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**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 351 SANCTIONS OR REMEDIES**  
**PART 2 SANCTIONS AND REMEDIES**

**8.351.2.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).  
 [2/1/95; 8.351.2.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 7/1/03]

**8.351.2.2 SCOPE:** The rule applies to the general public.  
 [2/1/95; 8.351.2.2 NMAC - Rn, 8 NMAC 4.MAD.000.2, 7/1/03]

**8.351.2.3 STATUTORY AUTHORITY:** The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-1-12 et seq.  
 [2/1/95; 8.351.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7/1/03]

**8.351.2.4 DURATION:** Permanent  
 [2/1/95; 8.351.2.4 NMAC - Rn, 8 NMAC 4.MAD.000.4, 7/1/03]

**8.351.2.5 EFFECTIVE DATE:** January 1, 2014,  
 [1/1/96; 8.351.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7/1/03]

**8.351.2.6 OBJECTIVE:** The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance programs (MAP).  
 [2/1/95; 8.351.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 7/1/03]

**8.351.2.7 DEFINITIONS:** [RESERVED]

**8.351.2.8 MISSION STATEMENT:** To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.  
 [2/1/95; 8.351.2.8 NMAC - Rn, 8 NMAC 4.MAD.002, 7/1/03]

**8.351.2.9 SANCTIONS AND REMEDIES:** The medical assistance division (MAD) is required to impose sanctions or penalties against providers for fraud, violations of federal or state law, violations of HIPAA regulations, failure to meet professional standards of conduct, non-compliance with the medical assistance division's New Mexico administrative code (NMAC) rules, violations of the Medicaid Provider Act, and other misconduct. See 42 CFR Part 455; Section 30-44-3 NMSA 1978 (Repl. Pamp. 1998). HSD recovers overpayments made to MAD enrolled providers, to include HSD contracted managed care organizations (MCO) contracted providers; and to a MCO's out-of-network providers who have billed and received payments from a HSD contracted MCO. For applying sanctions and remedies, any of the following are considered a MAD enrolled provider.

A. Any individual or other entity who has signed a provider participation agreement (PPA) with MAD, or who has signed an agreement or contract with a HSD contracted MCO.

B. Any individual or other entity who has otherwise received payment for treating or providing services to a medical assistance program (MAP) eligible recipient as an out-of-network provider, a participating or non participating provider, a subcontracted provider, or who participates in an entity contracted by HSD or a HSD contracted MCO, including but not limited to, pharmacy benefit managers, dental benefit administrators, and contracted transportation services.

C. Any individual or other entity that provides a service to a MAP eligible recipient which results in a claim for payment by MAD, the HSD contracted fiscal agent, or by a HSD contracted MCO or coordinated care organization with or without a contractual basis for the claim submission.

D. Any individual or other entity who submits a claim to medicare or to a medicare advantage plan for a MAP eligible recipient, for which a copayment, coinsurance, or deductible is applied.

E. An employee, owner, or contractor to any of the above.  
 [1/1/96; 8/1/99; 8.351.2.9.9 NMAC - Rn, 8 NMAC 4.MAD.960 & A, 7/1/03]

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**8.351.2.10 SANCTIONS:** MAD is required to impose sanctions against a provider for violation of the provisions outlined in the MAD New Mexico administrative code (NMAC) rules and federal and state laws and regulations. MAD has discretion to impose monetary or non-monetary sanctions against providers for fraud or other forms of misconduct.

A. **Provider fraud:** Fraud is the intentional misappropriation, deception or misrepresentation made by a provider with the knowledge that the deception could result in some unauthorized benefit to the provider, other entity or some other person. The term includes any act that constitutes fraud under applicable federal or state law or regulation.

