

Proposed Rule: Provider On-Site Inspection Authority

Preamble: *The Maine Department of Health and Human Services and the Office of MaineCare Services shall work with the Centers for Medicare & Medicaid Services to obtain any necessary approvals to amend the State Plan to enact these reforms.*

Section 1.02-4 (General Definitions, New Definition)

“On-Site Review” or “On-Site Inspection” means a review or inspection conducted by Department personnel or its authorized agents requiring physical presence at the provider’s place of business, service delivery location, or other premises where MaineCare-covered services are rendered or records are maintained. An on-site review or inspection shall not be satisfied by a telephone review, desk review, or any other remote or electronic substitute, unless the Department expressly authorizes an alternative method in writing due to extraordinary circumstances.

Section 1.03-3.A.6 (Grounds for Sanction, New Subsection)

The provider fails to permit access to provider locations for an On-Site Visit, Review, or Inspection.

Section 1.16 (Division of Audit, Program Integrity Authority)

The Division of Audit, Program Integrity Unit, or duly Authorized Entities appointed by the Department have the authority to monitor payments to any MaineCare provider by an audit or post-payment review. Such audits and post-payment reviews shall include On-Site Inspections conducted at the provider’s location. When the Department or its Authorized Entity determines that an On-Site Inspection is necessary to conduct or complete an audit or post-payment review, the provider must make its premises, staff, records, and equipment available for such inspection. A provider’s failure to permit or cooperate with an On-Site Inspection conducted under this Section shall be grounds for sanction under Section 1.20.

Section 1.18 (Fraud, Waste, and Abuse Investigations)

I. On-Site Inspections as part of fraud, waste, and abuse investigations. As part of any fraud, waste, or abuse investigation, the Department or its Authorized Entity shall conduct an On-Site Inspection at the provider’s place of business or service delivery location. Such inspections may be announced or unannounced. During an On-Site Inspection, the provider must provide Department personnel or Authorized Entity representatives with immediate access to the provider’s premises, staff, clinical and financial records, service delivery documentation, equipment, and any other materials relevant to the investigation. An On-Site Inspection conducted under this subsection shall not be substituted by a telephone review, desk review, or electronic document submission.

Section 1.22.4 (On-Site Inspections During Fraud Investigations)

On-Site Inspections During Fraud Investigations. Upon a credible allegation of fraud as defined in Section 1.22-3(A), or at any point during an active fraud investigation conducted under this Section, the Department, Program Integrity Unit, or Authorized Entity shall conduct one or more On-Site Inspections at the provider's place of business or any location where MaineCare-covered services have been or are being rendered. Such inspections may be conducted without prior notice to the provider.

A. Provider Obligation. A provider subject to a fraud investigation under this Section must permit and cooperate with any On-Site Inspection requested by the Department or its Authorized Entity. This obligation exists regardless of whether a payment suspension under Section 1.22-3 is in effect. Cooperation includes granting immediate access to the provider's premises, records, staff, and equipment upon presentation of the Department's or Authorized Entity's credentials.

B. No Substitution. A desk review, telephone contact, or electronic document submission shall not substitute for an On-Site Inspection under this Section. The Department retains discretion to conduct both an On-Site Inspection and a desk review as complementary investigative tools, but completion of a desk review does not satisfy the Department's authority to conduct an On-Site Inspection.

Proposed Rule: Payment Suspension and Escrow Upon Notice of Improper Payment

Preamble:*The Maine Department of Health and Human Services and the Office of MaineCare Services shall work with the Centers for Medicare & Medicaid Services to obtain any necessary approvals to amend the State Plan to enact these reforms.*

Section 1.20-2(D) (Sanction Actions, Existing Subsection Amendment)

D. Withholding or offset of future payments toward recoupment of prior MaineCare reimbursements *and payment suspension and escrow pursuant to Section 1.20-8;*

Section 1.20-3(C)(1) (Notice of Sanction, Existing Subsection Amendment)

1. When a provider, individual or entity, has been sanctioned and/or a recoupment has been imposed, the Department shall notify, if appropriate, the applicable professional society, Board of Registration or Licensure, his or her employer, and federal or state agencies of the findings made and the sanctions imposed. *Where a PSEO has been issued pursuant to Section 1.20-8, the notification required by this subsection shall also reference the PSEO and the provider's rights thereunder.*

Section 1.20-5(F) (Notice of Violation/Recoupment, New Subsection)

F. Effect on New Payments. Upon issuance of a Notice of Violation/Recoupment under this Section, the Department shall simultaneously issue a Payment Suspension and Escrow Order (PSEO) pursuant to Section 1.20-8. Unless the PSEO is modified or vacated pursuant to the procedures in Section 1.20-8, the Department shall suspend the disbursement of new MaineCare payments to the provider and hold such payments in a segregated escrow account pending full recoupment of the identified improper payment amount or final determination that no recoupment is owed, whichever occurs first. The issuance of a PSEO does not alter the provider's obligation to continue providing medically necessary covered services to current MaineCare members during any suspension period, in accordance with Section 1.20-8(G).

