R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-22. Administrative Sanction Procedures and Regulations.
R414-22-1. Introduction and Authority.

(1) In order to ~~effectively and efficiently operate~~ maintain the integrity of the Medicaid program, and to assure the safety of Medicaid members, the Department may implement administrative sanctions against providers who abuse or improperly apply the benefit program or otherwise conduct themselves contrary to law.~~.~~

(2) This rule is authorized by Sections 26-1-5 and Subsection 26-18-3(7).

R414-22-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in reimbursement for services that are either not medically necessary or that fail to meet professionally recognized standards for health care.

(2) "Conviction" or "Convicted" means a criminal conviction entered by a federal or state court for fraud involving Medicare or Medicaid regardless of whether an appeal from that judgment is pending.

(3) "Fiscal agent" means an organization that processes and pays provider claims on behalf of the Department.

(4) "Fraud" means intentional deception or misrepresentation made by a person that results in some unauthorized Medicaid benefit to himself or some other person. It includes any act that constitutes fraud under applicable state law.

(5) "Member" means an individual who is determined eligible for Medicaid

(~~5~~6) "Offense" means any of the grounds for sanctioning set forth in Section R414-22-4.

(~~6~~7) "Person" means any natural person, company, firm, association, corporation or other legal entity.

(~~7~~8) "Practitioner" means a physician or other individual licensed under state law to practice his profession.

(~~8~~9) "Provider" means an individual or other entity who has been approved by the Department to provide services to Medicaid ~~clients~~ members, and who has signed a provider agreement with the Department.

(~~9~~10) "Provider Sanction Committee" means the committee within the Department of Health that determines whether a Medicaid provider with a conviction or other sanction identified in Subsection R414-22-3 (3), (4), or (5) may enroll or remain in the Medicaid program. This committee consists of a designee of the Executive Director of the Department of Health, a designee of the Office of Inspector General of Medicaid Services, and the bureau director over provider enrollment.

(~~10~~11) "Suspension" means that Medicaid items or services provided by a provider under suspension shall not be reimbursed by the Department.

(~~11~~12) "Termination from participation" means termination of

the existing provider agreement.

R414-22-3. Grounds for Excluding Providers.

(1) Upon learning of the crime, misdemeanor or misconduct, the Department shall exclude a prospective Medicaid provider who:

(a) has a current ~~restriction, ~~suspension~~, or probation~~ from the Division of Professional and Occupational Licensing (DOPL) or another state's equivalent agency for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code; or

(b) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a felony conviction involving:

(i) a sexual crime;

(ii) a controlled substance; or

(iii)~~–~~ health care fraud,

~~(c) has a current restriction on their license from DOPL or another state's equivalent agency to treat only a certain age group or gender or DOPL requires another medical professional to supervise and restrict the provider's activity~~; or

(c~~d~~) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a misdemeanor conviction that involves a controlled substance.

(2) Upon learning of the crime, misdemeanor or misconduct, the Department shall terminate a current Medicaid provider for any violation stated in Subsection R414-22-3(1).

(3) If a prospective or current Medicaid provider has a current restriction or probation on their license from DOPL or another state's equivalent agency to treat only a certain age group or gender or DOPL requires another medical professional to supervise and restrict the provider's activity, then the Department will require the provider to submit the same documentation to the Department that the provider is required to submit to DOPL or another state's equivalent agency to demonstrate compliance with the restriction. Failure to submit such documentation to the Department is a basis for suspension or termination of enrollment with Medicaid.

(4~~3~~) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider who has served any term, completed any associated probation or parole, or made complete court-imposed restitution for a prior felony conviction involving:

(a) a sexual crime;

(b) a controlled substance; or

(c) health care fraud.

(5~~4~~) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider or allow a provider to remain in the Medicaid program if the provider has a previous restriction, suspension, or probation from DOPL for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code.

(6~~5~~) Subject to approval of the Provider Sanction Committee, the Department may allow a provider to remain in the Medicaid program when the Office of Inspector General of Medicaid Services

has recommended the program consider termination of the provider.

(~~6~~7) The Provider Sanction Committee may consider the need to maintain ~~client~~ member access to services when making a determination related to convictions or sanctions described in Subsection R414-22-3(~~3~~4), (~~4~~5), or (~~5~~6).

(~~7~~8) The Provider Sanction Committee may use any grounds described in Section R414-22-4 to exclude providers from Medicaid.

(~~8~~9) The Department may exclude a prospective Medicaid provider who has a current ~~restriction,~~ suspension~~, or probation~~ from DOPL or another state's equivalent agency.

(~~9~~10) The Provider Sanction Committee may exclude a prospective provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(~~10~~11) If after review, the Provider Sanction Committee finds there is prior misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed all requirements deemed necessary by the committee.

R414-22-4. Grounds for Sanctioning Providers.