B. **Misconduct defined:** Provider misconduct includes, but is not limited to, any of the following:

(1) engaging in a course of conduct or performing an act that violates any provision of federal or state statutes, laws, regulation, and rules, to include HIPAA, or the continuation of his or her conduct after the receipt of the notice that the conduct should cease;

(2) failure to meet federal or state licensing or certification standards required of the provider or other entity, including the revocation or suspension of his or her license. The provider or other entity must notify MAD of such failure;

(3) failure to correct deficiencies in provider or other entity operations within time limits specified by HSD or its authorized agent after receiving written notice of these deficiencies;

(4) failure to maintain and retain any medical, behavioral health or business records as are necessary to:

(a) verify the treatment or care of a MAP eligible recipient for which the provider or other entity received payment from MAD or a HSD contracted MCO to provide the benefit or service;

(b) services or goods provided to any MAP eligible recipient for which the provider or other entity received payment from MAD or a HSD contracted MCO;

(c) amounts paid by MAD or a HSD contracted MCO on behalf of a MAP eligible recipient;

(d).....identify the practitioners and qualifications of practitioners providing the service, and

(e) other records required by MAD for at least six years from the date of creation or until ongoing audits are settled, whichever is longer;

(5) furnishing services to a MAP eligible recipient or billing MAD or a HSD contracted MCO for services which fall outside the scope of the provider's practice board or outside the scope of his or her prescribed practice or as limited by MAD's NMAC rules;

(6) failure to comply with the terms of the provider certification, electronic signature, or terms of submission for the claim form;

(7) failure to provide complete, accurate, and current information on his or her MAD provider participation agreement (PPA);

(8) breach of the terms of the provider's MAD PPA;

(9) failure to provide or maintain services which meet professionally recognized standards of care and quality;

(10) engaging in negligent or abusive practices which result in death or physical, emotional, or psychological injury to a MAP eligible recipient;

(11) failure to repay or make arrangements to repay identified overpayments;

(12) failure to make records available upon request to HSD or its delegated agent;

(13) violation of any laws, regulations or code of ethics governing the conduct of providers;

(14) conviction of crimes relating to the neglect or abuse of any of his or her patients;

(15) conviction of a felony relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance;

(16) conviction of program-related crimes under medicare to include any other programs administered by the federal government or any state health care program or the suspension or termination of a provider's participation by this or another state's medicaid agency;

(17) seeking payment for a furnished service or for work related charges and penalties from a MAP eligible recipient or his or her personal or authorized agent, except as allowed and specifically delineated by HSD;

(18) refusing to furnish services to a MAP eligible recipient because he or she has third-party coverage; or

(19) advising a MAP eligible recipient to terminate his or her third-party coverage;

(20) failing to follow federal or state regulations and rules regarding the management of pain with controlled substances, the prescription monitoring program, and prescribing controlled substances;

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(21) injudicious or excessive prescribing;  
 (22) failing to maintain a practitioner-to-patient relationship while prescribing controlled substances;  
 (23) failure of a provider or other entity to report overpayments identified by the provider or other entity within 60 calendar days of identification which, at that point, are presumed to be false claims and are subject to determination as credible allegations of fraud.

C. **Violation of Medicaid Provider Act:** Violations of the Medicaid Provider Act include the following:

- (1) a material breach of a provider's obligation to furnish services to a MAP eligible recipient or any other duty specified under the terms of his or her PPA;
- (2) a violation of any provision of the Public Assistance Act or the Medicaid Provider Act or any regulations and rules issued pursuant to those acts;
- (3) the provider or other entity intentionally or with reckless disregard made false statements with respect to any report or statement required by the Public Assistance Act, Medicaid Provider Act or rules issued pursuant to either of act;
- (4) the provider or other entity intentionally or with reckless disregard advertised or marketed or attempted to advertise or market, services to a MAP eligible recipient in a manner to misrepresent its service or capacity for services, or engaged in any deceptive, misleading or unfair practice with respect to advertising or marketing;
- (5) the provider or other entity hindered or prevented the HSD secretary, MAD director, or HSD's authorized agent from performing any duty imposed by the Public Assistance Act, the Human Services Act, the Medicaid Provider Act or any regulations and rules issued pursuant to those acts; or
- (6) the provider or other entity fraudulently procured or attempted to procure any benefit from MAD or a HSD contracted MCO.