Section 1.20-6 (Suspension or Withholding of Payments, Cumulative-Authority Clause Added)

The payment suspension and escrow mechanism established by Section 1.20-8 is cumulative to and does not replace the suspension-and-withholding authority set forth in this Section.

Section 1.20-7 (Procedures Following a Suspension, New Subsections 3 and 4)

3. *During any payment suspension imposed under Section 1.20-8, the provider shall continue to submit claims to the Department on the same schedule required for active providers. Claims received during a suspension period shall be processed, approved, or denied in the ordinary course, and approved claim amounts shall be deposited into the escrow account established pursuant to Section 1.20-8(C), rather than remitted to the provider until a final determination is made as to the existence and amount of any improper payment.*

4. The Department shall provide a suspended provider with monthly written statements showing: (a) all claims received during the suspension period; (b) approved and denied claim amounts; (c) the total balance held in escrow; (d) the remaining unpaid recoupment balance; and (e) the estimated date by which full recoupment from escrowed funds will be achieved at the current rate of payment.

Section 1.20-8 (New Section) Payment Suspension and Escrow Upon Notice of Improper Payment

A. Purpose

This Section establishes a mandatory payment-suspension-with-escrow mechanism to protect MaineCare program funds while a provider contests a Notice of Violation/Recoupment issued under Section 1.20-5. Payments are suspended and held until a final determination is made as to the existence and amount of any improper payment. This Section is intended to satisfy applicable due process requirements under federal and state law while protecting the integrity of the MaineCare program.

B. Scope and Applicability

- 1. Upon issuance of a Notice of Violation/Recoupment under Section 1.20-5 that alleges an improper payment, overpayment, or other billing violation of \$1,000 or more, the Department shall simultaneously issue a Payment Suspension and Escrow Order (PSEO) pursuant to this Section.*
- 2. This Section applies whether the violation arises from: (a) extrapolation from a systematic random sampling of records; (b) calculation from a selective sample of records; or (c) a total review of all records, as provided for in Section 1.20-5(C).*
- 3. This Section does not apply to payment suspensions arising solely from a credible allegation of fraud under Section 1.22-3.*

C. Establishment of Segregated Escrow Account

- 1. Upon issuance of a PSEO, the Department shall establish a segregated interest-bearing escrow account for each affected provider. All MaineCare payments that would otherwise be disbursed to the provider shall instead be deposited into this escrow account.*
- 2. Interest accruing on funds held in escrow shall be credited to the provider upon release of escrowed funds in any amount to the provider, or shall be applied to reduce the identified recoupment amount if funds are ultimately applied to recoupment.*
- 3. The escrow account shall not be commingled with other Department funds and shall be treated as provider funds held in trust by the Department, subject to the conditions and procedures of this Section.*
- 4. Escrowed funds may not be applied toward recoupment until: (a) the provider has waived all rights to review and appeal; (b) the informal review and all available administrative hearing rights have been exhausted; and (c) any applicable judicial review period has expired or been resolved adversely to the provider. The period in Section 1.22-3(K) shall apply.*

D. Notice Requirements

The PSEO issued pursuant to Section 1.20-5(F) and this Section shall be in writing and shall set forth, in plain language:

- 1. A reference to the Notice of Violation/Recoupment issued under Section 1.20-5, including the nature of the alleged violations, the identified dollar amount, and the methodology used to calculate that amount.*
- 2. A clear statement that new MaineCare payments to the provider are being suspended and will be held in escrow pending full recoupment or final determination.*
- 3. The estimated amount of monthly payments that will be directed to escrow, based on the provider's recent payment history.*
- 4. The estimated length of the payment suspension based on the identified recoupment amount and the provider's average monthly MaineCare payment volume.*
- 5. A statement of the provider's due process rights, including:*
 - (a) The right to request an Informal Review of the PSEO within twenty (20) calendar days of receipt of the PSEO, pursuant to Subsection E of this Section.*
 - (b) The right to an administrative hearing before the Division of Administrative Hearings under Sections 1.23 and 1.24 following the Informal Review decision, or in lieu thereof, if the provider waives Informal Review.*
 - (c) The right to request an expedited hearing under Section 1.22-3(I).*
 - (d) The right to other administrative and judicial remedies as provided for by statute.*
- 6. A statement that the suspension of payments does not stay the provider's obligation to provide medically necessary covered services to existing MaineCare members, as provided in Subsection G of this Section.*
- 7. Contact information for the Department official responsible for administering the PSEO, including a phone number and mailing address.*

