

# Credible Allegations of Fraud & Payment Suspensions Part 2

*(Lead-in music, then standard opening)*

**Canned:** This is a Medicaid program integrity podcast. The Centers for Medicare & Medicaid Services developed and produced these podcasts to keep you informed about Medicaid program integrity topics.

**Narrator:** Welcome to Part Two of the “Credible Allegations of Fraud and Payment Suspension” podcast. This presentation provides information on how credible allegations of fraud and payment suspensions affect Medicaid providers. Let’s join Jim, the program integrity director for the State Medicaid program, as he discusses this issue with Ms. Coffman, an attorney representing Dr. McGee, and his mid-sized family practice clinic in Jim’s State.

*(Scene – On behalf of Dr. McGee, Attorney Mary Coffman calls Jim on the phone)*

**Jim:** Hello. This is Jim. How may I help you?

**Ms. C:** Good morning, Jim. This is Mary Coffman. I’m an attorney calling on behalf of Dr. McGee. He received a notice from your office last week about suspending Medicaid payments to his clinic.

**Jim:** How can I help you, Ms. Coffman?

**Ms. C:** Well, to start with, I need an explanation of what this is all about. I find it difficult to believe you’re suspending payments to my client. He depends on them to keep his doors open and serve his patients.

**Jim:** I certainly understand that, but we didn’t make this decision lightly. By law, we’re obligated to refer suspected fraud to the Medicaid Fraud Control Unit, called the MFCU.[1] Since the passage of the Affordable Care Act, whenever we receive a credible allegation of fraud against a Medicaid provider, as we did in this case, we must immediately suspend payments. We also have to report the allegation to the MFCU by the next business day.[2] If we don’t take these actions, our State is at risk of losing Federal funding for any payments we should’ve suspended.[3]

**Ms. C:** I can appreciate your situation, but I need for you to appreciate my client’s situation. This represents a serious threat to his practice and, potentially, to his patients who are also your beneficiaries. Please just answer a few questions for me: let’s start with this notice. It doesn’t tell me exactly what you think was done wrong.

**Jim:** Frankly, I have to use discretion here to make sure I won’t undermine the MFCU’s efforts. We’ve fully complied with the requirements of the regulation by telling your client in writing, within five days, that his payments are temporarily suspended. The notice also describes the circumstances that allow us to terminate the suspension. We

included the general allegation; in this case that we identified claims that appear to be false, and informed your client the suspension affects all of his payments. In the letter to your client, we told him that he can submit written evidence to convince us to lift the suspension and informed him of his administrative appeal rights.[4]

There is a training presentation on this topic on our website.[5] I'll be happy to send you the link after our call.

**Ms. C:** Thanks, I'm sure that will help. But more immediately, what more can you tell me about what Dr. McGee or his clinic supposedly did wrong? How can he correct the situation without more specific information on these allegations?

**Jim:** As I mentioned before, I can't be forthcoming on the exact nature of the allegations. But I can assure you that we received information that had "indicia of reliability." We were then legally bound to suspend payments and make the referral. And now that the MFCU has accepted the case for a criminal investigation, we can't do anything to compromise their work.

**Ms. C:** How did you identify the "indicia of reliability?"

**Jim:** I can't discuss it in this specific case, but I can describe it in general terms. We can receive a credible allegation of fraud from a variety of sources such as fraud hotline complaints, claims data mining or from patterns we've discovered through audits, false claims cases, or law enforcement investigations.[6] We then conduct a preliminary investigation to determine if there is sufficient basis for a full investigation.[7] If there is, we then suspend payments and make our referral to the MFCU.[8] We never take this step lightly. In addition, we amended our own State regulations to comport with the Federal regulations.[9] This offers additional protections to providers under such scrutiny. Understand, we make a decision about each suspension on its own merits.[10]

**Ms. C:** Are there any exceptions to suspending their payments? Is it possible to limit it in some way? This is going to have a serious outcome on his practice.

**Jim:** There are six exceptions listed in the Federal regulation. They include if: 1) the MFCU specifically requests that payments not be suspended because it might jeopardize their investigation; 2) we can protect ourselves more effectively or quickly through some other remedy like prior approval; 3) patient access is threatened because the provider is a sole physician or source of specialized services in a community or serves many patients in an area designated as medically underserved by the Health Resources and Services Administration (HRSA); 4) the law enforcement declines the referral; 5) we decide it is not in the best interests of the Medicaid program or 6) the provider offers written evidence convincing us to remove the suspension.[11]

Prior to suspending Dr. McGee's payments, we looked at each exception. Based on the information we have, none of the first five exceptions apply to his practice. Of course, now that you're both aware of the suspension, submit any written evidence you have as soon as possible, for our review.

