

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

|                             |                        |
|-----------------------------|------------------------|
| TO<br><i>Roberts/Snyder</i> | DATE<br><i>6-28-13</i> |
|-----------------------------|------------------------|

| DIRECTOR'S USE ONLY  | ACTION REQUESTED   |
|--|--|
| 1. LOG NUMBER<br><i>000404</i>   | <input type="checkbox"/> Prepare reply for the Director's signature<br>DATE DUE _____  |
| 2. DATE SIGNED BY DIRECTOR<br><i>CC: Mr. Tyack, Kost, Singleton</i><br><i>Cleared 7/23/13, letter attached</i> | <input checked="" type="checkbox"/> Prepare reply for appropriate signature<br>DATE DUE <i>7-10-13</i><br><br><input type="checkbox"/> FOIA<br>DATE DUE _____<br><br><input type="checkbox"/> Necessary Action |

| APPROVALS<br>(Only when prepared for director's signature) | APPROVE | * DISAPPROVE<br>(Note reason for disapproval and return to preparer.) | COMMENT |
|--|---------|---|---------|
| 1.   |         |   |         |
| 2.   |         |   |         |
| 3.   |         |   |         |
| 4.   |         |   |         |

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United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

June 24, 2013

**VIA ELECTRONIC TRANSMISSION**

Mr. Anthony E. Keck  
Director  
Office of the Director  
South Carolina Department of Health & Human Services  
P.O. Box 8206  
Columbia, SC 29202-8206

**RECEIVED**

**JUN 28 2013**

Department of Health & Human Services  
**OFFICE OF THE DIRECTOR**

Dear Mr. Anthony E. Keck:

When our government allows doctors who have been criminally convicted for problem prescribing practices and even terminated under state Medicaid programs to provide services under Medicare,<sup>401</sup> it exposes the elderly and chronically ill to potentially unsafe medical treatment and wastes millions of tax payer dollars on fraudulent, abusive, and unreliable providers.

Medicare is the largest federal healthcare program in the country, providing benefits to more than 40 million Americans and carrying a price tag of over \$550 billion.<sup>402</sup> Over 4,000 hospitals and 600,000 individuals provide health care services to Medicare enrollees.<sup>403</sup> Many of these providers also deliver services under State Medicaid programs.

By statute, Medicare must terminate any individual physician or entity from its rolls if that provider was terminated under any State's Medicaid program.<sup>404</sup> However, the requirement to terminate only applies if the provider, supplier, or individual was terminated or had their billing privileges revoked "for cause."<sup>405</sup> Accordingly, any

<sup>401</sup> Tracy Weber, Charles Ornstein & Jennifer LaFleur, "Medicare Drug Program Fails to Monitor Prescribers, Putting Seniors and Disabled at Risk," ProPublica (May 11, 2013), <http://www.propublica.org/article/part-d-prescriber-checkup-mainbar>.

<sup>402</sup> Ctr. for Medicare & Medicaid Serv., *National Health Expenditures Fact Sheet* 3, 22 (2012), available at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet.html>.

<sup>403</sup> <http://www.gao.gov/products/GAO-12-778R>.

<sup>404</sup> See Patient Protection and Affordable Care Act § 6501, 42 U.S.C. 1396a(a)(39).

<sup>405</sup> DEP'T OF HEALTH & HUM. SERV., CTR. FOR MEDICARE & MEDICAID SERV., CPI-CMCS INFO. BULL. 12-02, AFFORDABLE CARE ACT PROGRAM INTEGRITY PROVISIONS -- GUIDANCE TO STATES -- SECTION 6501 -- TERMINATION OF PROVIDER PARTICIPATION UNDER MEDICAID IF TERMINATED UNDER MEDICARE OR OTHER STATE PLAN (2012)..

Medicaid provider terminated "without cause" will not be mandatorily removed from Medicare.

States have broad discretion in terminating providers and may do so both for and without cause. Unfortunately, this flexibility means that States may bar doctors from State Medicaid programs and state medical boards may even censure providers because of fraudulent activity without reporting that the action was taken "for cause." As a result, a "without cause" termination enables duplicitous and untrustworthy providers to continue to draw from Medicare, wasting tax dollars and putting patients at risk.

