

1. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the debarring agency upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

2. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of such person.

3. Debarment by the Director of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Program or its fiscal agent for any services or supplies he or she has provided under the New Jersey Medicaid or NJ FamilyCare programs, except for services or supplies provided prior to the debarment. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the program or its fiscal agent for any services or supplies provided by a person within such organization who has been debarred by the program, except for services or supplies provided prior to the debarment.

4. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the Director may debar such organization and/or any individual person within said organization who is responsible for such violation.

(i) The Medicaid Agent or DMAHS may suspend a person in the public interest for any cause specified in (d) above, or upon a reasonable suspicion that such cause exists, or when, in the opinion of the Medicaid Agent or DMAHS, such action is necessary to protect the public welfare and the interests of the Medicaid or NJ FamilyCare program.

(j) Conditions for suspension shall be as follows:

1. Suspension shall be imposed only upon approval of the Director of the Division and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director of the Division and of the Attorney General, and shall be rendered in the best interests of the New Jersey Medicaid and NJ FamilyCare programs.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in (d) above may be established by a judgment or order of an administrative agency, or court of competent jurisdiction, or by a judgment of conviction, grand jury indictment, accusation, arrest, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by the Medicaid Agent or DMAHS for any of the causes described in (d) above may be the basis for the imposition of a concurrent suspension by another agency, which may impose such suspension without the approval of the Attorney General.

(k) The Medicaid Agent or DMAHS may suspend a person or his affiliates provided that within 10 days after the effective date of the suspension, the Medicaid Agent or DMAHS provides such party with a written notice stating that a suspension has been imposed and its effective date, setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed, stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue, and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party shall be given either a statement of the reasons for the suspension and an opportunity for a hearing, if he so requests, or a statement declining to give such reasons and setting forth the agency's position regarding the continuation of the suspension. Where a suspension by the Medicaid Agent or DMAHS has been the basis for suspension by another agency, the latter shall note that fact as a reason for its suspension.

(l) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

(m) Scope of suspension rules shall be as follows:

1. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be im-

puted to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him or her with the knowledge or approval of such person.

2. Suspension, by the Medicaid Agent or DMAHS, of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Program or its Fiscal Agent or DMAHS for any services or supplies he or she has provided under the New Jersey Medicaid or NJ FamilyCare program, except for services or supplies provided prior to the suspension. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the Program or its Fiscal Agent for any services or supplies provided by a person within such organization who has been suspended by the Medicaid Agent or DMAHS, except for services or supplies provided prior to the suspension.

3. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the Director may suspend such organization and/or any individual person within said organization who is responsible for such violation.

(n) Exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Medicaid Agent or DMAHS. However, when it is determined essential to the public interest by the Director of the Division, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

(o) Insofar as practicable, prior notice shall be given to the Attorney General and the Treasurer of any proposed debarment or suspension.

(p) The Medicaid Agent or DMAHS shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

(q) This section shall be applicable to all persons, providers, contractors, Fiscal Agent, and their affiliates who engage in State contracting with the Medicaid Agent or DMAHS as defined in this section.

Amended by R.1997 d.354, effective September 2, 1997.
See: 29 N.J.R. 2512(a), 29 N.J.R. 3856(a).

In (a), inserted “, and Reorganization Plan No. 001-1996”; in (b), substituted “New Jersey Medicaid program” and “Medicaid Agent” for “Division” throughout; in (b)3, deleted “reimbursed on a fee-for-service basis”; in (c), rewrote introductory paragraph and deleted “Division”, “Fiscal Agent” and “Provider”; and in (d), substituted “beneficiary” and “beneficiaries” for “recipient” and “recipients”, reference to Medicaid Agent for references to Division, Division of Medical Assistance and Health Services, and Director, and “Program” for references to the Division of Medical Assistance and Health Services, throughout; in (d)5, deleted Public Law references: in (d)17, deleted “form” following “Medicaid claim”; in (d)20, inserted reference to Commissioner of Health and Human Services; and in (j)2, substituted “New Jersey Medicaid program” for “Division”.

Amended by R.1998 d.154, effective February 27, 1998 (operative March 1, 1998; to expire August 31, 1998).
See: 30 N.J.R. 1060(a).