[11/1/96; 8/1/99; 8.351.2.10 NMAC - Rn, 8 NMAC 4.MAD.961 & A, 7/1/03]

**8.351.2.11 TYPES OF SANCTIONS:** HSD is allowed to impose monetary or non-monetary sanctions against any provider or other entity for misconduct. HSD is required to impose certain sanctions against a provider or other entity for fraud, HIPAA violations, and other actions. Sanctions may be applied to any provider or other entity receiving payment for services either directly through MAD or through its managed care contractor, subcontractor, or other provider.

A. **Prior approval:** As a condition of payment, MAD or a HSD contracted MCO can require a provider to obtain prior approval before delivering all or certain services including prior to prescribing or ordering services. The prior approval request must be submitted to the HSD's contracted MCO or the MAD UR contractor in a manner prescribed for general utilization review. Failure to obtain prior approval prior to furnishing a service may result in imposition of sanctions. In addition, MAD may sanction a provider or other entity by requiring him or her to obtain prior approval before furnishing all or certain services, including prior to prescribing or ordering services, even if other providers may furnish that service without the requirement of obtaining prior approval; see 8.302.5 NMAC.

B. **Education:** As a condition of payment, MAD or a HSD contracted MCO can require a provider or other entity to attend an educational program if misconduct could be remedied with the provision of identified education. MAD or a HSD contracted MCO may also require a provider or other entity who is seeking reinstatement to attend a specific educational program prior to the approval of his or her new PPA application. Provider education programs may include, but are not limited to, the following:

- (1) claim form completion;
- (2) use and format of the MAD NMAC rules;
- (3) use of procedure codes;
- (4) substantive provisions of MAD's NMAC rule, policy, and requirement;
- (5) reimbursement rates;
- (6) assistance in claims coding and billing; and
- (7) continuing medical or behavioral health education.

C. **Closed-end agreements:** MAD can transfer the provider to a closed-end PPA. A closed-end PPA is for a specified period of time which terminates on a defined date not to exceed 12 months. At the end of this term, a new PPA must be executed for continued MAD participation.

D. **Suspension:** "Suspension" is an exclusion from participation in MAD or a HSD contracted MCO for a specified period of time.

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(1) MAD suspension: MAD may suspend a provider from MAD or a HSD contracted MCO participation for misconduct or fraud.

(a) HSD is permitted to suspend a provider for up to 36 months. The period of suspension is not less than the term of any court-imposed suspension.

(b) If the suspension is imposed by MAD, the effective date of the suspension is the date on the notice of suspension. If the suspension is concurrent with a court-imposed suspension, the effective date is the date of the court-imposed suspension.

(c) MAD is permitted to suspend a provider when the provider's license is terminated, suspended, or moved to an inactive status whether the action is voluntary on the part of the provider or is an action of his or her practice or licensing board. When a provider is reinstated by his or her practice or licensing board, the provider may reapply to MAD. Approval of the provider's PPA will be based on the history, nature, and financial magnitude of the provider's prior misconduct and not solely on the basis of reinstatement of the provider's license.

(2) Medicare suspension: MAD must suspend a provider or other entity that is suspended by medicare or any other federal or state-funded health program. When a MAD suspension is concurrent with a medicare suspension, the effective date of the MAD suspension is the same date of the medicare suspension.

(3) Special exception for health manpower shortage areas: After assessing the nature of the violation or misconduct, MAD has the option of requesting action from the secretary of the federal department of health and human services (DHHS) if the suspension of a provider would result in the lack of adequate medical or behavioral health services for MAP eligible recipients in a given area. The secretary of DHHS can be asked to:

(a) designate the community as a health manpower shortage area and place national health services corps personnel in the community; or

(b) waive the provider's suspension based upon submission of adequate documentation that the suspension would deprive the provider's community of needed medical or behavioral health services because of a shortage of practitioners in the area.

(4) Submission of claims following suspension:

(a) If a provider is suspended from MAD or a HSD contracted MCO participation, the provider is prohibited from submitting claims for payment to MAD, its MAD claims processing contractor, or to a HSD contracted MCO.

(b) MAD or a HSD contracted MCO will not pay claims submitted by clinics, groups, corporations, associations or other entities associated with a provider who is suspended from MAD participation for services furnished by such provider after the effective date of the suspension.

(c) Claims for services, treatment or supplies furnished by the provider before the effective date of the suspension can be submitted. The claims may be subject to pre-payment review.