For example, one Florida physician wrote more than 96,000 prescriptions under state Medicaid over the course of twenty-one months. Yet he remains able to prescribe under Medicare even though he was expelled from state Medicaid, because his expulsion was *without cause*.<sup>406</sup>

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Florida Medicaid also terminated a Miami-based psychologist *without cause* for prescribing powerful sedatives and antipsychotics against the Food and Drug Administration's black box warnings.<sup>407</sup> He now prescribes the same sedatives and antipsychotics under Medicare.<sup>408</sup>

One Chicago psychiatrist wrote an average of 20,000 prescriptions for clozapine each year between 2007 and 2009, most of them for off-label purposes.<sup>409</sup> He was *suspended* from Illinois Medicaid and has a Department of Justice suit pending against him, yet he remains able to provide services under Medicare.<sup>410</sup>

States' current practice of without cause termination from Medicaid may speed their ability to protect Medicaid patients, but it can expose Medicare recipients to potentially unsafe medical treatment and keeps tax dollars flowing to unworthy providers. To better understand your state's termination process, please provide answers to the following questions by July 15, 2013:

1. Please provide your definition of both (i) for cause and (ii) without cause termination.
2. Please provide any factors you consider when determining without cause provider termination over for cause, including how much notice you give the provider.

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<sup>406</sup> *Id.* Termination was "in the best interest of the Medicaid program." Letter from D. Kenneth Yon to Roberta K. Bradford (Apr. 20, 2010), available at <http://www.propublica.org/documents/item/699705-fernando-mendez-villamil-medicaid.html>.

<sup>407</sup> *Id.*

<sup>408</sup> *Id.* See Letter from Tim Bynes to Tom Arnold (Aug. 31, 2005), pg.1, available at <http://www.propublica.org/documents/item/698584-enrique-casuso.html>.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.*

Log: Roberts/Sudar  
C: Direct/CDS  
Singer

3. Is termination from Medicare a factor in your termination considerations?
4. Please provide the ten (10) most recent physicians, including their Medicare provider numbers, who were terminated for cause, as well as the allegations against and detailed reasoning for their termination.
5. Please provide the ten (10) most recent physicians, including their Medicare provider numbers, who were terminated without cause, as well as the allegations against and detailed reasoning for their termination. Please exclude those physicians who were terminated without cause due to inactivity within the program.
6. Does the Medicaid program reimburse for prescriptions that are issued by a provider that has been terminated?
7. Once you have terminated a provider from Medicaid, do you notify the Centers for Medicare and Medicaid Services ("CMS")?
  - a. If yes:
    - i. Please list the last five (5) providers, including Medicare provider numbers, you have transmitted to CMS.
    - ii. How many providers has CMS terminated from Medicare due to your notifications? Please list each of these providers, including their Medicare provider number.
    - iii. Please describe the manner in which you notify CMS.
    - iv. What information do you include in your notification?
  - b. If not, why not?

Thank you in advance for your cooperation and prompt attention to this matter. When responding to this letter, please number your answers in accordance with our questions. I would appreciate a response by July 15, 2013. If you have any questions, please do not hesitate to contact Erika Long of my staff at (202) 224-0675.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



July 23, 2013

To close 404  
+ #23

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510-6275

Dear Senator Grassley:

We appreciate the opportunity to describe the South Carolina Department of Health and Human Services' (SCDHHS) policies and procedures for terminating health care providers from the Medicaid program. While we have always had a process in place to exclude health care providers for Medicaid fraud, patient abuse, and other serious issues such as loss of medical licensure, we have instituted new policies for termination for cause in response to the Provider Enrollment and Screening requirements in the Affordable Care Act. Our policies align with the regulations in 42 CFR 455.400, and were effective December 1, 2012.

Our answers to your specific questions follow.

