




<b>ISSUE DATE</b>  March 6, 2017	<b>EFFECTIVE DATE</b>  April 1, 2017	<b>NUMBER</b>  99-17-03
<b>SUBJECT</b>  Implementation of Criminal Background Checks for Providers Assigned ACA Categorical Risk Level of High		<b>BY</b>   Leesa M. Allen, Deputy Secretary Office of Medical Assistance Programs

**IMPORTANT REMINDER:** All providers must revalidate the Medical Assistance (MA) enrollment of each service location every 5 years. Providers should log into PROMISe to check the revalidation dates of each service location and submit revalidation applications at least 60 days prior to the revalidation dates. Enrollment (revalidation) applications may be found at: [http://www.dhs.pa.gov/provider/promise/enrollmentinformation/S\\_001994](http://www.dhs.pa.gov/provider/promise/enrollmentinformation/S_001994).

**PURPOSE:**

The purpose of this bulletin is to inform providers:

- which provider types and specialties the Department of Human Services (Department) has assigned to the “high” categorical risk level; and
- that as a condition of enrollment, providers assigned to the “high” categorical risk level are required by the Affordable Care Act to obtain a criminal background check, which includes a Federal Bureau of Investigation (FBI) criminal background check and a Pennsylvania State Police Criminal Record Check.

**SCOPE:**

This bulletin applies to all providers enrolled, or seeking to enroll, in the Medical Assistance (MA) Program.

**BACKGROUND:**

On March 23, 2010, the Patient Protection and Affordable Care Act (ACA) was signed into law. Section 6401(a) of the ACA (Pub. L. 111-118) amended Section 1866(j)(1)(A) of the Social Security Act. Section 1866(j)(1)(A) requires the Secretary of the Department of Health and Human Services (DHHS) to determine the level of screening of providers to be conducted according to the risk of fraud, waste and abuse with respect to the category of the provider.

**COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:**

The appropriate toll free number for your provider type

Visit the Office of Medical Assistance Programs Web site at <http://www.dhs.pa.gov/provider/healthcaremedicalassistance/index.htm>

Depending on the risk of fraud, waste and abuse, the screening of providers may include fingerprint-based criminal background checks.

The DHHS regulations that implement Section 1866(j)(1)(A) can be found at 42 CFR 455, Subpart E – Provider Screening and Enrollment. Section 455.450 requires a State Medicaid agency to screen all initial applications for enrollment, including applications for a new practice location, and any applications for re-enrollment (reactivation) or revalidation of enrollment based on a categorical risk level of “limited,” “moderate” or “high.” When a provider fits within more than one risk level, the highest level of screening is to be applied.

Section 455.434 requires providers that are designated by the State Medicaid agency as “high” categorical risk providers to consent to criminal background checks, which include submitting a set of fingerprints. It also requires “high” categorical risk providers and any person with a 5% or more direct or indirect ownership interest in the “high” categorical risk provider to submit a set of fingerprints in a form and manner to be determined by the State Medicaid agency, within 30 days upon request from the Centers for Medicare and Medicaid Services (CMS) or the State Medicaid agency. If the “high” categorical risk provider or any person with a 5% or more ownership interest in a “high” categorical risk provider, fails to submit a set of fingerprints within 30 days of a request from CMS or the State Medicaid agency, the State Medicaid agency must terminate the provider’s enrollment or deny enrollment unless the agency determines it is not in the Medicaid Program’s best interest to terminate the provider or deny enrollment.

Section 455.410 allows the State Medicaid agency to rely on the results of provider screening conducted by Medicare or another state’s Medicaid Program or Children’s Health Insurance Program (CHIP), including the results of fingerprint-based criminal background checks.

In addition, CMS released guidance for states in January 2016, titled “Sub Regulatory Guidance for State Medicaid Agencies (SMA): Fingerprint-based Criminal Background Checks (FCBC) (2016-002),” which included two paths states could follow to be in compliance with the fingerprint-based criminal background check requirement by June 1, 2016. States had the option of conducting fingerprint-based criminal background checks by June 1, 2016, or submitting a compliance plan to CMS that included a description of how fingerprint-based criminal background checks would be collected from “high” categorical risk providers enrolled or revalidated on or after August 1, 2015. The Department submitted a compliance plan to CMS. CMS approved the Department’s plan and required that the Department comply fully with the ACA fingerprint-based criminal background check provisions by July 1, 2017.