(5) Reinstatement: A provider can apply for reinstatement at the end of a suspension period. Reinstatement is not automatic or guaranteed. A provider must furnish written documentation that he or she meets all relevant licensing, certification, or registration requirements as specified by MAD, HSD's behavioral health services division (BHSD), the children, youth and families department (CYFD), or the department of health (DOH).

**E. Termination:** Termination is the ending of the provider's MAD PPA for a specified period of time. MAD must terminate the provider's PPA in certain specified instances and is permitted to terminate the PPA in other instances.

(1) Mandatory termination: MAD must terminate the PPA when any of the following events occur:

(a) provider is convicted of MAP or medicare fraud;

(b) provider has a previous suspension from MAD with failure to correct identified deficiencies; or

(c) provider is terminated from participation in the medicare program or another federal or state-funded health program.

(2) Discretionary termination: MAD may terminate the provider's PPA when the violation is so egregious, in the discretionary opinion of MAD, that other sanctions are not sufficient to address, reduce or eliminate the violation or when the identified deficiency or violation reflects a pattern of violation.

(3) Effective date of termination: The effective date of the MAD PPA termination is the date of a MAD or a medicare fraud conviction or the date of the provider's medicare termination. If termination follows a prior suspension from MAD or the termination is discretionary, the date of termination is set by MAD.

(4) Termination of a NF or intermediate care facility's PPA:

(a) MAD or a HSD contracted MCO can terminate a NF or an intermediate care facility for individuals with intellectual disabilities (ICF-IID) PPA instead of or in addition to other alternative remedies.

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Termination can occur in the instances which include, but are not limited to, the following:

- (i) immediate jeopardy to a NF or ICF-IID MAP eligible recipient resident's health and safety which have not been removed;
  - (ii) the provider is not in substantial compliance with participation requirements regardless of whether immediate jeopardy to a NF or ICF-IID MAP eligible recipient resident is present;
  - (iii) the provider fails to submit an acceptable plan of correction within the specified timeframes;
  - (iv) provider fails to relinquish control to temporary manager; or
  - (v) DOH recommends termination as the most appropriate remedy.
- (b) Termination of the provider's PPA ends payment to the NF or ICF-IID provider.
- (c) Notwithstanding other sections of this rule, payment to the NF or ICF-IID provider can be continued for up to 30 calendar days after the effective date of his or her PPA termination if the following conditions are met:

- (i) the payment is for a NF or ICF-IID MAP eligible recipient resident admitted to the NF or ICF-IID before the effective date of the provider's PPA termination; and
- (ii) MAD or a HSD contracted MCO is making reasonable efforts to transfer a MAP eligible recipient resident to another MAD enrolled facility or to alternate care;
- (iii) for purposes of this provision, the 30 calendar day period begins on the effective date of the provider's PPA termination by CMS, MAD, or by the NF or ICF-IID provider.

(d) Before termination of a provider's NF or ICF-IID PPA, MAD or a HSD contracted MCO must notify the provider and the public at least 15 calendar days before the effective date of the termination with non-immediate jeopardy deficiencies that constitute the noncompliance. For termination due to deficiencies that pose immediate jeopardy to a MAP eligible recipient resident, MAD or a HSD contracted MCO must notify the provider and the public at least two working days before the effective date of the termination.

(e) If the termination of the provider's PPA is selected due to immediate jeopardy to a NF or ICF-IID MAP eligible recipient resident, the effective date of the termination is within 23 calendar days of the last date of its DOH survey.

(5) Submission of claims following termination:

- (a) If a provider is terminated from MAD participation, the provider is prohibited from submitting claims for payment to a HSD contracted MCO or to the MAD claims processing contractor.
- (b) MAD or an HSD contracted MCO will not pay claims submitted by clinics, groups, corporations, associations, or other entities associated with a provider who is terminated from MAD participation for services furnished by such provider after the effective date of the termination.
- (c) Claims for services, treatment or supplies furnished by the provider before the effective date of the termination can be submitted. The claims may be subject to pre-payment review.