**1. Please provide your definition of both (i) for cause and (ii) without cause termination.**

Termination "for cause" means that SCDHHS has taken an action to revoke a provider's Medicaid billing privileges, the provider has exhausted all applicable appeal rights or the timeline for appeal has expired, and there is no expectation on the part of the provider or SCDHHS that the revocation is temporary.

"For cause" termination is initiated by SCDHHS, and this action can be appealed by the provider under South Carolina State Regulations, Chapter 126, Article 1, Subarticle 3. Once a provider is terminated for cause, he or she can apply to be reactivated in the Medicaid program, but the issues that led to the termination for cause will have to be resolved first before an application will be considered.

"Termination without cause" means that the provider's Medicaid ID number is placed in a status to show that they are currently not an active provider. This includes the ID numbers of providers who voluntarily withdraw from the Medicaid program, as well as provider numbers deactivated because the Medicaid account shows no billing or other activity over a specified period of time. Failure to timely report changes can result in a termination without cause. SCDHHS requires a provider to report any change in enrollment or contractual information (e.g., mailing or payment address, physical location, telephone number, specialty information, change in group affiliation, ownership, etc.) within thirty days of the change.

**2. Please provide any factors you consider when determining without cause provider termination over for cause, including how much notice you give the provider.**

Factors considered when determining without cause provider termination:

- Returned mail/Unable to locate provider at physical location address
- Telephone number disconnected
- License to practice or permit has expired (as opposed to suspended or revoked as part of board disciplinary action)
- Provider Deceased
- Provider moved out of state
- Non-compliance with policy
- Business location closed
- Inactivity – no Medicaid billing within the past year

In these cases, the provider is not given any notice of the termination, but the provider can re-enroll in Medicaid as long as the provider continues to meet SC Medicaid enrollment requirements.

Multiple factors can trigger a termination for cause. SCDHHS will terminate the enrollment of any provider where any person with a 5 percent or greater direct or indirect ownership interest in the provider did not submit timely and accurate information and cooperate with any screening methods required under 42 CFR Subpart E – Provider Screening and Enrollment. SCDHHS will also terminate the enrollment of any provider that was terminated on or after January 1, 2011, by Medicare or another State's Medicaid or Children's Health Insurance Program.

Unless SCDHHS determines that termination is not in the best interest of the State Medicaid program, SCDHHS will terminate a provider's enrollment for any of the following reasons:

- Any person with a 5 percent or greater direct or indirect ownership interest in the provider has been convicted of a criminal offense related to that person's involvement in Medicare, Medicaid, or title XXI program in the last 10 years.
- The provider or a person with an ownership or control interest or who is an agent or managing employee of the provider fails to submit timely or accurate information and/or does not cooperate with any screening methods required by SCDHHS.
- The provider fails to permit access to provider locations for any site visit under 42 CFR §455.432.
- The provider fails to provide access to Medicaid patient records.
- Any person with a 5 percent or greater direct or indirect ownership interest in the provider fails to submit sets of fingerprints in the form and manner required by SCDHHS within 30 days of a CMS or SCDHHS request.
- It is determined that the provider has falsified any information provided on the application.
- The identity of any provider/applicant cannot be verified.
- The provider fails to comply with the terms of the enrollment agreement.
- The provider fails to comply with the terms of contract with SCDHHS.
- The provider has not repaid an outstanding debt or recoupment identified through a program integrity review.
- The provider's license to practice has been suspended and/or revoked by the respective board for disciplinary reasons, or there are restrictions placed on his or her license that make the provider unsuitable for providing care to Medicaid patients.

- The provider has been terminated by a Medicaid Managed Care Organization for reasons due to fraud or quality of care.
- The provider allows a non-enrolled rendering provider to use an enrolled provider's number, except where otherwise allowed by policy.
- The provider continues to bill Medicaid after the suspension or revocation of their medical license.
- The provider is under a State and/or Federal exclusion.
- The provider has falsified medical records to support the services billed to Medicaid.
- The provider is sanctioned under State regulation 126-403.

In cases of termination for cause, the provider is given 30 days' notice of the action, during which time the provider can file an appeal. In regards to physicians, the primary reason for a termination for cause has been the suspension of the physician's medical license (see the cases described in response to question 4.)

