

**Bulletin Number:** MSA 14-40

**Distribution:** Home Help Provider Agencies, MI Choice Waiver Agencies, Program of All-Inclusive Care for the Elderly (PACE) Programs, Prepaid Inpatient Health Plans (PIHPs), Integrated Care Organizations

**Issued:** September 2, 2014

**Subject:** Excludable Convictions for Medicaid Home Help Program Personal Care Service Providers

**Effective:** October 2, 2014

**Programs Affected:** Home Help

The Michigan Department of Community Health (MDCH) intends to utilize the authority extended to the state through 42 USC 1396t(k)(4) to meet the requirements under 42 CFR 441.570 to assure that "[n]ecessary safeguards have been taken to protect the health and welfare of enrollees." This bulletin extends the Medicaid provider criminal history screening and enrollment requirements to individuals who offer personal care services through the Medicaid Home Help program. Additionally, it augments the list of excludable convictions as outlined in Bulletin MSA 14-31 to include permissive exclusions as defined below. The screening requirements described in this bulletin are to apply to all providers of Medicaid Home Help personal care services. The requirements apply to both individual providers and to those providing services as an employee of a provider agency.

As used in this bulletin, "personal care services" include services provided to a Medicaid beneficiary to assist the beneficiary with completing their Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) while the beneficiary is in a home or community-based setting. ADLs include eating, bathing, dressing, toileting, transferring, mobility, walking, and personal hygiene. IADLs include financial management, shopping, telephone use, transportation, housekeeping, meal preparation, and managing medications.

**Compliance Timeline:** Beginning October 2, 2014, all new provider applicants must fully meet the provisions of this bulletin before being enrolled to provide services. Providers must be properly enrolled prior to being authorized, approved, or reimbursed to provide personal care services through the Medicaid Home Help program.

All currently enrolled providers must be fully compliant with the provisions of this policy by March 31, 2015. Screenings, updates, enrollments, and notifications to currently enrolled providers will be done on a timeline to be established by MDCH, but will be completed no later than the March 31, 2015 deadline.

**Excludable Convictions:** Excludable convictions fall into two general categories. Mandatory exclusions, as discussed in Bulletin MSA 14-31, are those set forth in the Social Security Act (42 USC 1320a-7[a]) and shown in the first bullet below. Permissive exclusions are allowed under part (b) of that section. The Act (42 USC 1396t[f][1][A]) states that "[n]othing in the Act shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary." Finally, 42 CFR 441.570 requires the State to assure that "[n]ecessary safeguards have been taken to protect the health and welfare of enrollees." Permissive exclusions within the context of this policy are reflected in the second bullet and sub-bullets below. Based on these guidelines and subject to the Personal Choice and Acknowledgement of Provider provision, the Medicaid Home Help program shall not employ, independently contract with, or otherwise authorize or reimburse for services any individual who has direct access to or provides direct services to program participants if the individual has received a criminal history screening from MDCH that indicates one or more of the following:

- Convictions associated with program-related fraud and patient abuse, health care fraud, and felony controlled substance crimes. These exclusions are mandated and defined under 42 USC 1320a-7 and articulated in Bulletin MSA 14-31.
- Conviction of crimes directly relatable to neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, providing unqualified health care services and other crimes identified by MDCH. The list of specific crimes shall be the same as those defined for nursing facilities, county medical care facilities, hospices, and other long term service and support providers as set out and defined in the Public Health Code Act 368 of 1978, specifically Public Act 28 Sec. 20173a(1) (MCL333.20173a[1]). This list includes, but is not limited to crimes that:
  - Involve the intent to cause death or serious impairment of a body function;
  - Result in death or serious impairment of a body function;
  - Involve the use of force or violence;
  - Involve the threat of force or violence;
  - Involve cruelty or torture;
  - Involve criminal sexual conduct;
  - Involve abuse or neglect;
  - Involve the use of a firearm or a dangerous weapon;
  - Involve larceny, theft, or embezzlement;
  - Involve a felony Driving Under The Influence (DUI);
  - Involve an assault, battery, or the threat thereof;
  - Involve a crime against a "vulnerable adult";
  - Involve retail fraud; or
  - State that the conviction is a felony reduced to a misdemeanor.