(6) Re-application for MAD participation: A provider or other entity must submit a new PPA application after the end of the termination period to MAD, before requesting enrollment in one of HSD's contracted MCOs. A provider must meet certification and licensing requirements specified by MAD, CYFD or DOH to be eligible to once again become a provider.

F. **Civil monetary penalties:** MAD is permitted to impose civil monetary penalties in addition to other penalties, and in accordance with the federal and state laws, regulations and rules.

- (1) Amount of penalty: The provider or other entity is liable for the following:
  - (a) payment of interest on the amount received by the provider or other entity from MAD or a HSD contracted MCO in excess of payment at the maximum legal rate in effect on the date the payment was made, for the period from the date payment was made to the date of repayment to HSD;
  - (b) a civil monetary penalty in an amount of up to the maximum allowable under federal or state law, regulations or rules;
  - (c) a civil monetary penalty of \$500 for each false or fraudulent claim submitted for furnishing treatment, services, or goods; and
  - (d) payment of legal fees and costs of investigation and enforcement of civil remedies.
- (2) Payment of penalty amounts: Penalties and interest amounts must be remitted to the state of New Mexico (the state). Any legal fees, costs of investigation and costs of enforcement of civil remedies recovered on behalf of the state must also be remitted to the state.

(3) **Criminal action:** The filing of a criminal action is not a condition precedent to MAD's imposition of civil monetary penalties.

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G. **Reduction of payment:** MAD may reduce the amount of any payment due a provider or other entity, in addition to other sanctions, if the provider or other entity seeks to collect an amount in excess of the MAD or a HSD contracted MCO's allowable amount from a MAP eligible recipient, his or her family, his or her authorized agent or any other source. See 42 CFR Section 447.20 - 447.21.

(1) The reduction may be equal to up to three times the amount that the provider sought to collect.

(2) For purposes of this provision, the MAD allowable amount is equal to the amount payable under the state plan or MAD NMAC rules, a MAD or a HSD contracted MCO fee schedule. The provider may not charge a MAP eligible recipient for any effort or penalties such as researching eligibility, not having cards, completing paper work or billing forms, missed appointments, or any other add-on cost unless specifically allowed in a MAD NMAC rule.

H. **Sanctions and remedies for noncompliance with nursing facility or intermediate care facility certification requirements:** MAD is required to impose additional remedies against a NF provider who fails to comply with federal medicaid and state MAD participation requirements with respect to his or her licensing and certification. One or more of the following remedies can be imposed by MAD for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance: termination of the NF provider's MAD PPA and all provider contracts with the HSD contracted MCO; temporary management; denial of payment for new admissions; civil money penalties; NF closure or the transfer of MAP eligible recipient residents or both; state monitoring; directed plan of correction; directed inservice training; and other state remedies approved by CMS. MAD is also required to impose remedies against an ICF-IID provider who fail to comply with federal medicaid and state MAD licensing and certification requirements. MAD may terminate an ICF-IID provider's certification or deny payment for new admissions if the provider fails to meet the conditions for participation or certain deficiencies are identified by DOH.

(1) Authority of survey agency: DOH is the survey agency designated by MAD. When the rationale for imposition of the remedies is tied to DOH's licensing and certification responsibilities, criteria for imposition of remedies and description of these specific remedies are based on NMAC rules promulgated by the DOH.

(2) Recommendations for imposition of additional remedies: Following completion of a survey, DOH may recommend that specified remedies be imposed against a NF or an ICF-IID provider for failure to meet certification or licensing requirements which are based on the type, extent and seriousness of an identified deficiency. MAD has five working days from receipt of DOH's recommendations to impose remedies or to oppose the recommendations. Unless a response from MAD is received in writing prior to the expiration of the time period, the recommendations are accepted by MAD as submitted and the recommended remedy is imposed.

(3) Informal reconsideration for an ICF-IID provider: An ICF-IID provider can request an informal reconsideration of the decision to deny, terminate or not renew his or her MAD PPA when the HSD administrative hearing final decision will not be completed prior to the effective date of the termination. The informal reconsideration must be completed prior to the effective date of the termination. The informal reconsideration includes the following:

(a) written notice to the ICF-IID provider of the denial, termination or nonrenewal of his or her MAD PPA;

(b) reasonable opportunity for the ICF-IID provider to refute the findings upon which the decision was based; and

(c) a written affirmation or reversal of the denial, termination or nonrenewal of the provider's MAD PPA.

