

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED POLICY

Public Act 280 of 1939, as amended, and consultation guidelines for Medicaid policy provide an opportunity to review proposed changes in Medicaid policies and procedures.

Please review the policy summary and the attached materials that describe the specific changes being proposed. Let us know why you support the change or oppose the change.

Submit your comments to the analyst by the due date specified. Your comments must be received by the due date to be considered for the final policy bulletin.

Thank you for participating in the consultation process.



Director, Program Policy Division
Bureau of Medicaid Policy and Health System Innovation

Project Number: 1635-PE **Comments Due:** November 20, 2017 **Proposed Effective Date:** January 1, 2018

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Policy Subject: Provider Enrollment Fitness Criteria

Affected Programs: Medicaid, Healthy Michigan Plan, MICHild, Children's Special Health Care Services (CSHCS), Maternity Outpatient Medical Services (MOMS)

Distribution: All Providers

Policy Summary: The policy defines Medicaid provider enrollment fitness criteria, outlining federal and state felonies and misdemeanors that would prohibit a provider from participating in the State's Medicaid programs.

Purpose: The Michigan Department of Health and Human Services (MDHHS) is implementing fitness criteria to provide a clear policy to exclude providers from enrollment as permitted under federal and state law. These criteria are in addition to the federal and state mandated exclusions. The policy would also obsolete the Home Help enrollment exclusions policies, allowing the Medical Services Administration to apply the new criteria uniformly to all providers.

Proposed Policy Draft

Michigan Department of Health and Human Services
Medical Services Administration

Distribution: All Providers

Issued: December 1, 2017 (Proposed)

Subject: Provider Enrollment Fitness Criteria

Effective: January 1, 2018 (Proposed)

Programs Affected: Medicaid, Healthy Michigan Plan, MICHild, Children's Special Health Care Services (CSHCS), Maternity Outpatient Medical Services (MOMS)

The purpose of this bulletin is to notify Medicaid providers that effective January 1, 2018, in accordance with guidance from the Centers for Medicare and Medicaid Services (CMS) dated April 19, 2016, the Michigan Department of Health and Human Services (MDHHS) will implement provider enrollment fitness criteria. The criteria define federal and state felonies and misdemeanors that would prohibit a provider from participating in the State's Medicaid programs. Under 42 CFR 431.51(c)(2) and pursuant to Michigan's Social Welfare, Public Act 280 of 1939 (MCL 400.111e), the State Medicaid plan has the authority to set reasonable standards relating to the qualifications of providers and may define exclusions that the Director determines necessary to protect the best interests of the program and its beneficiaries.

I. Impacted Providers

A provider includes, but is not limited to, all Community Health Automated Medicaid Processing System (CHAMPS) enrolled and/or registered Fee-for-Service providers, any person that has a 5% or greater direct or indirect ownership interest in the provider, suppliers, or other professionals providing services under the Medicaid State Plan or under a waiver of the plan.

Individuals or groups with 5% or greater direct or indirect ownership interest include the following:

Agent – Any person who has been delegated the authority to obligate or act on behalf of a provider.

Board of Directors – A group of individuals that are elected as, or elected to act as, representatives of the stockholders to establish corporate management related policies and to make decisions on major company issues.

Managing Employee – A general manager, business manager, administrator, director, or other individual that exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of the institution, organization, or agency, either under contract or through some other arrangement, whether or not the individual is a W-2 employee.

Home Help Providers

Personal Choice and Acknowledgement of Provider Selection: A beneficiary receiving personal care services through the Medicaid Home Help program may select any family member or other individual that has been convicted of certain crimes by signing a personal acknowledgment form. The beneficiary must submit their request on the Home Help Personal Choice and Acknowledgement of Provider Selection form 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 and eligible for payment until the signed acknowledgement has been received, processed, and recorded by MDHHS.

