

Bulletin Number: MSA 14-31

Distribution: Home Help Providers, MI Choice Waiver Agencies

Issued: July 31, 2014

Subject: Personal Care Provider Criminal History Screening

Effective: September 1, 2014

Programs Affected: Medicaid, Healthy Michigan Plan

This bulletin provides additional information about the Michigan Department of Community Health's (MDCH) implementation of Medicaid provider screening and enrollment requirements of Sections 6201, 6401, and 6501 of the Affordable Care Act (ACA) and state policy as reflected in the General Information for Providers Chapter, Section 2 – Provider Enrollment, in the Michigan Medicaid Provider Manual. Section 1128(a) of 42 U.S.C.1320a-7 (the Social Security Act) prohibits individuals or entities from participating in programs funded under the Act if they have been convicted of any of the Mandatory Exclusion offenses outlined below. The Act permits the State to apply additional permissive restrictions; however those will be covered in a subsequent bulletin. This policy applies to all providers of personal care services that are delivered through the Michigan Medicaid Home Help program and the MI Choice waiver program.

For the purposes of this policy, a provider is any individual providing a direct or indirect program service to a beneficiary or enrollee of the Home Help or MI Choice programs that is reimbursed by Medicaid. This applies to both independent providers of service as well as employees of service agencies. The criminal history screen will be conducted either by MDCH through the provider registration process or as assigned by contract with the MI Choice waiver agencies. Screenings under this policy will not require fingerprinting of the individual being screened and will be conducted through available public record databases.

Mandatory Exclusions: Providers (any individual or entity) MUST be screened for and, as required by the State of Michigan, MUST disclose the following excludable convictions. Any applicant or provider found to meet one of these four categories is prohibited from participating as a service provider for Medicaid or the Home Help program. The mandatory exclusion categories are:

1. Any criminal convictions related to the delivery of an item or service under Medicare (Title XVIII), Medicaid (Title XIX) or other state health care programs (e.g., Children's Special Health Care Services, Healthy Kids), (Title V, Title XX, and Title XXI)
2. Any criminal convictions under federal or state law, relating to neglect or abuse of patients in connection with the delivery of a health care item or service
3. Felony convictions **occurring after August 21, 1996**, relating to an offense, under federal or state law, in connection with the delivery of health care items or services or with respect to any act or omission in a health care program (other than those included in number 1 above) operated by or financed in whole or in part by any federal, state, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct
4. Felony convictions **occurring after August 21, 1996**, under federal or state law, related to unlawful manufacture, distribution, prescription, or dispensing of a controlled substance

For the purposes of the laws mentioned above, an individual or entity is considered to have been convicted of a criminal offense when:

- A judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged,
- A finding of guilt against the individual or entity by a federal, state, or local court,
- A plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court, or
- An individual or entity that has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

Criminal History Screening: All current and potential providers covered under this policy must agree to a criminal history screening. Such approval will be indicated through the submission of a signed MSA-4678 Medical Assistance Home Help Provider Agreement, a properly submitted online program provider application, or other authorized application approved by the department. Valid identifying information, including name, home address, date of birth, and Social Security Number, must be provided by all providers and applicants. The screening must be completed and passed before a provider will be allowed to provide services under a Medicaid program. Subsequent screening will be administered as described below. Approved and existing individual providers will be periodically reviewed and rescreened by MDCH.

Program-approved provider agencies are required to assure that a criminal history screening of all individuals in their employment providing in-home services has been conducted. Such agencies are also required to provide similar screenings on the following agency personnel:

- Any individual with an ownership interest in the agency,
- Any individual providing services on behalf of the agency or individual who has direct access to a client, patient or resident or to a client's, patient's or resident's property, financial information, medical records, treatment information, or any other identifying information, or
- Any person providing services to client, patient or resident for which the agency is reimbursed under Medicaid.

