

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

the programs established under title V, XVIII, or XX of the Act. This includes:

(a) Any hospital, skilled nursing facility, home health agency, independent clinical laboratory, renal disease facility, rural health clinic, or health maintenance organization that participates in Medicare (title XVIII);

(b) Any Medicare intermediary or carrier; and

(c) Any entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health-related services for which it claims payment under any plan or program established under title V or title XX of the Act.

*Fiscal agent* means a contractor that processes or pays vendor claims on behalf of the Medicaid agency.

*Group of practitioners* means two or more health care practitioners who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or common equipment).

*Indirect ownership interest* means an ownership interest in an entity that has an ownership interest in the disclosing entity. This term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

*Managing employee* means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency.

*Ownership interest* means the possession of equity in the capital, the stock, or the profits of the disclosing entity.

*Person with an ownership or control interest* means a person or corporation that—

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by

the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

*Significant business transaction* means any business transaction or series of transactions that, during any one fiscal year, exceed the lesser of \$25,000 and 5 percent of a provider's total operating expenses.

*Subcontractor* means—

(a) An individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients; or

(b) An individual, agency, or organization with which a fiscal agent has entered into a contract, agreement, purchase order, or lease (or leases of real property) to obtain space, supplies, equipment, or services provided under the Medicaid agreement.

*Supplier* means an individual, agency, or organization from which a provider purchases goods and services used in carrying out its responsibilities under Medicaid (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).

*Wholly owned supplier* means a supplier whose total ownership interest is held by a provider or by a person, persons, or other entity with an ownership or control interest in a provider.

[44 FR 41644, July 17, 1979, as amended at 51 FR 34788, Sept. 30, 1986]

**§ 455.102 Determination of ownership or control percentages.**

(a) *Indirect ownership interest.* The amount of indirect ownership interest is determined by multiplying the percentages of ownership in each entity. For example, if A owns 10 percent of the stock in a corporation which owns 80 percent of the stock of the disclosing entity, A's interest equates to an 8 percent indirect ownership interest in the disclosing entity and must be reported. Conversely, if B owns 80 percent of the stock of a corporation which owns 5 percent of the stock of the disclosing