Personal choice selections are subject to the following restrictions:

- The provider does not have a disqualifying conviction that is one of the four 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 MDHHS and has received notification of a successful determination.
- The provider is not an agency or associated with an agency (supersedes policy in bulletin MSA 15-13).

A personal choice selection may be applied for the limited purpose of providing Home Help services to the specific individual identified in the request. A personal choice selection shall not be construed as approval, authorization or permission to provide services to other beneficiaries or through other programs. Providers selected through the personal choice provisions of this section must be registered in 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.

This bulletin supersedes Home Help provider enrollment policies MSA 14-31 and MSA 14-40.

II. Exclusions

MDHHS must terminate or deny a provider or supplier's enrollment in Michigan's Medicaid program for the following reasons:

1. The provider has been convicted of a relevant crime described under 42 USC 1320a-7(a)-7(b).
2. The provider's failure to comply with the enrollment requirements of the Social Welfare Act, Public Act 280 of 1939 (MCL 400.111b -111e) and the provider screening and enrollment requirements pursuant to 42 CFR 455.416. The basis for termination or denial of enrollment under this section includes, but is not limited to the provider's:
 - Failure to submit timely and accurate information;
 - Failure to cooperate with MDHHS screening methods;
 - Failure to submit sets of fingerprints as required within 30 days of a CMS or MDHHS request;
 - Failure to permit access to provider locations for site visits;
 - Falsification of information provided on the enrollment application;
 - Inability to verify a provider applicant's identity; or
 - Failure to comply with Medicaid policies regarding submission of claims and billing Medicaid beneficiaries.
3. The provider is excluded from participation in Medicare, Medicaid or any other Federal health care programs.
4. The provider is convicted of violating the Medicaid False Claims Act, the Health Care False Claims Act, or a substantially similar statute, or a similar statute by another state or the federal government.
5. The provider has a federal or state felony conviction within the preceding 10 years, including, but not limited to:
 - Crimes as defined in the Public Health Code Act 368 of 1978, specifically, MCL 333.20173a(1);
 - Crimes involving state, federal, or local government assistance programs;
 - Crimes against a child as defined by MCL 750.135n et seq;
 - Crimes against a "vulnerable adult" as defined by MCL 750.145n et seq;
 - Violent crimes including, but not limited to: murder, manslaughter, kidnapping, arson, assault, battery and domestic violence;
 - Financial crimes including, but not limited to: fraud, forgery, counterfeiting, embezzlement and tax evasion;
 - Theft crimes including, but not limited to: larceny, burglary, robbery, extortion, false pretenses, false representation, and conversion;
 - Sex crimes including, but not limited to: rape, sexual abuse, and prostitution;

- Drug crimes including, but not limited to: possession, delivery, and manufacturing;
 - Inchoate crimes including, but not limited to: attempt, solicitation, and conspiracy; and
 - Any other felony that places the health or safety of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid program at risk.
6. The provider has a federal or state misdemeanor conviction within the preceding 10 years, including, but not limited to:
- Crimes as defined in the Public Health Code Act 368 of 1978, specifically, MCL 333.20173a(1);
 - Crimes involving state, federal, or local government assistance programs;
 - Crimes against a child as defined by MCL 750.135n et seq;
 - Crimes against a “vulnerable adult” as defined by MCL 750.145n et seq;
 - Financial crimes including, but not limited to: fraud, forgery, counterfeiting, embezzlement and tax evasion;
 - Theft crimes including, but not limited to: larceny, burglary, robbery, extortion, false pretenses, false representation, and conversion;
 - Sex crimes including, but not limited to: rape, sexual abuse, and prostitution;
 - Drug crimes including, but not limited to: possession, delivery, and manufacturing;
 - Inchoate crimes including, but not limited to: attempt, solicitation, and conspiracy; and
 - Any other misdemeanor that places the health or safety of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid program at risk.