**Ms. C:** I'll get started on the written evidence right away. I am aware that an investigator already served a subpoena to the Oak Street clinic for all records of Dr. McGee's colleague, Dr. Allen, for the last three years. The compliance office started its own review once we knew. I can assure you that if they made any billing errors, they'll correct them and reimburse any overpayments right away.

**Jim:** That's good news, Ms. Coffman, and that's a very positive response. I can't promise anything, of course, but that could help us. Again, no promises, but with the written evidence, we may be able to limit the payment suspension to Oak Street, to Dr. Allen, or both.[12] But you should know we don't suspend payments for mere billing errors.[13] You need to know that even if we terminate the payment suspension entirely, the referral to the MFCU stands and they will pursue the investigation until they're satisfied.[14]

**Ms. C:** Oh boy ... okay, thanks for that clarification. Can you please tell me how long this payment suspension will last? Or, for that matter, how long the MFCU's investigation will take?

**Jim:** The MFCU operates independently of our Medicaid agency.[15] They'll take however long they need to complete their investigation. The full suspension continues unless we find your written evidence compelling or until the MFCU completes its investigation.

We'll stay in close touch with the MFCU. They're obligated to let us know what's going on quarterly. According to Federal regulations, the MFCU has to certify, in writing, that the investigation is still continuing.[16] I want you to remember that any payment suspension is intended to be temporary. We take our obligation to monitor suspensions seriously.

**Ms. C:** All right, I think I know what I need to do next. Do you have time for a couple more questions.

**Jim:** I do...

**Ms. C:** Okay, since Dr. Allen seems to be the subject of the allegations, does it matter if he isn't an employee of the clinic and works under contract?

**Jim:** No, it doesn't make a bit of difference. CMS' frequently asked questions on payment suspension makes that clear.[17]

**Ms. C:** Okay, one last question. How long do you think it will take to review our written evidence?

**Jim:** Please read the written notice. It lays out the appeals process in our State and the timeframes for it. The sooner you submit your written evidence, the sooner we can consider it.

**Ms. C:** Jim, I don't believe that Dr. McGee or his clinic has done anything intentionally wrong. And I certainly hope the MFCU's investigation proves that. In the meantime, Dr. McGee will do his best to continue to serve his patients.

**Jim:** Thank you. Our goal and obligation is to our beneficiaries and ensuring they have appropriate access to services. As part of our ongoing monitoring of your payment suspension, we are following CMS' guidelines and will work with all our partners to evaluate beneficiary access throughout the duration of the suspension.[18]

**Ms. C:** Well, I will be frank – Dr. McGee is not happy about this. He and his staff work hard to serve their patients. But I do appreciate the time you took today to help me better understand this mess. Thank you.

**Jim:** You're welcome, Ms. Coffman. Please don't hesitate to call me anytime.

*(Standard closing)*

**Canned:** More questions? For additional information about credible allegations of fraud and suspensions of payments, contact your State Medicaid agency or the Office of Inspector General at [www \[dot\] oig \[dot\] hhs \[dot\] gov](http://www.oig.hhs.gov).

**Follow us on Twitter**  [#MedicaidIntegrity](https://twitter.com/MedicaidIntegrity)

*(Closing music)*

## Disclaimer

This podcast was current at the time it was published or uploaded onto the web. Medicaid and Medicare policies change frequently so links to the source documents have been provided within the document for your reference.

This podcast was prepared as a service to the public and is not intended to grant rights or impose obligations. This podcast may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. Use of this material is voluntary. Inclusion of a link does not constitute CMS endorsement of the material. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of their contents.

