

PUBLICATION

CMS's Payment Suspensions Wreak Havoc: Understanding the Risks [Ober|Kaler]

2016

CMS payment suspensions can cripple any provider's or supplier's operations. Yet, CMS has the authority to impose a payment suspension upon the mere existence of "reliable information" that an overpayment or fraud may exist. Furthermore, payment suspensions leave affected providers and suppliers without appeal rights.

CMS released updated and expanded guidance related to payment suspensions in its [Transmittal 670 \[PDF\]](#) to the Medicare Program Integrity Manual, effective November 23, 2016. Transmittal 670 largely addresses payment suspension process and/or clarifications applicable to Medicare contractors. These updates are important to understand, however, as the changes may assist providers and suppliers in their efforts to counter and/or avoid payment suspensions.

Below, we provide a brief overview of CMS's payment suspension authority, followed by a discussion of some Transmittal 670 updates.

CMS Suspension of Payment Authority

CMS possesses extensive payment suspension authority. Indeed, payments may be suspended where there is "reliable information" of any of the following:

- A "credible allegation" of fraud exists, which CMS has confirmed only needs to have an "indicia of reliability";
- An overpayment exists but the amount of the overpayment is not yet determined;
- The payments to be made may not be correct; or
- The provider or supplier fails to furnish records and other requested information needed to determine amounts due.

CMS confirms that allegations of fraud include reasons that may not typically be viewed as false claims, with Transmittal 670 providing further examples. These examples include suspected violations of the physician self-referral ban, allegations of kickbacks, forged signatures or other misrepresentations on medical records.

The initial payment suspension period is 180 days (with a potential extension for up to two additional 180-day periods even in the absence of proving actual fraud) and the decision to impose or extend a payment suspension is not appealable. Upon receipt of a suspension notice, a provider or supplier is afforded the opportunity to submit a rebuttal statement and address why it believes the payment suspension is not warranted. Transmittal 670 sets the time period for the submission of the rebuttal statement and CMS' period to respond to a rebuttal statement to within 15 calendar days.

Payment suspensions do not halt a provider's or supplier's ability to provide covered services and submit claims. Rather, following claims determinations, payments are placed into an escrow account until after the payment suspension is lifted. CMS confirms, in Transmittal 670, that following the imposition of a payment

suspension, no payments are to be released to the provider or supplier as of the effective date of the payment suspension, which includes claims for dates of service prior to the payment suspension effective date.

Transmittal 670

With Transmittal 670, CMS is imposing additional process requirements on Zone Program Integrity Contractors (ZPICs), both with respect to the initial payment suspension decision and any potential extensions of such payment suspension. For example:

- For initial requests to suspend payments, the ZPIC must inform its assigned CMS Business Function Lead (BFL) of any potential suspension. Only then can the ZPIC submit its payment suspension request to CMS, which must include its draft suspension notice, and all other relevant documentation that supports the suspension request. (The transmittal further confirms that a similar process is required for all ZPIC requests to extend payment suspensions.)
- Even in situations where there is a strong likelihood of fraud, ZPICs are prohibited from referring an overpayment to the Medicare Administrative Contractor (MAC) before having its investigation vetted by CMS.
- CMS' policy guidance previously required a payment suspension notice to include the reason for suspending the payment. In Transmittal 670, CMS clarified that for most payment suspension notices, the ZPIC must now identify and describe "at least five example claims that are associated with the reason for the payment suspension, if available."
- As noted above, the payment suspension does not stop the processing of claims. CMS has stated its preference, in Transmittal 670, that the provider or supplier be additionally placed on a prepayment review so that claims can be audited for reasonableness and/or to determine if the services were rendered as billed.
- Transmittal 670 provides policy guidance related to the length of the payment suspension based on the reason justifying the sanction. CMS states that only in rare instances will it grant an extension of a "general suspension" beyond the initial 180-day period and under no circumstances will a general suspension be extended beyond 360 calendar days. CMS further clarifies that it is only with CMS' approval that a ZPIC may transition a general payment suspension to a "fraud suspension," thereby allowing for the payment suspension to continue for more than 360 days.
- Currently, prior to the expiration of the initial 180-day payment fraud suspension CMS is required to evaluate whether there is a good cause to terminate the payment suspension. CMS clarifies in Transmittal 670 the process for it to consider a "good cause" exception.

The transmittal also provides additional policy guidance for payment suspensions for DME suppliers and payment suspensions involving national providers or suppliers, such as hospital and nursing facility chains, franchised medical clinics and laboratories enrolled in multiple jurisdictions.

Ober|Kaler's Comments

Transmittal 670 contains procedural changes that present providers and suppliers with additional mechanisms to understand and respond to payment suspensions, and to ensure ZPICs are not arbitrarily imposing payment suspensions. Even with this more detailed guidance, providers and suppliers should take appropriate actions to have adequate reserves to allow business operations to continue if a payment suspension is initiated. Additionally, it is important to understand this particular type of payment suspension to be able to appropriately respond to payer credentialing and enrollment questions that require the disclosure of certain adverse actions, since over reporting could have as detrimental an effect as under reporting.

