

## IMPLEMENTATION DEADLINE OF PROVIDER RECOUPMENT POLICY

### BACKGROUND

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Texas Government Code §531.1135 requires HHSC to adopt rules describing the process an MCO must follow to recoup an overpayment made to a health care provider related to missing electronic visit verification (EVV) information. Texas Government Code, §531.1131(f) requires that, as part of the process, an MCO give a provider at least 60 days to correct a deficiency in a claim before the MCO begins any efforts to recoup overpayments.

In addition, Texas Government Code, §Section 531.1131(e) requires HHSC to adopt rules describing the due process procedures an MCO must follow when engaging in recoupment efforts related to fraud or abuse. This notice requires MCOs to comply with the provisions set forth below. HHSC will publish these requirements, by rule, later this year.

### KEY DETAILS

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This notice describes requirements an MCO must comply with regarding:

- the time period limit for the review of EVV visit transactions in an audit conducted by the
- MCO of a provider or financial management services agency (FMSA); the notice an MCO must give to recoup an overpayment related to an EVV transaction in accordance with Texas Government Code, §531.1135, and
- the due process an MCO must give to recoup an overpayment related to a determination of fraud or abuse in accordance with Texas Government Code, §531.1131.

#### Notice to Recoup an Overpayment Related to an EVV Visit Transaction

An MCO must comply with the following policy for any audit or investigation the MCO conducts of a provider or FMSA that begins on or after the date of this notice and involves the review of EVV visit transactions.

In an audit of a provider or FMSA conducted by an MCO, the MCO must limit the review of EVV visit transactions to those that occurred during the 24 months prior to the audit.

If, based on an audit or investigation of a provider or FMSA, an MCO identifies a deficiency related to an EVV visit transaction *that is not fraud or abuse*, and the MCO decides to recoup an overpayment because of the deficiency, the MCO must give the provider or FMSA written notice of the MCO's intent to recoup overpayments not later than the 30th day after the date the audit or investigation is completed.

An MCO must include the following in the written notice:

1. a description of the basis for the intended recoupment;
2. if the basis of the intended recoupment is an EVV visit transaction, the specific EVV visit transaction and associated claim that are the basis of the intended recoupment;
3. if the basis of the intended recoupment is a missing EVV visit transaction, the claim for which there is no associated EVV visit transaction;
4. that the MCO must receive a response to the notice from the provider or FMSA no later than the 30th day after the date the provider or FMSA receives the written notice, if the provider or FMSA intends to respond;
5. the specific number of days allowed to correct and explain the deficiency before the MCO begins any efforts to collect overpayments, which must be no fewer than 60 days from the notice date;
6. the process by which the provider or FMSA should communicate with and send information to the MCO about the EVV visit transactions that are the basis of the intended recoupment;
7. the provider's or FMSA's option to seek an informal resolution with the MCO of the intended recoupment; and
8. the MCO's process for the provider or FMSA to appeal the intended recoupment.

A corrected deficiency is one that a provider or FMSA makes by doing one or both of the following:

- performing visit maintenance to correct an EVV visit transaction in accordance with HHSC EVV policy; or
- correcting and resubmitting a claim in accordance with MCO policies and procedures.

An MCO may recoup an overpayment only if a provider or FMSA:

- does not correct the deficiency and does not appeal the alleged overpayment; or
- appeals the alleged overpayment and the final decision from the appeal is favorable to the MCO.

If an MCO determines that a deficiency related to an EVV visit transaction is fraud or abuse, the MCO must comply with the provisions set forth below.

#### Due Process Procedures to Recoup an Overpayment Because of a Discovery of Fraud or Abuse

An MCO must comply with the following policy if, on or after the date of this notice, the MCO discovers fraud or abuse by a provider or FMSA that results in a decision by the MCO to recoup an overpayment from the provider or FMSA.

An MCO that seeks to recoup payment secondary to a discovery of fraud and abuse must issue written notice to the provider or FMSA of the MCO's intent to recoup overpayments that includes the following elements:

1. a description of the basis for the intended recoupment;
2. the specific claims that are the basis of the intended recoupment;
3. the process by which the provider or FMSA should send information to the MCO about claims that are the basis of the intended recoupment;
4. the provider's or FMSA's option to seek an informal resolution with the MCO of the intended recoupment; and
5. the MCO's process for the provider or FMSA to appeal the intended recoupment.

MCOs must have a process for the provider or FMSA to seek informal resolution; and a process for the provider or FMSA to appeal the intended recoupment.

An MCO may recoup an overpayment only if a provider or FMSA:

- does not appeal the alleged overpayment; or
- appeals the alleged overpayment and the final decision from the appeal is favorable to the MCO.

**Additional Information:**

For purposes of the policy requirements in this notice, the following definitions apply:

Abuse--This term has the meaning set forth in 1 TAC §371.1 (relating to Definitions).

EVV transaction--Electronic visit verification transaction. This term has the meaning set forth in 1 TAC §354.4003 (relating to Definitions).

FMSA-- Financial Management Services Agency. An entity that contracts with an MCO to provide financial management services to a Consumer Directed Services (CDS) employer as described in 40, TAC Chapter 41 (relating to CDS Option).

Fraud--This term has the meaning set forth in 1 TAC §371.1.