All providers will be required to revalidate their Medicaid enrollment information for the purposes of subsequent criminal history screenings a minimum of once every three years, or more often if requested by MDCH. MDCH will notify providers when revalidation is required. **Providers are reminded that they must notify MDCH within 10 business days of any change to their enrollment information. Failure to do so will result in termination of provider enrollment.**

Exclusions: For any provider found to be in violation of any of the four mandatory exclusions listed above, MDCH shall terminate or deny enrollment in the Michigan Medicaid program. Although the Social Security Act stipulates a minimum exclusionary period for these offenses under of 42 U.S.C.1320a-7(c)(3)(B), the exclusionary period under this policy will be consistent with that set for other types of Medicaid providers under MCL 333.20173. Termination of enrollment means a provider's billing privileges have been revoked and all appeal rights have been exhausted or the timeline for appeal has expired. Denial of enrollment means the provider agreement will not be approved for participation in the Medicaid program. The basis for termination or denial of enrollment includes, but is not limited to:

- Failure to submit timely and accurate information,
- Failure to cooperate with MDCH screening methods,
- Any criminal convictions related to the delivery of an item or service under Medicare (Title XVIII), Medicaid (Title XIX) or other state health care programs (e.g., Adult Benefit's Waiver, County Health Plan, Children's Special Health Care Services, Healthy Kids), (Title V, Title XX, and Title XXI),
- Termination on or after January 1, 2011, under Medicare or the Medicaid program or Children's Health Insurance Program (CHIP) of any other state,
- Falsification of information provided on the provider agreement, or
- Inability to verify a provider applicant's identity.

In addition to the above, approved or applying Home Help agency providers will be terminated or denied enrollment under for the following:

- Billing for services provided by individuals who have a criminal conviction listed under Section 1128(a) of the Social Security Act,
- Having owners or disclosed individuals with convictions listed under Section 1128(a) of the Social Security Act,
- Failing to provide MDCH upon request with proof that any individual subject to criminal history screening has a completed screen not older than twelve months, or
- Failing to notify MDCH of a conviction listed under Section 1128(a) of the Social Security Act of an individual covered by this policy.

MDCH shall suspend payments to a provider after determining there is a credible allegation of fraud for which an investigation is pending under the Medicaid program. An allegation of fraud may be from any source including fraud hotline complaints, claims data mining and patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered to be credible when they have indications of reliability and the state Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis. Providers will be notified within 90 days of initiation of a payment suspension. The notification will include the general allegations as to the nature of the suspension action, the period of suspension, and the circumstances under which the suspension will be terminated. Providers may submit written evidence for consideration through the administrative appeal process. All payment suspensions will include referral to the Office of Health Services Inspector General.

Notifications: MDCH will notify applicants or providers within 10 business days of conducting an ineligible criminal history screening. The department will concurrently notify all affected program beneficiaries and necessary Department of Human Services (DHS) staff.

Reviews and Appeals: Provider applicants and enrolled providers may request an administrative redetermination of the criminal history screening process if the criminal history record is inaccurate. Such a request must be made in writing to the department and must identify the specific information being challenged as well as what the individual feels to be the correct information. Negative actions based on an accurate criminal history are not subject to appeal, except as provided below.

Providers who are providing services to a client prior to the effective date of this policy may appeal a decision to terminate or deny enrollment. Denial of enrollment due to a temporary enrollment moratorium is appealable, but the scope of review is limited to whether the temporary moratorium applies to the provider appealing the denial. The basis for imposing a temporary moratorium is not subject to review. After termination from the Medicaid program, the provider must contact MDCH to request re-enrollment as a Medicaid provider and reinstatement of billing privileges. Providers whose enrollment has been denied are not prohibited from submitting a request for subsequent re-enrollment.

Manual Maintenance

Retain this bulletin until the information has been incorporated into the Michigan Medicaid Provider Manual.

Questions

Any questions regarding this bulletin should be directed to Provider Inquiry, Department of Community Health, P.O. Box 30731, Lansing, Michigan 48909-8231, or e-mail at ProviderSupport@michigan.gov. When you submit an e-mail be sure to include your name, affiliation, and phone number so you may be contacted if necessary. Providers may phone toll-free 1-800-292-2550.

Approved


Stephen Fitton, Director
Medical Services Administration