Credible Allegations of Fraud and Payment Suspensions

(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 the "Credible Allegations of Fraud and Payment Suspension" podcast. This podcast provides a simulation of how Medicaid program integrity units handle credible allegations of fraud and payment suspensions, so providers understand the process. By being more aware of credible allegations of fraud, providers can help protect the Medicaid program.

Let's join Jim, a State Medicaid agency program integrity director as he discusses this issue with Patrick, the director of the Medicaid Fraud Control Unit (MFCU) in his State.

Scene – Jim calls Patrick on the phone.

Patrick: Hello, Patrick speaking.

Jim: Hi, Patrick. This is Jim. I have a couple of things I need to talk to you about. Do you have a few minutes?

Patrick: Sure, Jim. Fire away.

Jim: Remember the suspected fraud referral we sent to you earlier this week on that home health agency? The one we think was involved in false certifications of medical necessity?

Patrick: Yes–remind me again how you came across that one?

Jim: We were conducting a routine audit of the provider's billings when our auditors became suspicious of some of the physician certifications. The same physician signed many of them on the same day. That triggered our preliminary investigation under the Federal regs.[1]

Patrick: Understood. What'd you find during the preliminary investigation?

Jim: We did some data mining to see what connections there might be between the doctor and the patients. For some of the beneficiaries, there weren't any claims from that doctor. For others, the date of service didn't match the certification dates on the home health forms. One of our investigators called three of the beneficiaries and not one of them remembered ever seeing that doctor or being served by the home health agency. So we suspended all the provider's payments because we can't be sure a partial suspension would adequately protect us.[2]

Patrick: I don't think there's any doubt that you have a credible allegation of fraud. You've identified a suspicious pattern from your provider audit and followed up with claims data mining and beneficiary interviews.[3] Your work shows the "indicia of reliability" discussed in the regs. By the way, the referral you sent was great.

Jim: Thanks, Patrick. We work hard to follow the referral performance standards CMS issued several years ago.[4] They're helpful because they so clearly lay out what needs to go into the referrals, particularly a detailed description of the suspected misconduct.

Patrick: So, you suspended payments? We're considering doing an undercover operation on this one if the provider hasn't been alerted to the payment suspension.

Jim: We haven't sent the required 5-day notice to the provider yet.[5] That's one of the reasons why I'm calling you. If you're thinking about working on this right away, we could go one of two ways. You can request we withdraw the payment suspension altogether or we could delay the written notice to the provider for 30 days. The notice is renewable twice for a total of a 90-day delay in sending the notice.[6] Given our payment cycle, it's likely this guy doesn't know we've suspended his payments. But he'll certainly figure it out by the end of the first 30 days. So it might be better for you to request a suspension withdrawal. That would be the only "good cause" exception that will fly here.[7] But it's concerning. Given this provider's billing activities, we're at risk of losing a lot of money if the investigation drags out.

Patrick: Yeah, money is always an issue. You're sure the law enforcement request is the only one of the six good cause exceptions that applies here?

Jim: Yeah, I'm sure. Remember the good cause exceptions include:
1) protecting ourselves more effectively or quickly through some other remedy like prior approval; 2) when the provider offers written evidence convincing us to remove the suspension; 3) when patient access is threatened because the provider is the sole physician or source of specialized services in a community or serves many patients in the HRSA-designated medically underserved area; 4) when law enforcement declined the referral; or 5) if we decide it is not in the best interests of the Medicaid program.[8] Of course, the provider isn't aware of the suspension yet, so he hasn't had the chance to rebut it. But none of the others apply in this case.

Patrick: I'll email you today to accept the referral and request a no payment suspension. That should provide you with the written documentation you need. And I'll expect the quarterly certification request to confirm that this investigation is ongoing and active from you.[9] I understand these payment suspensions are not supposed to take on a life of their own. They're only temporary to allow time to conduct the investigation properly. I know you have an ongoing obligation to monitor suspensions to ensure they remain valid.[10]

Jim: Thanks, I appreciate that. This helps me meet Federal documentation requirements. I've got to keep all records related to credible allegations of fraud for a minimum of five years,[11] and I have to submit an annual report to the Secretary of HHS on each of our payment suspensions and good cause exceptions.[12] We just registered with CMS' Medicaid and CHIP web portal to report this information.[13] There's even a webinar posted there on how to use the portal to report payment suspensions.[14]

Patrick: If you do re-impose the payment suspension later and send the notice, how much information do you have to give the provider?

Jim: It's pretty straightforward. We have to tell him we're suspending payments temporarily and under what circumstances we would terminate the suspension. We also give him the general allegation without being specific about your investigation and let him know the suspension will be total, not partial. Finally, we tell him he can submit written evidence to convince us to lift the suspension and what the administrative appeal process is.[15]

Patrick: I'm glad you only have to mention the general allegations. We certainly don't want to compromise the investigation.

Jim: It shouldn't cause you any problems at all. Remember the provider has the right to know why we are taking such a serious action.

Patrick: Understood. It looks like you're following all the key steps laid out in the Medicaid Payment Suspension Toolkit that CMS issued in 2014.[16] Between that, the fraud referral performance standards, and CMS' 2011 informational bulletin on payment suspensions, it's pretty clear how to handle these cases.[17]

Jim: I agree. And I appreciate that guidance. Besides our own commitment to protecting the Medicaid program, you know that there is a lot of interest in this. For example, CMS has cited it in at least two recent program integrity reviews. In one State, the MFCU requested a good cause exception for every credible allegation.[18] The Payment Suspension Toolkit clearly states that blanket requests like that aren't acceptable. Each case has to be evaluated on its own merits.[19] In another review, CMS has found the State out of compliance with most of the provisions of 42 C.F.R § 455.23.[20]

I recently saw an HHS-OIG report criticizing a State for using good cause exceptions for 80 percent of their credible allegations. And more than a fourth of the providers whose payments were suspended still received some payments.[21] According to their work plan, HHS-OIG will conduct more payment suspension reviews in fiscal year 2015.[22]

Patrick: I saw that report. HHS-OIG uses performance standards to evaluate us.[23] We're required to maintain adequate referrals including giving timely responses on referrals and quarterly payment suspension certifications.

Jim: We were smart to incorporate so much of this into our Memorandum of Understanding (MOU).[24] We were also well advised to lay out our credible allegation process in the MOU.[25]

Patrick: I couldn't agree more. But at the end of the day, one of the best tools we have to combat Medicaid fraud, waste, and abuse is our ongoing cooperation and communication.

Jim: Exactly. I'll catch you later.

Patrick: Talk to you soon.

(Standard closing with music)

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.

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