

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:** May 22, 2018 **Proposed Effective Date:** July 1, 2018

Mail Comments to: Margo Sharp
Bureau of Medicaid Policy and Health System Innovation
Medical Services Administration
P.O. Box 30479
Lansing, Michigan 48909-7979

Telephone Number: 517-284-1222 **Fax Number:** 517-241-8969
E-mail Address: msapolicy@michigan.gov

NOTE: This policy is being distributed a second time for public comment. Comments submitted during the first public comment period do not need to be resubmitted. All comments will be addressed when the final policy is released.

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 a policy that provides new provider enrollment criteria as permitted under federal and state law. These criteria are in addition to the federal and state mandated exclusions. This 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: June 1, 2018 (Proposed)

Subject: Provider Enrollment Fitness Criteria

Effective: July 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 July 1, 2018, in accordance with guidance from the Centers for Medicare & 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), 42 CFR 455.452, and pursuant to Michigan's Social Welfare Act (Public Act 280 of 1939 [MCL 400.111e]), the Medicaid single state agency has the authority to set reasonable standards and screening relating to the qualifications of providers and may define exclusions that the Medicaid Director determines necessary to protect the best interests of the program and its beneficiaries.

All currently enrolled providers must be fully compliant with the provisions of this policy by July 1, 2018. Screenings, updates, enrollments, and notifications to currently enrolled providers will be done on an ongoing basis.

I. Impacted Providers

This policy applies to the following providers:

- All Community Health Automated Medicaid Processing System (CHAMPS) enrolled providers.
- Any person who:
 - has a 5% or greater direct or indirect ownership interest in the provider. This requirement pertains to individuals as well as groups of individuals;
 - is an agent. An agent is any person who has been delegated the authority to obligate or act on behalf of a provider;

- is on the Board of Directors of a provider entity. A Board of Directors is a group of individuals who are selected or elected to establish corporate management related policies and to make decisions on major company issues; or
- is a managing employee. A managing employee would be a general manager, business manager, administrator, director, or other individual who 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.

A. Typical and Atypical Provider Types

Typical providers are professional health care providers who provide health care services to beneficiaries. Typical providers must meet education and state licensure requirements and have assigned National Provider Identifiers (NPIs). Examples of typical provider types include, but are not limited to: physicians, physician assistants, certified nurse practitioners, dentists and chiropractors. Providers should refer to the Michigan Medicaid Provider Manual and any applicable State policy or law for educational and professional licensure requirements.

Atypical providers provide support services for beneficiaries. These providers generally do not have professional licensure requirements and may not have an NPI. Examples of atypical provider types include, but are not limited to: peer support specialists, peer recovery coaches, and parent support partners.

Some provider types are currently unavailable as an option for enrollment in CHAMPS. It does not mean the provider is not required to enroll, only that the provider type is not currently being accepted for enrollment in CHAMPS. CHAMPS continues to be updated to accept additional provider types for enrollment. A separate policy addressing enrollment requirements specifically for these provider types will be released in fall 2018.

B. 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 who has been convicted of certain crimes by signing a personal acknowledgment form. The beneficiary must submit their request on the 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 complied with the criminal history screening conducted by MDHHS.
- 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 Personal Choice and Acknowledgement of Provider Selection form. A personal choice selection shall not be construed as approval, authorization or permission to provide services to other beneficiaries. Providers selected through the personal choice provisions of this section must be registered in CHAMPS and other systems (if applicable) 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 policy in MSA 14-31 and MSA 14-40.

C. Non-Emergency Medical Transportation (NEMT) Providers

This bulletin supersedes policy sections of MSA 16-05 that outline exclusion and screening criteria.

II. Exclusions

MDHHS must terminate or deny a provider'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):
 - Conviction of program-related crimes
Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII or under any State health care program.
 - Conviction relating to patient abuse
Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

- Felony conviction relating to health care fraud
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph [1]) 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.
 - Felony conviction relating to controlled substance
Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.
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 their 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, 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 of their provider enrollment application, including, but not limited to, any criminal offense related to:
 - murder, rape, abuse or neglect, assault, or other similar crimes against persons;
 - extortion, embezzlement, income tax evasion, insurance fraud, and other similar financial crimes;
 - the use of firearms or dangerous weapons; or

- any felony that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.
6. The provider has a federal or state misdemeanor conviction within the preceding five years of their provider enrollment application, including but not limited to, any criminal offense related to:
- any misdemeanor crime listed as a permissive exclusion in 42 USC 1320a-7(b);
 - rape, abuse or neglect, assault, or other similar crimes against persons;
 - extortion, embezzlement, income tax evasion, insurance fraud, or other similar financial crimes; or
 - any misdemeanor that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.

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; or
- a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, tribal, or local court.

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 Medicaid program. Additionally, the Medicaid director may reduce or extend a provider's exclusion from the Medicaid program if, in the Medicaid 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 will be done as required by law and as deemed necessary by MDHHS for the protection of the Medicaid program and beneficiaries. Providers who 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. Claims with dates of service on and after the provider's enrollment termination date will be denied.

State Limited and Suspended Licenses

In accordance with Michigan's State Plan and Medicaid Provider Manual, providers are required to comply with all licensing laws and regulations applicable to the provider's practice or business in Michigan. Limited or suspended licenses may result in disenrollment or denial of enrollment if MDHHS determines the basis of the action to be detrimental to the health or safety of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid program.

III. Reviews and Appeals

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, Public Act 280 of 1939 (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 the Public Health Code, Public Act 368 of 1978 (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, Letters & Forms.

IV. Reinstatement and Enrollment

Providers who are excluded from participation in the Medicaid program due to a conviction for a crime listed above may request enrollment or reinstatement upon a showing that the provider's participation is in the best interest of the Medicaid program and of the Medicaid beneficiaries. Factors that may 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;
- whether all conditions, terms of probation or parole, penalties, fines, etc. of the felony or misdemeanor offenses that resulted in exclusion have been fully completed;
- 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.

Requests for reinstatement must be sent in writing to the Medicaid Provider Enrollment Unit at:

Medicaid Provider Enrollment Unit
Michigan Department of Health and Human Services
PO Box 30238
Lansing, MI 48909

Fax: 517-241-8233

MDHHS will address requests for reinstatement within 30 days after all requested information has been provided.

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.