspension of pay-
 22 ments should be terminated or modified
 23 because—

24 (I) a good cause not to suspend
 25 payments exists under section

1 455.23(e) of title 42, Code of Federal
2 Regulations (as revised after the ap-
3 plication of this Act); or

4 (II) a good cause to suspend pay-
5 ments only in part exists under sec-
6 tion 455.23(f) of such title (as so re-
7 vised); and

8 (ii) if the agency finds that there is no
9 good cause to terminate or modify the sus-
10 pension of payments, furnish to the pro-
11 vider the agency's reasons for such finding.

12 (B) If the investigation is not resolved in
13 a reasonable amount of time (as determined by
14 the Secretary), the State Medicaid agency shall
15 disclose to the provider the specific allegations
16 of fraud that formed the basis for the agency's
17 determination that there is a credible allegation
18 of fraud against the provider.

19 (C) Every 180 days after the initiation of
20 a suspension of payments based on credible al-
21 legations of fraud, a State Medicaid Agency
22 shall—

23 (i) evaluate whether there is good
24 cause to not continue such suspension; and

1 (ii) request a certification from the
2 Medicaid fraud control unit for the State
3 or, if the State has no Medicaid fraud con-
4 trol unit, the State attorney general, or
5 other law enforcement agency that the
6 matter continues to be under investigation
7 warranting continuation of the suspension.

8 (D) Good cause not to continue to suspend
9 payments to an individual or entity against
10 which there are credible allegations of fraud
11 shall be deemed to exist if a payment suspen-
12 sion has been in effect for 18 months and there
13 has not been a resolution of the investigation,
14 except a State Medicaid Agency may extend a
15 payment suspension beyond such period if —

16 (i) the case has been referred to, and
17 is being considered by, the Medicaid fraud
18 control unit for the State or, if the State
19 has no Medicaid fraud control unit, the
20 State attorney general, for administrative
21 action or such administrative action is
22 pending; or

23 (ii) the Medicaid fraud control unit
24 for the State or, if the State has no Med-
25 icaid fraud control unit, the State attorney

1 general, submits a written request to the
 2 State Medicaid Agency that the suspension
 3 of payments be continued based on the on-
 4 going investigation and anticipated filing
 5 of criminal or civil action or both or based
 6 on a pending criminal or civil action or
 7 both. At a minimum, the request shall in-
 8 clude the following:

9 (I) Identification of the entity
 10 under suspension.

11 (II) The amount of time needed
 12 for continued suspension in order to
 13 conclude the criminal or civil pro-
 14 ceeding or both.

15 (III) A statement of why or how
 16 criminal or civil action or both may be
 17 affected if the requested extension is
 18 not granted.

19 (d) DEFINITIONS.—For purposes of this section:

20 (1) The term “Medicaid fraud control unit”
 21 means a State Medicaid fraud control unit as de-
 22 fined in section 1903(q) of the Social Security Act
 23 (42 U.S.C. 1396b(q)).

24 (2) The term “Secretary” means the Secretary
 25 of Health and Human Services.

1 (3) The term “State Medicaid agency” means
 2 the agency responsible for administering a State
 3 plan under title XIX of the Social Security Act (42
 4 U.S.C. 1396 et seq.).

5 **SEC. 3. APPEALS PROCESS.**

6 (a) IN GENERAL.—Section 1902(a)(39) of the Social
 7 Security Act (42 U.S.C. 1396a(a)(39)) is amended—

8 (1) by striking “shall exclude” and inserting
 9 “shall—

10 “(A) exclude”;

11 (2) by adding “and” after the semicolon at the
 12 end; and

13 (3) by adding at the end the following new sub-
 14 paragraph:

15 “(B) establish and codify a process where-
 16 by a provider to whom payments have been sus-
 17 pended, in whole or part, on the basis of cred-
 18 ible allegations of fraud against such provider
 19 may appeal any decision (including a decision
 20 not to terminate or modify a payment suspen-
 21 sion that is already in place) by the State agen-
 22 cy that no good cause exists under the regula-
 23 tions of the Secretary to terminate, modify, or
 24 refrain from imposing such suspension of pay-
 25 ment;”.

1 (b) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Subject to paragraph (2),
3 the amendments made by this section shall take ef-
4 fect on the date that is 1 year after the date of the
5 enactment of this Act.

6 (2) DELAY PERMITTED IF STATE LEGISLATION
7 REQUIRED.—In the case of a State plan approved
8 under title XIX of the Social Security Act which the
9 Secretary of Health and Human Services determines
10 requires State legislation (other than legislation ap-
11 propriating funds) in order for the plan to meet the
12 additional requirements imposed by this section, the
13 State plan shall not be regarded as failing to comply
14 with the requirements of such title solely on the
15 basis of the failure of the plan to meet such addi-
16 tional requirements before the first day of the first
17 calendar quarter beginning after the close of the
18 first regular session of the State legislature that
19 ends after the 1-year period beginning with the date
20 of the enactment of this section. For purposes of the
21 preceding sentence, in the case of a State that has
22 a 2-year legislative session, each year of the session
23 is deemed to be a separate regular session of the
24 State legislature.

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