

must be supplied without charge and in the form requested by the unit; and

(iii) Access to any information kept by providers to which the agency is authorized access by section 1902(a)(27) of the Act and § 431.107 of this subchapter. In using this information, the unit must protect the privacy rights of recipients; and

(3) On referral from the unit, initiate any available administrative or judicial action to recover improper payments to a provider.

(b) The agency need not comply with specific requirements under this subpart that are the same as the responsibilities placed on the unit under subpart D of this part.

**§ 455.23 Withholding of payments in cases of fraud or willful misrepresentation.**

(a) *Basis for withholding.* The State Medicaid agency may withhold Medicaid payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation under the Medicaid program. The State Medicaid agency may withhold payments without first notifying the provider of its intention to withhold such payments. A provider may request, and must be granted, administrative review where State law so requires.

(b) *Notice of withholding.* The State agency must send notice of its withholding of program payments within 5 days of taking such action. The notice must set forth the general allegations as to the nature of the withholding action, but need not disclose any specific information concerning its ongoing investigation. The notice must:

(1) State that payments are being withheld in accordance with this provision;

(2) State that the withholding is for a temporary period, as stated in paragraph (c) of this section, and cite the circumstances under which withholding will be terminated;

(3) Specify, when appropriate, to which type or types of Medicaid claims withholding is effective; and

(4) Inform the provider of the right to submit written evidence for consideration by the agency.

(c) *Duration of withholding.* All withholding of payment actions under this section will be temporary and will not continue after:

(1) The agency or the prosecuting authorities determine that there is insufficient evidence of fraud or willful misrepresentation by the provider; or

(2) Legal proceedings related to the provider's alleged fraud or willful misrepresentation are completed.

[52 FR 48817, Dec. 28, 1987]

**Subpart B—Disclosure of Information by Providers and Fiscal Agents**

SOURCE: 44 FR 41644, July 17, 1979, unless otherwise noted.

**§ 455.100 Purpose.**

This subpart implements sections 1124, 1126, 1902(a)(38), 1903(i)(2), and 1903(n) of the Social Security Act. It sets forth State plan requirements regarding—

(a) Disclosure by providers and fiscal agents of ownership and control information; and

(b) Disclosure of information on a provider's owners and other persons convicted of criminal offenses against Medicare, Medicaid, or the title XX services program.

The subpart also specifies conditions under which the Administrator will deny Federal financial participation for services furnished by providers or fiscal agents who fail to comply with the disclosure requirements.

**§ 455.101 Definitions.**

*Agent* means any person who has been delegated the authority to obligate or act on behalf of a provider.

*Disclosing entity* means a Medicaid provider (other than an individual practitioner or group of practitioners), or a fiscal agent.

*Other disclosing entity* means any other Medicaid disclosing entity and any entity that does not participate in Medicaid, but is required to disclose certain ownership and control information because of participation in any of