Inserted reference to NJ KidCare and to DMAHS throughout; in (a), added a reference to P.L. 1997, c.272; in (d), inserted “or supplemented” following “amended” in 20, and inserted a reference to Title XXI in 26; in (e), substituted “DMAHS” for “agency” following “Agent or” in 5; and in (i), substituted “Medicaid or NJ KidCare program” for “medical assistance Program” at the end.

Adopted concurrent proposal, R.1998 d.487, effective August 28, 1998.

See: 30 N.J.R. 1060(a), 30 N.J.R. 3519(a).

Readopted the provisions of R.1998 d.154 without change.

Amended by R.2003 d.82, effective February 18, 2003.

See: 34 N.J.R. 2650(a), 35 N.J.R. 1118(a).

Rewrote the section.

Law Review and Journal Commentaries

Defense of Health Care Fraud, Abuse Charges. Richard L. Friedman, 133 N.J.L.J. No. 7, 10 (1993).

Case Notes

DMAHS properly denied a pharmacy’s application for participation in the New Jersey Medicaid program because the pharmacist-in-charge, who was a 50% owner, answered “No” to the question about criminal charges despite the fact that the pharmacist had previously pled guilty to criminal trespass and completed the Pre-Trial Intervention program. Neither alleged confusion regarding the obligation to disclose Pre-Trial Intervention charges nor the fact that the pharmacist was no longer associated with the pharmacy required a different result. *Mi Farmacia v. DMAHS*, OAL Dkt. No. HMA 9969-06, 2008 N.J. AGEN LEXIS 354, Initial Decision (April 30, 2008).

N.J.A.C. 10:49-11.1(d) does not require that a false statement be made willfully in order to deny an application. *Mi Farmacia v. DMAHS*, OAL Dkt. No. HMA 9969-06, 2008 N.J. AGEN LEXIS 354, Initial Decision (April 30, 2008).

Where a registered nurse anesthetist administered 2,000 times the recommended dose of a narcotic anesthetic to three patients, and submitted false answers on applications, good cause existed for debarment from participation in New Jersey Medicaid and Division-administered programs, and the mitigating factors presented by the anesthetist, including the provider’s interest in compensation from the Medicaid program, were superseded by the Division’s “overriding public interest in the proper administration of the Medicaid program in New Jersey.” *Frimpong v. DMAHS*, OAL Dkt. No. HMA 05200-04, 2007 N.J. AGEN LEXIS 752, Initial Decision (November 20, 2007).

Suspension, debarment, and disqualification are measures invoked by the Division to exclude or render ineligible certain persons from participation in contracts and subcontracts with the New Jersey Medicaid or New Jersey FamilyCare programs, the Medicaid Agent, or DMAHS on the basis of a lack of responsibility; the purpose of sanctions is not to punish the person, but rather to protect the interests of Medicaid and New Jersey FamilyCare programs. *Frimpong v. DMAHS*, OAL Dkt. No. HMA 05200-04, 2007 N.J. AGEN LEXIS 752, Initial Decision (November 20, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 210) adopted, which concluded that while the word “shall” in N.J.A.C. 10:49-3.2(b)(3) creates a mandatory time limit of 35 days within which a Medicaid provider applicant is to supply enrollment information requested by the Division, there is no regulatory basis for the Division to deny an application for failure to meet the deadline. The applicant’s failure to provide requested enrollment information within 35 days could not be placed within the rubric of N.J.A.C. 10:49-11.1, which sanctions are stated to be for the purposes of protecting the interests of the New Jersey Medicaid program, and not for punishment. *Grace Pharmacy v. DMAHS*, OAL Dkt. No. HMA 6904-06, 2007 N.J. AGEN LEXIS 528, Final Decision (June 5, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 751) adopted, which concluded that a pharmacy's application to be a Medicaid provider was correctly denied pursuant to N.J.A.C. 10:49-11.1(d)22 because the pharmacy owner willfully or by inexcusably irresponsible omission provided false information on the application concerning the criminal history of the pharmacist-in-charge and then lied about whether the person

was still an employee. *Surgi-Med Pharmacy v. DMAHS*, OAL Dkt. No. HMA 3635-06, 2006 N.J. AGEN LEXIS 934, Final Decision (October 1, 2006).

Pharmaceutical provider submitted a false answer on the application by failing to reveal the adverse action taken against it in Colorado, and