I. **Sanction for violation of the Medicaid Provider Act:** MAD may take any or any combinations of the following delineated actions against a provider or other entity for a violation of the Medicaid Provider Act.

(1) imposition of an administrative penalty of not more than \$5,000 for engaging in any practice that violates the Act. Each separate occurrence of such practice constitutes a separate offense;

(2) MAD issues an administrative order requiring the provider or other entity to:

(a) cease or modify any specified conduct or practices engaged in by the provider or other entity or his or her employees, subcontractors, or agents;

(b) fulfill its contractual obligations in the manner specified in the order;

(c) provide any service that has been denied;

(d) take steps to provide or arrange for any service that it has agreed to or is otherwise obligated to make available; or

(e) enter into and abide by the terms of binding or nonbinding arbitration proceeding, if agreed to by the opposing parties.

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(3) suspend or terminate the provider's MAD PPA and the provider contracts with a HSD contracted MCO.  
 [11/1/96; 8/1/99; 8.351.2.11 NMAC - Rn, 8 NMAC 4.MAD.962 & A, 7/1/03]

**8.351.2.12 IMPOSITION OF SANCTIONS:**

A. **Mandatory sanctions:** MAD must impose sanctions when a provider receives a formal reprimand or censure for unethical practice by a professional association of the provider's peers or when a provider is suspended or terminated from participation in medicare or any federal or state-funded health care program. Imposition of sanctions are applied to any provider or other entity receiving payment for services either directly through MAD, its contractor, or through any HSD contracted MCO, subcontractor, or provider.

B. **Permissive sanctions:** MAD can impose monetary or non-monetary sanctions against a provider or other entity for fraud or other forms of misconduct.

C. **Criteria used in assessment of permissive sanctions:** MAD uses the following criteria to determine the type of permissive or mandatory sanction to impose:

- (1) seriousness of the violation;
- (2) number and nature of a violation;
- (3) history of a prior violation or prior sanction;
- (4) action or recommendation of peer review group or licensing board;
- (5) nature and degree of adverse impact of the sanction upon a MAP eligible recipient;
- (6) cost to MAD or a HSD contracted MCO of the violation;
- (7) mitigating circumstances; and
- (8) other relevant facts.

[11/1/96; 8.351.2.12 NMAC - Rn, 8 NMAC 4.MAD.963, 7/1/03]

**8.351.2.13 RECOVERY OF OVERPAYMENTS:** MAD can seek recovery of overpayments through the recoupment or repayment process. Overpayments are amounts paid to a MAD provider or other entity in excess of the MAD allowable amount. Overpayment amounts must be collected within 24 months of the initiation of recovery. Overpayment includes, but is not limited to, payment for any claim for which the provider or other entity was not entitled to payment because an applicable MAD NMAC rule and its requirements were not followed. Payment made to a pharmacy for a controlled substance or another prescribed drug item for which the prescriber did not follow all state and federal regulations, laws or rules may be subject to recoupment from the prescriber or entity to which the prescriber is associated. Recovery of overpayments through a HSD contracted MCO is also subject to the provisions of 8.308.22 NMAC.

A. **AUDITING PROCEDURES**

(1) **Prima facie evidence:** The audit findings generated through the audit procedure shall constitute prima facie evidence in all MAD proceedings of the number and amount of requests for payment as submitted by the provider or other entity.

(2) **Use of statistical sampling techniques:** MAD's procedures for auditing a provider or other entity may include the use of random sampling and extrapolation. When this procedure is used, all sampling will be performed using generally accepted statistical methods and will yield statistically significant results at a confidence level of at least 90 percent. Findings of the sample will be extrapolated to the universe for the audit period.