September 2015

## References

- 1 Cooperation With Medicaid Fraud Control Units, 42 C.F.R. § 455.21(a)(1) & (a)(2). Retrieved June 4, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455\\_121&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455_121&rgn=div8)
- 2 Suspension of Payments in Cases of Fraud, 42 C.F.R. § 455.23(d)(2)(i). Retrieved June 4, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455\\_123&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455_123&rgn=div8)
- 3 Social Security Act § 1903(i)(2)(C). Retrieved June 28, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title19/1903.htm](http://www.ssa.gov/OP_Home/ssact/title19/1903.htm)
- 4 Suspension of Payments in Case of Fraud, 42 C.F.R. § 455.23(a)(2). Retrieved June 4, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455\\_123&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455_123&rgn=div8)
- 5 State of New York. Office of Medicaid Inspector General. (2011, September 7) Provider Webinar on Credible Allegations of Fraud. Retrieved June 9, 2015, from [https://www.omig.ny.gov/images/stories/Webinar/sept\\_7\\_final-wf-mh.pdf](https://www.omig.ny.gov/images/stories/Webinar/sept_7_final-wf-mh.pdf)
- 6 Definitions, 42 C.F.R. § 455.2. Retrieved June 9, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=a127873f3c66ca2be906d051b4c30011&mc=true&node=se42.4.455\\_12&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=a127873f3c66ca2be906d051b4c30011&mc=true&node=se42.4.455_12&rgn=div8)
- 7 Preliminary Investigation, 42 C.F.R. § 455.14. Retrieved June 9, 2015, from <http://www.gpo.gov/fdsys/pkg/CFR-2010-title42-vol4/pdf/CFR-2010-title42-vol4-sec455-14.pdf>
- 8 Full Investigation, 42 C.F.R. § 455.15. Retrieved June 9, 2015, from <http://www.gpo.gov/fdsys/pkg/CFR-2010-title42-vol4/pdf/CFR-2010-title42-vol4-sec455-15.pdf>
- 9 State of Mississippi Administrative Code. Retrieved June 9, 2015, from <http://www.sos.ms.gov/ACProposed/00020742b.pdf>

- 10 Definitions, 42 C.F.R. § 455.2. Retrieved June 9, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=a127873f3c66ca2be906d051b4c30011&mc=true&node=se42.4.455\\_12&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=a127873f3c66ca2be906d051b4c30011&mc=true&node=se42.4.455_12&rgn=div8)
- 11 Suspension of Payments in Cases of Fraud, 42 C.F.R. § 455.23(f)(3)(i). Retrieved June 4, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455\\_123&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455_123&rgn=div8)
- 12 Suspension of Payments in Cases of Fraud, 42 C.F.R. § 455.23(e)(2)through (e)(6). Retrieved June 4, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455\\_123&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455_123&rgn=div8)
- 13 U.S. Department of Health and Human Services. Centers for Medicare & Medicaid Services. (2011, March 25) CPI-CMCS Informational Bulletin (FAQs p. 4). Retrieved June 4, 2015, from <http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/payment-suspensions-info-bulletin-3-25-2011.pdf>
- 14 Suspension of Payments in Cases of Fraud, 42 C.F.R. § 455.23. Retrieved June 4, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455\\_123&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=893b28672ad86402dc647b1ecf873714&mc=true&node=se42.4.455_123&rgn=div8)
- 15 Relationship to, and Agreement With, the Medicaid Agency, 42 C.F.R. § 1007.9(a) & (b). Retrieved June 11, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=19eefe4806447289e2fe2ce6c9d5cf93&mc=true&node=se42.5.1007\\_19&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=19eefe4806447289e2fe2ce6c9d5cf93&mc=true&node=se42.5.1007_19&rgn=div8)
- 16 Federal Register Vol. 77, No. 106. (2012, June 1) Office of Inspector General. Revision of Performance Standards for State Medicaid Fraud Control Units, Performance Standard Four-Maintaining Adequate Referrals. Retrieved June 10, 2015, from <http://oig.hhs.gov/authorities/docs/2012/PerformanceStandardsFinal060112.pdf>
- 17 U.S. Department of Health and Human Services. Centers for Medicare & Medicaid Services. (2011, March 25) CPI-CMCS Informational Bulletin (FAQs p. 4). Retrieved June 4, 2015, from <http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/payment-suspensions-info-bulletin-3-25-2011.pdf>
- 18 Centers for Medicare & Medicaid Services. Center for Program Integrity. Medicaid Payment Suspension Toolkit (FAQ No. 14). Retrieved June 4, 2015, from <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforProfs/Downloads/medicaid-paymentsuspension-toolkit-0914.pdf>