**3. Is termination from Medicare a factor in your termination considerations?**

Yes - SCDHHS will terminate the enrollment of any provider that was terminated on or after January 1, 2011, by Medicare. Upon application for enrollment, SCDHHS will check PECOS, Medicare's on-line provider management system, for the Medicare status of a provider. However, termination from Medicare is not a factor in our determination of whether the termination from Medicaid is for cause or without cause.

**4. Please provide the ten (10) most recent physicians, including their Medicare provider numbers, who were terminated for cause, as well as the allegations against and detailed reasoning for their termination.**

SCDHHS has taken action to terminate for cause five physicians since December 1, 2012. Most of the terminations were for license suspensions related to misuse of controlled substances and prescribing privileges. Prior to December 2012, SCDHHS would *exclude* physicians who lost their license to practice or who failed to repay an overpayment identified through a Program Integrity review. "Exclusion" means that items and services furnished, ordered or prescribed by a specified individual or entity will not be reimbursed under Medicare, Medicaid, and all other Federal healthcare programs until the individual or entity is reinstated by the United States Department of Health and Human Services, Office of Inspector General (OIG). The OIG is responsible for excluding health care providers for reasons such as a fraud conviction, patient abuse, or other crimes. SCDHHS also has the authority to exclude a provider from participation in the Medicaid program. However, termination for cause provides a more appropriate tool to ensure that certain providers are no longer in a position to bill the Medicaid program. Since May 23, 2008, Medicare has required that the NPI be used in place of all provider legacy numbers.

**A. Daniel Henry Jebens, DO**

License No.: 583

NPI: 1821124934

Reason for Termination for Cause action – The physician's medical license was temporarily suspended by the SC Board of Medical Examiners on 12/19/2012, according to information received from the Board. A final order is not yet available. The SCDHHS termination action is based on the physician's temporary suspension by the Medical Board.

**B. Michael Lloyd Hughes, M.D.**

License No: 23667

NPI: 1497731442

Reason for Termination for Cause action – The physician’s medical license was temporarily suspended by the SC Board of Medical Examiners on 12/21/2012. The Board outlined findings of fact related to the physician’s suspension in a final order dated 6/14/2012, which is posted on the Board’s website. The physician applied for interim reinstatement of his license to practice medicine and his license was reinstated by order dated 5/2/2013.

This physician’s termination for cause action is based on his medical license suspension, his termination by a Managed Care Organization, and the findings of fact listed in the Final Order.

**C. John Nichols Burling, M.D.**

SC License No.: 30355

GA License No: 043175-Inactive

NPI: 1649292079

Reason for Termination for Cause action – The physician’s medical license was temporarily suspended by the SC Board of Medical Examiners on 12/19/2012, according to information received from the Board. A final order is not yet available. The physician’s termination for cause action is based on the Medical Board’s suspension of his medical license and the allegations outlined in the temporary suspension order.

**D. Richard A. Hardoin**

License No: F2276

NPI: 1518923440

This physician’s termination “for cause” was initiated and then resolved during the appeal period.

Reason for Termination for Cause action – The physician did not reimburse the Medicaid program for an overpayment of \$27,208.14 established from a Program Integrity review. He had ceased billing SC Medicaid and was located out-of-state.

When the physician received notice of the pending termination for cause, he paid the identified overpayments owed to the Medicaid program. Since the repayment took place during the 30-day window for the appeal, SCDHHS rescinded the termination action.

**E. David Lee Smith, MD**

License No: 20668

NPI: 1710999750

Reason for Termination for Cause action – Dr. Smith voluntarily surrendered his medical license to the SC Board of Medical Examiners on 1/16/2013, due to pending criminal charges.