(3) **Burden of proof:** When MAD's final audit findings have been generated through the use of sampling and extrapolation, and the provider or other entity disagrees with the findings based on the sampling and extrapolation methodology that was used, the burden of proof of compliance rests with the provider or other entity. The provider or other entity may present evidence to show that the sample was invalid. The evidence must include a 100 percent audit of the universe of provider records used by MAD in the drawing of its sample. Any such audit must:

- (a) be arranged and paid for by the provider or other entity;
- (b) be conducted by a certified public accountant;
- (c) demonstrate that a statistically significantly higher number of claims and records not reviewed in MAD sample were in compliance with MAD NMAC rules, and
- (d) be submitted to MAD with all supporting documentation.

B. **Repayment process:** A provider or other entity can repay all or part of an overpayment with a lump sum payment or a series of payments based on a schedule developed and mutually agreed to by MAD and the provider or other entity. If a provider or other entity fails to comply with the schedule, HSD will recover the

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overpayment and interest or initiate other collection efforts.

C. **Recoupment process:** Upon written notice, MAD may withhold all or a portion of a provider or other entity's payment on pending and subsequently received claims in order to recover an overpayment, or it may suspend payment on all pending or subsequently submitted claims, pending a final determination of the amount of overpayment. All amounts must be recouped within 24 months. Recoupments may be applied to other providers owned by the same entity when necessary to recoup overpayments timely.

D. **Combination of processes:** MAD can use both recoupment and repayment process to collect an overpayment if:

- (1) the provider is unlikely to remain a MAD provider long enough for full recovery using recoupment alone;
- (2) the provider is not enrolled through a MAD PPA or contract; or
- (3) the average monthly payment to a provider or other entity is so low that recoupment within 12 months is not feasible.

E. **Prepayment review:** MAD may require pre-payment review of claims submitted during a recoupment or repayment process to ensure that subsequent claims are not inflated to compensate for amounts recovered during the recoupment or repayment process. Prepayment review may also be conducted as part of MAD's administrative responsibilities.

[11/1/96; 8.351.2.13 NMAC - Rn, 8 NMAC 4.MAD.964, 7/1/03; A, 9/1/04]

**8.351.2.14 NOTICE REQUIREMENTS:**

A. **Content of provider notice:** With the exception of a referral based on a credible allegation of fraud, as that term is defined in federal statute or regulation or both, when MAD seeks overpayment recovery, or to impose sanctions or remedies, written notice is sent to the provider or other entity. The notice sent to a non-nursing facility provider or other entity contains the following information:

- (1) nature of the violation or misconduct;
- (2) dollar value, if applicable, the method, criteria or both used for determining the overpayment, intended sanction, or amount of civil monetary penalty to be imposed;
- (3) provider's right to a HSD provider administrative hearing, the right to be represented by counsel at the hearing proceeding, and the process necessary to request a HSD provider administrative hearing.
- (4) statement notifying the provider that if he or she does not request a HSD provider administrative hearing, the action proposed by MAD will be deemed final for purposes of collection of overpayment and imposition of sanctions; and
- (5) a statement that provider has 30 calendar days from the date of the notice to request a HSD provider administrative hearing.

B. **Notice requirements for credible allegations of fraud:**

- (1) The notice for contains the following information; see 42 CFR Section 455.23 (b):
  - (a) a statement that payments are being withheld on a temporary basis and delineate which types or type of MAD claim to which the termination applies, when appropriate;
  - (b) a statement informing the provider of his or her right to submit written information for MAD's consideration regarding release of payments, in whole or in part, for a good cause exception; and
  - (c) the information listing the conditions or circumstances under which the withholding is terminated.

(2) Time limits for withholding for fraud or misrepresentation: If payments are to be withheld in instances of credible allegations of fraud, the notice is sent to the provider within five calendar days of taking such action.

(3) The provider is not afforded any HSD administrative hearing for temporary payment suspension based on refunds or denial of a partial or in whole good cause exception for a credible allegation of fraud.

C. **Notice to other organizations:** When a MAD provider or other entity is sanctioned, MAD notifies the applicable professional society, board of certification, licensing or registration, and state or federal agencies of the sanctions imposed and rationale for imposition of sanctions. If MAD learns that a provider or other entity is convicted of a MAD-related offense, MAD also notifies the federal secretary of DHHS of the conviction.

