



## **MEDICAID PROGRAM INTEGRITY**

### **Toolkits to Address Frequent Findings: 42 CFR 455.106**

#### **Disclosures of Health Care-Related Criminal Convictions**

The following information addresses frequent findings from CMS's comprehensive program integrity reviews of State Medicaid Agencies' operations. This information helps address common issues for states when collecting appropriate disclosures of health care-related criminal convictions as required by regulation. We have included the regulation below for your reference.

#### **455.106 Disclosure by providers: Information on persons convicted of crimes.**

**(a) *Information that must be disclosed.*** Before the Medicaid agency enters into or renews a provider agreement, or at any time upon written request by the Medicaid agency, the provider must disclose to the Medicaid agency the identity of any person who:

- (1) Has ownership or control interest in the provider, or is an agent or managing employee of the provider; and**
- (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the title XX services program since the inception of those programs.**

**(b) *Notification to Inspector General.***

- (1) The Medicaid agency must notify the Inspector General of the Department of any disclosures made under paragraph (a) of this section within 20 working days from the date it receives the information.**
- (2) The agency must also promptly notify the Inspector General of the Department of any action it takes on the provider's application for participation in the program.**

**(c) *Denial or termination of provider participation.***

- (1) The Medicaid agency may refuse to enter into or renew an agreement with a provider if any person who has an ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the title XX Services Program.**

**(2) The Medicaid agency may refuse to enter into or may terminate a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.**

This regulation is the third of three regulations (the others are 42 CFR 455.104 and 455.105) that address disclosures that must be made by providers. While managed care entities (MCEs) are not legally mandated by this regulation to require their network providers to disclose criminal conviction history, CMS considers these same requirements to be a program safeguard that would be considered prudent to apply in managed care settings. These requirements can be delegated to the MCEs through each state's contract with their respective MCEs.

Below are some **Common Issues** we have observed in our reviews, followed by **Solutions** that states can implement to ensure compliance with the regulation.

**Common Issues:**

- 1) States often fail to collect health care-related criminal conviction disclosures from all of the parties required by the regulation. These disclosures must be collected from those with an ownership or control interest and those who are agents or managing employees of individual practitioners or group providers as required in 455.106(a)(1). These omissions are usually found where states have separate disclosure forms for individual/group providers and institutional providers (or other such "disclosing entities"). Because the latter group must provide disclosures of ownership and control interest (per 42 CFR 455.104), the state is often capturing all relevant parties on their disclosure form, and the questions for criminal conviction disclosures for persons with ownership or control interest, agents, and managing employees will be included. However, the application form for individual or group providers will often only ask the applicant if he/she has had a health care-related criminal conviction, and it will not include soliciting criminal conviction information on the providers' agents or managing employees.
- 2) States' questions for capturing criminal conviction disclosures often do not include the time frame referenced in the regulation at 455.106(a)(2) – "since the inception of the programs" (referring to the Medicare, Medicaid, and Title XX services programs). This information is important in order to capture any provider who may have had a past criminal conviction, even if he/she is not currently excluded by any federal or state program. Although not necessarily grounds for denying the enrollment of a provider, it can serve to alert the state's program integrity unit of a possible high-risk provider entering the Medicaid program.
- 3) Similarly, states often fail to list the appropriate health care programs for which criminal convictions must be disclosed. State forms will often reference "title

XVIII and title XIX programs,” or will include “title XXI” instead of “Medicare, Medicaid, or title XX services programs” as listed in the regulation.

- 4) States fail to collect health care-related criminal conviction disclosures from certain provider types. Often the state will ask about criminal convictions of FFS providers providing services under the state plan, but they do not include the same criminal conviction disclosure requirements on the enrollment forms for other provider types enrolled by sister agencies such as waiver providers or on the disclosure forms completed by MCEs.
- 5) States do not always have policies and procedures for notifying HHS-OIG of any criminal conviction disclosures made within 20 working days as required by the regulation at 455.106(b)(2).

**Solutions:**

- a) Ensure that all enrollment applications and/or disclosure forms for any provider receiving Medicaid funds require the applicant to disclose whether anyone with an ownership or control interest or who is an agent or managing employee has ever had a health care-related criminal conviction.
- b) Provide definitions or examples of ownership or control interest and agents and managing employees who the applicant should include, e.g., billing agent or office manager. These definitions may be found at 42 CFR 455.101. Many individual providers may not have viewed staff as being in a managerial or agent role until they read the definition. Also, many corporate organizations may not realize that employees such as Accounts Receivable Managers or Purchasing Agents need to be included.
- c) Ensure that all applications and/or disclosures forms have space available for the provider to disclose the relevant information.
- d) Ensure that any questions or solicitations for disclosures include a time frame that refers back to when the federal and state programs began. This can be accomplished by citing the exact language from the regulation or using a similar phrase such as “ever.”
- e) Ensure that the state has policies and procedures for notifying HHS-OIG within 20 working days of any health care-related criminal conviction disclosures it receives from providers.

We hope this information on collecting federally mandated health care-related criminal convictions has been helpful to states. Please direct any suggestions or feedback to: [Medicaid Integrity Program@cms.hhs.gov](mailto:Medicaid_Integrity_Program@cms.hhs.gov).