**5. Please provide the ten (10) most recent physicians, including their Medicare provider numbers, who were terminated without cause, as well as the allegations against and detailed reasoning for their termination. Please exclude those physicians who were terminated without cause due to inactivity within the program.**

| <u>Provider Type</u> | <u>Provider Name</u> | <u>NPI</u> | <u>Term Date</u> | <u>Reason for Termination</u> |
|----------------------|----------------------|------------|------------------|-------------------------------|
| Physician            | John A. Rider        | 1073585204 | 4/3/2013         | Unable to Locate Provider     |
| Physician            | Kinchen Ballentine   | 1710046644 | 3/22/2013        | Moved Out-of-State            |
| Physician            | Lollice B. Courtney  | 1174581987 | 1/12/2013        | Deceased                      |
| Physician            | Ahraya Tocharoen     | 1518936707 | 9/5/2012         | Deceased                      |
| Physician            | James R. Pruitt      | 1043274202 | 2/8/2011         | License Expired               |
| Physician            | Hollis P. Snead Jr.  | 1104908102 | 2/16/2012        | NPI Deactivated               |
| Physician            | Dennis M. Kilgore DO | 1740387711 | 2/16/2012        | NPI Deactivated               |
| Physician            | Nicholas R. Loon     | 1225120090 | 6/15/2011        | NPI Deactivated               |
| Physician            | Donald G. Gallup     | 1659326890 | 1/8/2011         | Deceased                      |
| Physician            | Roland L Skinner Jr. | 1245212356 | 3/24/2011        | Deceased                      |

**6. Does the Medicaid program reimburse for prescriptions that are issued by a provider that has been terminated?**

SCDHHS rejects claims for payment for prescriptions written by providers who have been *excluded* from Medicaid by the OIG and/or SCDHHS. Currently, SCDHHS does not have a process in place to block payment for prescriptions issued by a *terminated* provider, but development of this process is underway as part of an agency improvement project that will be implemented by the end of the year.

Currently, if a provider has a valid NPI, the only control in place to block their prescriptions would be if the provider was on our state excluded provider list, which is maintained on the SCDHHS website, or on the federal excluded provider list maintained by the OIG (the LEIE). But as noted, SCDHHS is implementing system changes to only pay claims if the prescriber is an enrolled Medicaid provider. At that time, we would deny claims for anyone who is not an SC Medicaid provider, and therefore this would block payment for prescriptions from any terminated physician.

**7. Once you have terminated a provider from Medicaid, do you notify the Centers for Medicare and Medicaid Services ("CMS")?**

SCDHHS recently obtained the ability to report the names of providers terminated "for cause" with other states via a CMS supported web-based portal referred to as MC SIS. SCDHHS will report termination for cause actions to the MC SIS in order to assist other States with protecting themselves from providers who pose an increased risk to government health care programs. SCDHHS will also notify the OIG of any terminations for cause. These notifications will occur after a provider's termination for cause is final, i.e., after the 30-day appeal process is over and no appeal has been filed, or an appeal has been filed and the decision to terminate upheld.

As of this date, since the provider terminations listed in question 4 are still within the 30-day appeal time frame, SCDHHS has not reported any terminated for cause providers to the MC SIS.

Again, thank you for this opportunity to provide information about the South Carolina Medicaid program. We truly appreciate your efforts toward strengthening the integrity of Medicaid and ensuring robust oversight of this vital program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony E. Keck', with a long horizontal flourish extending to the right.

Anthony E. Keck  
Director

Log #404 ✓



July 25, 2013

Mr. Ken Kramer  
PsychSearch  
Via E-mail: records@psychsearch.net

Dear Mr. Kramer:

This is in response to your request for information from the South Carolina Department of Health and Human Services (DHHS) pursuant to the South Carolina Freedom of Information Act (FOIA) dated July 18, 2013 and received by DHHS on July 18, 2013.

Pursuant to your request, please find attached a copy of DHHS's response to Senator Grassley's letter of June 24, 2013. Also pursuant to your request the following is a link for South Carolina Medicaid exclusions: <https://www.scdhhs.gov/site-page/medicaid-fraud-costs-taxpayers-millions>. Please note that DHHS includes Medicaid exclusions on the website but not terminations.

Thank you for your request. If you have any questions, feel free to contact me at (803) 898-0062.

Sincerely,

Constance D. Holloway  
Assistant General Counsel

CDH

cc: Brenda James

Enclosures