E. Informal Review of PSEO

- 1. A provider may request an Informal Review of the PSEO within twenty (20) calendar days of the date of receipt of the PSEO. The request shall be in writing and shall be sent to Program Integrity, Office of MaineCare Services. The request shall specify: (a) the grounds on which the provider contends the PSEO should be modified or vacated; (b) any evidence or documentation the provider believes the Department failed to consider; and (c) whether the provider is requesting any partial modification, such as release of escrowed funds for specific purposes.*
- 2. The filing of a request for Informal Review does not stay the PSEO. Payments shall continue to be deposited into escrow during the Informal Review period.*

3. The Department shall issue a written Informal Review Decision within thirty (30) calendar days of receipt of the request for Informal Review. The Informal Review Decision shall: (a) state whether the PSEO is affirmed, modified, or vacated; (b) if modified, describe the specific modification and its basis; (c) if affirmed, state the specific reasons the PSEO is supported by the available information; and (d) advise the provider of the right to request an administrative hearing within thirty (30) calendar days of receipt of the Informal Review Decision.

4. If, upon Informal Review, the Department determines the PSEO was issued in error or the identified overpayment amount was overstated, the Department shall: (a) immediately vacate or modify the PSEO to reflect the correct amount; and (b) release any escrowed funds in excess of the corrected amount to the provider within ten (10) business days.

F. Administrative Hearing Rights

1. Following receipt of an Informal Review Decision, or following waiver of Informal Review, a provider may request an administrative hearing before the Division of Administrative Hearings pursuant to Sections 1.23 and 1.24 of this Chapter.

2. The request for an administrative hearing shall be made within thirty (30) calendar days of receipt of the Informal Review Decision, or, if Informal Review is waived, within thirty (30) calendar days of receipt of the PSEO.

3. A provider may request an expedited administrative hearing in writing, in accordance with Section 1.22-3(I).

4. The suspension of payments shall not be stayed during the administrative hearing process. Payments shall continue to be deposited into escrow pending the hearing officer's decision and any further appeal.

5. At the administrative hearing, the Department shall bear the burden of proving by a preponderance of the evidence that: (a) the provider received an improper payment; and (b) the identified amount is reasonably calculated.

6. If the hearing officer determines that the identified overpayment amount has been overstated, the PSEO shall be reduced to reflect the amount determined at hearing, and any excess escrowed funds shall be promptly released to the provider.

7. If the hearing officer determines that no improper payment occurred, the PSEO shall be vacated, all escrowed funds including accrued interest shall be released to the provider within ten (10) business days, and the provider shall be restored to full payment status immediately.

G. Continuity of Member Care

1. A payment suspension under this Section does not authorize or excuse a provider from terminating the provision of medically necessary covered services to current MaineCare members. The provider shall continue to provide services in accordance with its MaineCare Provider Agreement and all applicable provisions of the Benefits Manual.

2. *Where the Department determines that a payment suspension has or is likely to create a disruption in medically necessary services to vulnerable MaineCare members, the Department shall: (a) notify affected members of the provider's payment suspension status within thirty (30) days of the PSEO; (b) assist members in identifying alternative providers if the provider indicates it will cease providing services; and (c) coordinate with managed care organizations, as applicable, to ensure continuity of care.*
3. *Nothing in this Section prevents the Department from separately pursuing termination or suspension of provider participation under Section 1.19 or Section 1.20 if the provider's conduct otherwise warrants such action.*

H. Release of Escrowed Funds and Termination of PSEO

1. *The PSEO shall terminate and all escrowed funds, together with accrued interest, shall be released to the provider upon: (a) a final determination, through Informal Review, administrative hearing, or judicial review, that no improper payment was made; (b) full satisfaction of the recoupment obligation from escrowed funds; or (c) execution of a written repayment agreement acceptable to the Department under which the provider agrees to a schedule of direct repayment or offset of future payments, which supersedes the PSEO.*
2. *If escrowed funds are sufficient to fully satisfy the final recoupment obligation before all rights of review are exhausted, the Department shall notify the provider and shall hold any excess funds in escrow for thirty (30) days following the provider's receipt of the notice to allow the provider to contest the final recoupment amount. If no contest is filed within thirty (30) days, the Department shall apply the escrowed funds to the recoupment obligation and release any remaining excess to the provider.*
3. *Upon final determination following exhaustion of all administrative appeals and judicial review, the Department shall apply any remaining escrowed funds to the final recoupment obligation in accordance with statute and Section 1.22-3(K).*

I. Recordkeeping and Reporting

1. *The Department shall maintain complete records of each PSEO, including: the date of issuance; the identified recoupment amount; the basis for the PSEO; all Informal Review requests and decisions; all hearing requests and outcomes; and all escrow account statements.*
2. *The Department shall publish an annual program integrity report with the aggregate number of PSEOs issued, the total amount held in escrow system-wide, the total amount ultimately applied to recoupment, the total amount released to providers, and the average duration of PSEO periods.*

J. Severability

If any provision of Section 1.20-8 is found by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such finding shall not affect the validity of the remaining provisions, which shall continue in full force and effect to the greatest extent permitted by law.