For the purposes of the excluded offenses 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, tribal or local court regardless of whether there is an appeal pending;
- There has been a finding of guilt against the individual or entity by a federal, state, tribal or local court;
- A plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, tribal, or local court; or
- The individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

Pursuant to MCL 400.111e, the Medicaid director may terminate or deny enrollment if that action is necessary to protect the health of the medically indigent individuals, the welfare of the public, and/or the funds appropriated for the program. Additionally, the Medicaid director may reduce or extend a provider's exclusion from the Medicaid program if, in the director's judgment, the continuation or reduction of the exclusion period is necessary to protect beneficiaries or the Medicaid program.

The criminal history screening will be conducted by MDHHS through reputable and reliable data sources. Screenings for providers, suppliers, agents, owners or managing employees will be done as required by law and as deemed necessary by MDHHS for the protection of the Medicaid program and beneficiaries. Providers that are already enrolled at the time of a finding by MDHHS will have their enrollment ended as of the date MDHHS was notified of the excluded offense.

III. Reviews and Appeals

Medicaid providers have the right to appeal any adverse action taken by MDHHS. The appeal process is outlined in the Medicaid Provider Manual and subject to the Social Welfare Act, 1939 PA 280; MCL 400.01 et seq., Chapters 4 and 6 of the Administrative Procedures Act of 1969; MCL 24.271 to 24.287, MCL 24.301 to 24.306, and Public Health Code, 1978 PA 368; MCL 333.20173b. A review will not be granted to contest the merits of the court's findings in a criminal case.

The Medicaid Provider Manual can be accessed on the MDHHS website at www.michigan.gov/medicaidproviders >> Policy and Forms.

IV. Reinstatement

Providers that are excluded from participation due to a conviction for a crime listed above may request enrollment or reinstatement upon a showing that the provider's participation in the Medicaid program is in the best interest of the medical services program and in the best interests of the Medicaid beneficiaries. The provider has the burden of proving that all conditions, terms of probation or parole, penalties, fines, etc. of the felony or misdemeanor offenses that resulted in exclusion have been fully completed at the time of request for enrollment or reinstatement. Factors that will be considered when determining whether enrollment or reinstatement in the Medicaid program is in the best interest of the Medicaid program and beneficiaries includes, but is not limited to:

- Whether the exclusion poses a undue hardship to beneficiaries;
- Whether the provider is the sole community physician or sole source of specialized services in the community;
- Subsequent offenses of the provider;
- Amount of time that has lapsed since the excluded offense;
- Provider's participation in Medicare or other state Medicaid programs; or
- Other factors that demonstrate the provider does not otherwise pose a risk to the Medicaid program or beneficiaries.

HOME HELP PERSONAL CHOICE AND ACKNOWLEDGEMENT OF PROVIDER SELECTION

Michigan Department of Health and Human Services

Beneficiary Information

Beneficiary Name (Last, First)	Medicaid ID No.
Beneficiary's Legal Representative (if applicable)	Legal Representative's Relationship to Beneficiary

Provider Information

Provider Name (Last, First)	Provider ID No.
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Adult Services Worker Information

ASW Name (Last, First)

Beneficiary Acknowledgement

<ul style="list-style-type: none">• I acknowledge that the person listed above under Provider Information has a criminal conviction history and still choose this person to provide me Home Help services.• I understand the Michigan Department of Health and Human Services does not promise the criminal history information to be correct or complete.• I understand I should not risk my safety, well-being, or personal or financial interests by choosing the person listed above under Provider Information.• I understand I may choose another provider or, if I have a current provider, to continue with that provider.	
Beneficiary Signature	Date Signed
Beneficiary's Legal Representative Signature (if applicable)	Date Signed

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The Michigan Department of Health and Human Services does not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, genetic information, sex, sexual orientation, gender identity or expression, political beliefs, or disability.

AUTHORITY: None

COMPLETION: Is voluntary, but required to obtain services from certain Home Help providers.