

CMS Proposes Rule Change to Protect Medicaid Provider Payments

Today, the Centers for Medicare & Medicaid Services (CMS) proposed changes to the Medicaid Provider Reassignment regulation that would eliminate state's ability to divert Medicaid payments away from providers, with the exception of payment arrangements explicitly authorized by statute. This proposed regulatory change is designed to ensure that taxpayer dollars dedicated to providing healthcare services for low-income vulnerable Americans are not siphoned away for other purposes.

"The law provides that Medicaid providers must be paid directly and cannot have part of their payments diverted to third parties outside of a few very specific exceptions," said Tim Hill, Acting Director for the Center for Medicaid and CHIP Services. "This proposed rule is intended to ensure that providers receive their complete payment, and any circumstances in which a state does divert part of a provider's payment must be clearly allowed under the law."

Section 1902(a)(32) of the Social Security Act generally prohibits States from making payments for Medicaid services to anyone but the provider. The statute provides only a few specific exceptions to this requirement, such as withholding payment due to a court order for wage garnishments, child support orders, or judgments for monies that are owed to the state.

In 2014, CMS revised the regulation to provide for a new exception to the direct payment requirement for certain providers, which primarily include independent in-home personal care workers. This new regulatory exception authorized a state to divert part of the Medicaid payment to third parties that could then be used to fund other costs on behalf of the provider. After further review, CMS has determined that the new exception created by the 2014 rule is not consistent with the statute, may have resulted in provider payments being diverted in ways that do not comport with the law, and, in some cases, may have occurred without the express knowledge of the provider.

We are seeking comments to inform the development of CMS guidance and help explain which payment arrangements would be considered acceptable assignments of Medicaid payments under the current law, especially those between the states and providers.

To view the proposed rule, please visit: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-14786.pdf>