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 whether an appeal is pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;
- A finding of guilt by judge or jury against the individual or entity by a federal, state, or local court; or
- A plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court.

The criminal history screening will be conducted by MDCH through a reputable and reliable data source. Screenings for any provider may be updated on a schedule set by the MDCH or as deemed necessary for the protection of a Medicaid beneficiary.

**Provider Application or Agreement:** Any individual wishing to provide personal care services through the Medicaid Home Help program, including those providing such services as an employee of a provider agency, must submit a properly formatted and approved application or service agreement form to MDCH that:

- Provides notification that a criminal history screening will be performed on the applicant or provider;
- Identifies the general categories of convictions that will be screened;
- Provides adequate information as determined by MDCH to conduct such a screening;
- Notifies the applicant or provider that the results of the screening will be shared with the applicant, pertinent program participants, and pertinent program staff; and
- Is signed by the applicant or provider.

**Providers are reminded that they must notify MDCH within 10 days of any change to their enrollment information. Failure to do so will result in termination of provider enrollment.**

**Notifications:** MDCH will notify applicants or providers within 10 business days of an ineligible criminal history screening. The department will concurrently notify all affected program participants and Department of Human Services (DHS) staff of all criminal history information discovered through the screening process. The notice shall include a statement that the applicant or provider has a right to appeal the information relied upon by MDCH in making its decision regarding his or her employment eligibility based on the criminal history screening. The notice shall also include information describing the appellate procedures.

**Placement in Provider Referral System:** Names and contact information for all individuals successfully passing a criminal history screening will be placed in a provider referral system database administered and operated by MDCH. Individuals identified with an excludable conviction through the screening process CANNOT be placed in the provider referral database. Any individual in the provider referral database will have the option to:

- Update their personal and contact information;
- Indicate their work preferences or otherwise restrict their availability; and
- Indicate that they are not available for referrals to provide services to additional participants.

The database will be used to make referrals to Home Help program participants who are in need of personal care services. Providers are not required to accept service referrals made through the referral system. Similarly, program participants are not required to accept services from providers listed in any given referral. Providers serving through a personal choice selection as described below may not be placed in the provider referral database and cannot be given any additional participant referrals through that process.

**Personal Choice and Acknowledgement of Provider Selection:** A participant receiving personal care services through the Medicaid Home Help program may select any family member or other individual to provide such services subject to the following restrictions:

- The provider does not have a disqualifying conviction that is one of the four Mandatory Exclusions under 42 USC 1320a-7.
- The provider is not legally responsible for the participant.
- The provider is capable of providing the required services and is otherwise qualified to do so.
- The provider has successfully undergone a criminal history screening conducted by MDCH and has received notification of a successful determination.

**A participant may request to select a provider who has been determined ineligible as a result of a Permissive Exclusion identified through the criminal history screening process.** The request must be submitted on a form specified by MDCH. The participant must provide a signed acknowledgement that indicates receipt of notification of the criminal offense(s) which prompted the exclusion and must indicate their selection of that provider to deliver services. The selection shall not be considered effective until the signed acknowledgement has been received, processed, and recorded by MDCH and communicated to DHS.

**A personal choice selection may not be applied to the federally mandated exclusions that are described under 42 USC 1320a-7.** A personal choice selection may be applied to permissive exclusions for the limited purpose of providing Home Help services to the specific individual identified in the request.

A personal choice selection through this section shall not be construed as approval, authorization or permission to provide services to other participants or through other programs. Providers selected through the personal choice provisions of this section will be registered in the Community Health Automated Medicaid Processing System (CHAMPS) and other systems for the purposes of monitoring, contacting, and generating payments, however, such individuals shall be prohibited from either being placed in the provider referral database or receiving referrals for additional clients through that process.

**Reviews and Appeals:** Individuals may request an administrative redetermination of the criminal history screening, but such a review is limited solely to the accuracy of the information used for the screening. Negative actions based on accurate criminal history are not subject to appeal, except as provided below. A review will not be granted to contest the merits of the court findings.

Providers who are authorized to furnish services for a program participant prior to the effective date of this policy may appeal a decision to terminate or deny their provider enrollment. Denial of provider 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](mailto: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