D. **Notice to a MAP eligible recipient:** When MAD terminates or suspends a provider from participation, it notifies each MAP eligible recipient for whom the provider has submitted claims for services after the date of the alleged fraud or misconduct.

E. **Notice deadlines for a NF or ICF-IID provider:** The notice period begins on the date of the

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MAD notice. In no event will the effective date of the action be later than 20 calendar days after MAD sends the notice.

(1) The notice informing the NF or ICF-IID provider of MAD's intent to impose remedies is given at least two calendar days before the effective date of the action in instances where there is immediate jeopardy to a NF or ICF-IID MAP eligible resident.

(2) The notice informs the NF or ICF-IID provider of MAD's intent to impose remedies is given at least 15 calendar days before the effective date of the remedies in instances where immediate jeopardy to a NF or ICF-IID MAP eligible resident is not involved.

F. **Exceptions to the notice requirements:** Notice is not sent and a HSD provider administrative hearing is not available if the basis for the provider sanction is the non-nursing facility provider's failure to meet standards for licensing, certification, or registration required by federal or state laws and rules for MAD participation. Additional notice is not required if MAD has notified the provider in writing of the failure to meet standards and has given the provider 30 calendar days notice to correct or produce necessary documentation curing the failure and the provider fails to respond.

[11/1/96; 8.351.2.14 NMAC - Rn, 8 NMAC 4.MAD.965, 7/1/03]

**8.351.2.15 REQUEST FOR PROVIDER HEARING:** A provider can request a hearing if he or she disagrees with any of the aforementioned actions taken or sanctions or remedies imposed by MAD, as applicable. Requests for a HSD provider administrative hearing must be made within 30 calendar days or within the time limit specified on the notice of MAD action. A NF or ICF-IID provider must submit the request to DOH within 60 calendar days of the notice of the proposed imposition of remedies related to noncompliance with certification or licensing requirements. If a provider fails to request a HSD provider administrative hearing during this time frame, the provider waives its right to an appeal. See 8.353.2 NMAC for information on the MAD provider administrative hearing process and a provider rights and responsibilities.

A. **Imposition of remedies:** MAD can impose all remedies on a MAD enrolled provider after notifying the provider in a timely manner of the deficiencies an impending sanction, or remedy. Except for the imposition of civil monetary penalties against a NF provider, imposition of sanctions for violation of the Medicaid Provider Act and referrals based on credible allegations of fraud, any applicable sanctions or remedy may be imposed prior to the HSD provider administrative hearing.

B. **Stay granted:** As applicable, the provider can request that the imposition of sanctions or remedies be stayed while the HSD provider administrative hearing process is pending by submitting such request in writing to MAD. Granting of a stay is at the discretion of the MAD director upon consideration of health service available and other related concerns. Interest on civil money penalties or overpayments accrues from the date of the initial determination.

C. **Collection of civil monetary penalties for noncompliance:** MAD may not collect a civil money penalty against a NF provider until a final decision is made that supports the imposition of the penalty. In instances where imposition of civil money penalties are proposed due to noncompliance with certification requirements, a NF provider may waive its right to a HSD provider administrative hearing by submitting a written request to DOH. Waiver of the right to such a hearing reduces the amount of the specified penalty by 35 percent. A NF provider may submit a plan of correction or request a resurvey without prejudicing its position during the hearing.

[11/1/96; 8/1/99; 8.351.2.15 NMAC - Rn, 8 NMAC 4.MAD 966, 7/1/03]

**HISTORY OF 8.351.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center:

ISD 305.3000, Provider Sanctions, filed 1/7/80.

ISD 305.4000, Provider Notification and Right to Review, filed 1/7/80.

ISD 305.5000, Repayment of Medicaid Funds, filed 1/7/80.

ISD 305.6000, Periods of Suspension, filed 1/7/80.

SP-004.0500, Section 4, General Program Administration Medicaid Agency Fraud Detection and Investigation Program, filed 1/23/81.

SP-004.3000, Section 4, General Program Administration Suspension of Practitioners Convicted of Crimes Related to Medicare or Medicaid, filed 3/17/81.

**MAD-MR:**

**EFF DATE: proposed**

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**History of Repealed Material:** [RESERVED]