

## Comments and Responses on ARC 1621C

Revise language to 441 IAC §§79.2(2), 79.2(3), 79.2(4), 79.2(6), 79.2(8), 79.14(3)  
Received September 22, 2014

The following person/organizations provided written comments, which are included in the summary below:

1. Clark, Kelsey: Title: Iowa Association of Community Providers
2. Sopulos, Ted: Title: Director of Governmental and Regulatory Affairs, Iowa Health Care Association

### COMMENT:

Both respondents provided similar comments. The proposed revision to IAC 79.2(8), the IACP recommends clarification of “within a reasonable time frame.” The withholding or suspension of payment is such a significant issue, that it is only fair that the person be notified as soon as possible. IACP recommends notification prior to any withholding or suspension of payment.

### RESPONSE:

Federal law requires that a State Medicaid Agency send notice of suspension of program payments within five days of a payment suspension for a credible allegation of fraud (CAF). (42 CFR §455.23(b)(1)(i)). The department will, of course, continue to comply with this federal requirement. In practice, the department regularly mails the Notice of Payment Suspension on the same day that the suspension is imposed. However, federal law contemplates that a five day delay may be appropriate in some cases. Mailing the Notice of Payment Suspension prior to the actual imposition of the payment suspension may impact the department’s ability to protect Medicaid funds against fraud, waste or abuse if the provider receives advance notice of the payment suspension prior to its implementation. In cases not related to CAF, the department will send the notice of payment suspension within 10 days of the payment suspension and will amend 79.2(8) as follows:

**79.2(8)** Suspension or withholding of payments ~~pending a final determination. Where the department has notified a provider of any sanction, overpayment, civil monetary penalty, or other adverse action,~~ The department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question due to a sanction, incorrect payment, civil monetary penalty, or other adverse action, and may also

suspend payment or participation pending a final determination. ~~Where~~If the department ~~intends~~  
~~to~~ withholds or suspends payments, it shall notify the person ~~provider~~ in writing within a  
timeframes prescribed by federal law for cases related to a credible allegation of fraud, and  
within 10 (ten) days for all other cases.~~reasonable timeframe.~~

**COMMENT:**

The proposed revision to IAC 79.2(14)(3)(d), the IACP has concerns that providers with a minor drug offense may be disenrolled from the Medicaid Program.

**RESPONSE:**

At the outset, the department would note a more severe version of this provision is presently found in 441 IAC 79.2(3)(c)(2) and (d); the rule change moves the provision from 441 IAC 79.2(3)(d) to 79.2(14)(3)(d) and thereby changes both the nature of the exclusion and its scope. With respect to the nature of the exclusion, presently such persons and their affiliated corporations are subject to mandatory termination (permanent exclusion), which under federal law also requires exclusion from Medicare and all other state Medicaid programs. By moving the provision to 441 IAC 79.2(14)(3)(d), the exclusion is now a disenrollment, which lacks these federal collateral consequences. With respect to scope, disenrollment is now limited to persons owning, controlling, or directing 5% or more of a corporation and to controlled substance offenses incurred within the last five years.

The intent of the rule is to provide the department with the ability to protect Iowa's most frail members from an agency owned by someone whose recent activity places the member at risk of medication theft or financial abuse.