The Department may impose sanctions against a provider who:

(1) knowingly presents, or cause to be presented, to Medicaid any false or fraudulent claim, other than simple billing errors, for services or merchandise; or

(2) knowingly submits, or cause to be submitted, false information for the purpose of obtaining greater Medicaid reimbursement than the provider is legally entitled to; or

(3) knowingly submits, or cause to be submitted, for Medicaid reimbursement any claims on behalf of a provider who has been terminated or suspended from the Medicaid program, unless the claims for that provider were included for services or supplies provided prior to his suspension or termination from the Medicaid program; or

(4) knowingly submits, or cause to be submitted, false information for the purpose of meeting Medicaid prior authorization requirements; or

(5) fails to keep records that are necessary to substantiate services provided to Medicaid recipients; or

(6) fails to disclose or make available to the Department, its authorized agents, or the State Medicaid Fraud Control Unit, records or services provided to Medicaid members~~recipients~~ or records of payments made for those services; or

(7) fails to provide services to Medicaid members~~recipients~~ in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate state regulatory agencies; or

(8) breaches the terms of the Medicaid provider agreement; or

(9) fails to comply with the terms of the provider certification on the Medicaid claim form; or

(10) overutilizes the Medicaid program by inducing, providing, or otherwise causing a Medicaid member~~recipient~~ to

receive services or merchandise that is not medically necessary; or

(11) rebates or accepts a fee or portion of a fee or charge for a Medicaid member~~recipient~~ referral; or

(12) violates the provisions of the Medical Assistance Act under Title 26, Chapter 18, or any other applicable rule or regulation; or

(13) knowingly submits a false or fraudulent application for Medicaid provider status; or

(14) violates any laws or regulations governing the conduct of health care occupations, professions, or regulated industries; or

(15) is convicted of a criminal offense relating to performance as a Medicaid provider; or

(16) conducts a negligent practice resulting in death or injury to a patient as determined in a judicial proceeding; or

(17) fails to comply with standards required by state or federal laws and regulations for continued participation in the Medicaid program; or

(18) conducts a documented practice of charging Medicaid members~~recipients~~ for Medicaid covered services over and above amounts paid by the Department unless there is a written agreement signed by the member~~recipient~~ that such charges will be paid by the member~~recipient~~; or

(19) refuses to execute a new Medicaid provider agreement when doing so is necessary to ensure compliance with state or federal law or regulations; or

(20) fails to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, CMS Form 2567, in provider operations within a specific time frame agreed to by the Department and the provider, or pursuant to a court or formal administrative hearing decision; or

(21) is suspended or terminated from participation in Medicare for failure to comply with the laws and regulation governing that program; or

(22) fails to obtain or maintain all licenses required by state or federal law to legally provide Medicaid services; or

(23) fails to repay or make arrangements for repayment of any identified Medicaid overpayments, or otherwise erroneous payments, as required by the State Plan, court order, or formal administrative hearing decision.

(24) The Department may sanction a Medicaid provider who has a current ~~restriction, or~~ suspension~~, or probation~~ from DOPL or another state's equivalent agency.

(25) The Provider Sanction Committee may sanction a provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(26) If after review, the Provider Sanction Committee finds there is prior misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed all requirements deemed necessary by the committee.

R414-22-5. Sanctions.

Sanctions for violating any subsection of Section R414-22-4 are:

(1) Termination from participation in the Medicaid program; or

(2) Suspension of participation in the Medicaid program.

R414-22-6. Imposition of Sanction.

(1) Before the Department decides to impose a sanction, it shall notify the provider, in writing, of:

(a) the findings of any investigation by the Department, its agents, or Office of Inspector General of Medicaid Services ~~the Bureau of Medicaid Fraud~~; and

(b) any possible sanctions the Department may impose.

(2) Providers shall have 30 days after the notice date to respond in writing to the findings of any investigation. A written request for additional time of less than 30 days may be granted by the Department for good cause shown.

(3) The Provider Sanction Committee has the discretion to impose sanctions after receiving the provider's input.

(4) The Provider Sanction Committee may consider the following factors when determining which sanction to impose:

(a) seriousness of offense;

(b) extent of offense;

(c) history of prior violations of Medicaid or Medicare law;

(d) prior imposition of sanctions by the Department;

(e) extent of prior notice, education, or warning given to the provider by the Department pertaining to the offense for which the provider is being considered for sanction;

(f) adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense;

(g) whether a lesser sanction will be sufficient to remedy the problem;

(h) sanctions imposed by licensing boards or peer review groups and professional health care associations pertaining to the offense; and

(i) suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing these programs.

(5) When the Department decides to impose a sanction, it shall notify the provider at least ten calendar days before the sanction's effective date.

R414-22-7. Scope of Sanction.

(1) Once a provider is suspended or terminated, the Department shall only pay claims for services provided prior to the suspension or termination.

(2) The Department may suspend or terminate any individual, clinic, group, corporation, or other similar organization, who allows a sanctioned provider to bill Medicaid under the clinic, group, corporation or organization provider number.

R414-22-8. Notice of Sanction.

(1) When a provider ~~has been~~ is sanctioned for a period exceeding 15 days, the Department may notify the applicable professional society, board of registration or licensor, and federal or state agencies.

(2) Notice includes:

(a) the findings made; and

(b) the sanctions imposed.

(3) The Department shall timely notify any appropriate Medicaid member~~recipient~~ of the provider's suspension or termination from the Medicaid program.

R414-22-9. Monitoring.

(1) If the Department is aware that an applicant or provider has had an action against them related to the following issues, the applicant will be subject to additional monitoring. The issues include:

(a) claims for excessive charges;

(b) providing unnecessary services;

(c) failing to disclose required information; or

(d) a misdemeanor conviction that involves health care fraud.

(2) The Department will refer applicants or providers described in Subsection R414-22-9(1) to the Office of Inspector General of Medicaid Services to be monitored for at least six months.

R414-22-10. Provider Application.

The Department shall review any Medicaid provider agreement application for previous sanctions before approving the provider agreement.

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