TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Final Rule
LSA Document #07-540(F)

DIGEST

Amends 405 IAC 1-1-6 to include a corrective action plan as a potential sanction for noncompliance with any provision of IC 12-15 or any rule established under one of those sections, to define a corrective action plan, to identify sanctions for not submitting corrective action plan, and to allow the imposing of sanctions for noncompliance with Section 1902(a)(68) of the Social Security Act regarding "Employee Education About False Claims Recovery". Effective 30 days after filing with the Publisher.

405 IAC 1-1-6

SECTION 1. 405 IAC 1-1-6 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-1-6 Sanctions against providers; determination after investigation

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2
Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 4-21.5-4; IC 12-15-13-3

Sec. 6. (a) If, after investigation by the office of Medicaid policy and planning (office), the office's designee, the Indiana Medicaid fraud control unit (IMFCU), or other governmental authority, the office determines that a provider has violated any provision of IC 12-15, or has violated any rule established under one (1) of those sections, the office may impose one (1) or more of the following sanctions:
(1) Deny payment to the provider for medical assistance services rendered during a specified period of time.
(2) Reject a prospective provider's application for participation in the medical assistance program.
(3) Remove a provider's certification for participation in the medical assistance program (decertify the provider).
(4) Assess a fine against the provider in an amount not to exceed three (3) times the amounts paid to the provider in excess of the amounts that were legally due.
(5) Assess an interest charge, at a rate not to exceed the rate established by ~~IC 12-15-13-3(f)(1),~~ **IC 12-15-13-3(e)(1),** on the amounts paid to the provider in excess of the amounts that were legally due. The interest charge shall accrue from the date of the overpayment to the provider.
(6) Require the provider to create a corrective action plan. A corrective action plan must include the following:
(A) A timeline for coming into compliance with state or federal requirements.
(B) The names, including title, address, and phone number, of persons responsible for ensuring compliance with state or federal requirements.
(C) A description of the actions the entity will take to come into compliance with state or federal requirements.
(D) Any other information required by the office.
If, after sixty (60) days following written notice of a request for a corrective action plan by the state, a provider has not submitted a corrective action plan, the provider may be subject to payment withholding or any other sanction under this rule.

(b) Specifically, the office may impose the sanctions in subsection (a) if, after investigation by the office, the office's designee, the IMFCU, or other governmental authority, the office determines that the provider:
(1) submitted, or caused to be submitted:
(A) claims for medical assistance services: ~~which~~
(i) that cannot be documented by the provider; **or**
~~(2) submitted, or caused to be submitted, claims for medical assistance services~~
(ii) provided to a person other than a person in whose name the claim is made;
~~(3) submitted, or caused to be submitted,~~ **(B)** any false or fraudulent claims for medical assistance services or merchandise;
~~(4) submitted, or caused to be submitted,~~ **(C)** information with the intent of obtaining greater compensation than that which the provider is legally entitled, including charges in excess of the:
(i) fee schedule; or
(ii) usual and customary charges; **or**

~~(5) submitted, or caused to be submitted,~~ **(D)** false information for the purpose of meeting prior authorization requirements;
~~(6)~~ **(2)** engaged in a course of conduct or performed an act deemed by the office to be abusive of the Medicaid program or continuing ~~such~~ **the** conduct following notification that the conduct should cease;
~~(7)~~ **(3)** breached, or caused to be breached, the terms of the Medicaid provider certification agreement;
~~(8)~~ **(4)** failed to comply with the terms of the provider certification on the Medicaid claim form;
~~(9)~~ **(5)** overutilized, or caused to be overutilized, the Medicaid program;
~~(10)~~ **(6)** submitted, or caused to be submitted:
(A) a false or fraudulent provider certification agreement;
~~(11) submitted, or caused to be submitted,~~ **(B)** claims for medical assistance services for which federal financial participation is not available; **or**
~~(12) submitted, or caused to be submitted,~~ **(C)** any claims for medical assistance services or merchandise arising out of any act or practice prohibited by the:
(i) criminal provisions of the Indiana Code; or ~~by the~~
(ii) rules of the office;
~~(13)~~ **(7)** failed to:
(A) disclose or make available to the office, the office's designee, the IMFCU, or other governmental authority, after reasonable request and notice to do so, documentation of services provided to Medicaid recipients and Medicaid records of payments made therefor;
(B) comply with the requirements of 1902(a)(68) of the Social Security Act, except that such failure shall first be sanctioned with a corrective action plan before any other sanction in subsection (a) shall be applied; or
~~(14) failed to~~ **(C)** meet standards required by the state of Indiana or federal law for participation;
~~(15)~~ **(8)** charged a Medicaid recipient for covered services over and above that paid for by the office;
~~(16)~~ **(9)** refused to execute a new provider certification agreement when requested to do so;
~~(17)~~ **(10)** failed to:
(A) correct deficiencies to provider operations after receiving written notice of these deficiencies from the office; **or**
~~(18) failed to~~ **(B)** repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments, unless:
(i) an appeal is pending; and
(ii) the provider has elected not to repay an alleged overpayment ~~pursuant to~~ **under** section 5(d)(3) of this rule; or
~~(19)~~ **(11)** billed the Medicaid program more than the usual and customary charge to the provider's private pay customers.

(c) The assistant secretary of the office or his **or her** duly authorized representative may enter a directive imposing a sanction under IC 4-21.5-3-6. Any directive issued under this subsection shall:
(1) be served upon the provider by certified mail, return receipt requested;
(2) contain a brief description of the order;
(3) become final fifteen (15) days after its receipt; and
(4) contain a statement that any appeal from the decision of the assistant secretary made under this section shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 1-1.5-2.

(d) If an emergency exists, as determined by the office, the assistant secretary or his **or her** duly authorized representative may issue an emergency directive imposing a sanction under IC 4-21.5-4. Any order issued under this subsection shall:
(1) be served upon the provider by certified mail, return receipt requested;
(2) become effective upon receipt;
(3) include a brief statement of the facts and law that justifies the office's decision to issue an emergency directive; and
(4) contain a statement that any appeal from the decision of the assistant secretary made under this section shall be taken in accordance with IC 4-21.5-3-7 and 405 IAC 1-1.5-2.

(e) The decision to impose a sanction shall be made at the discretion of the assistant secretary or his **or her** authorized representative.

(f) Prepayment review of claims is not a sanction and is not subject to appeal.

(Office of the Secretary of Family and Social Services; Title 5, Ch 1, Reg 5-105; filed Jun 19, 1979, 2:16 p.m.: 2

IR 1124; filed Sep 23, 1982, 9:59 a.m.: 5 IR 2349; filed Dec 22, 1995, 2:15 p.m.: 19 IR 1076; errata, 19 IR 1373; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3372; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; filed Feb 20, 2008, 2:18 p.m.: 20080319-IR-405070540FRA)
NOTE: Transferred from the Division of Family and Children (470 IAC 5-1-4.5) to the Office of the Secretary of Family and Social Services (405 IAC 1-1-6) by P.L.9-1991, SECTION 131, effective January 1, 1992.

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