CMS also released the “Medicaid Provider Enrollment Compendium” (MPEC), which provided sub-regulatory guidance to State Medicaid agencies on how to comply with Federal regulations relating to provider screening and enrollment. The MPEC instructs states that provider types existing in both Medicare and Medicaid should be assigned the same or a higher risk category applicable under Medicare. The MPEC includes a list of providers designated as “high” categorical risk by Medicare. In addition, the MPEC instructs that

provider types existing in only Medicaid should be assigned an appropriate risk level by assessing if the provider type presents an increased risk of fraud, waste or abuse.

**DISCUSSION:**

For newly enrolling providers, the Department assigned the provider types and specialties listed in the chart below to the “high” categorical risk level for purposes of provider screening. The providers identified in the chart below will be changed to the “moderate” categorical risk level once enrolled in the MA Program.

Provider Type Code	Provider Type Description	Specialty Code	Specialty Description
5	Home Health	50	Home Health Agency
5	Home Health	51	Private Duty Nursing
25	DME/Medical Supplies	250	DME/Medical Supplies
25	DME/Medical Supplies	251	Prosthetist
25	DME/Medical Supplies	252	Orthotist
25	DME/Medical Supplies	253	Optician
55	Vendor	250	DME/Medical Supplies
59	Attendant Care/OLTL provider	50	Home Health Agency
59	Attendant Care/OLTL provider	250	DME/Medical Supplies

Additionally, the following providers will be assigned to the “high” categorical risk level:

- Providers on which the Department has imposed a payment suspension based on a credible allegation of fraud, waste or abuse. The provider’s risk remains “high” for 10 years beyond the date of the payment suspension.
- Providers that have been excluded by the U.S. DHHS, Office of Inspector General or from participation in Medicare or another state’s Medicaid or CHIP Program within the last 10 years.
- Providers that have an outstanding overpayment due to the Department that is greater than \$1,500 and is more than 30 days old, have not repaid the overpayment at the time the application was filed, are not currently appealing the overpayment and do not have an approved extended repayment schedule for the entire outstanding overpayment. Providers will remain at “high” risk until the overpayment is repaid.
- Providers that apply for enrollment in the MA Program within 6 months after a federally imposed moratorium for the particular provider type has been lifted. Once the provider

is enrolled, the provider will be assigned the risk level which corresponds to the provider's type and specialty.

The Department will require "high" categorical risk providers or any person with a 5% or more ownership interest in a "high" categorical risk provider to submit a FBI criminal background check and a Pennsylvania State Police Criminal Record Check upon the provider being assigned to the "high" categorical risk level or during the enrollment, revalidation or re-enrollment (reactivation) process unless the Department has verified that a fingerprint-based criminal background check screening was previously conducted by Medicare or another state's Medicaid or CHIP Program. If a managing employee is not the "high" categorical risk provider or does not have a 5% or more ownership interest in the "high" categorical risk provider, the managing employee will not be required to submit a FBI criminal background check and a Pennsylvania State Police Criminal Record Check.

If the provider is the same or higher categorical risk level in Medicare, in an approved status in Medicare and has been screened on or after March 25, 2011, the Department can rely on the screening conducted by Medicare or another state's Medicaid or CHIP Program. Approved status means that the Department has verified in Medicare's internet-based Provider Enrollment, Chain and Ownership System that the provider is a participating Medicare provider in good standing.

If the Department cannot verify that an enrolled provider that has been assigned to the "high" categorical risk level or every person with a 5% ownership interest in a "high" categorical risk provider completed a fingerprint-based criminal background check, the Department will send the provider a letter notifying the provider that a criminal background check is required. The letter will include instructions for how to submit the required information to the Department.

Additionally, all "high" categorical risk providers who have enrolled in the MA Program since August 1, 2015, and did not submit a fingerprint-based criminal background check to Medicare or another state's Medicaid or CHIP Program will need to obtain an FBI criminal background check and a Pennsylvania State Police Criminal Record Check and submit them to the Department's Office of Medical Assistance Programs. If the Department cannot verify that the "high" categorical risk provider or any person with a 5% ownership interest in the provider completed a fingerprint-based criminal background check, the Department will send the provider a letter notifying the provider that a criminal background check is required. The letter will include instructions for how to submit the required information to the Department.

#### **PROCEDURE:**

As of April 1, 2017, providers designated to be a "high" categorical risk that are enrolled in or wish to enroll in the MA Program and any person with a 5% or greater ownership interest in a "high" categorical risk provider that need to obtain a fingerprint-based criminal background check must complete a FBI criminal background check. In addition, they must obtain a Pennsylvania State Police Criminal Record Check.

To obtain a FBI criminal background check, the provider and any person with a 5% or more ownership interest in the provider should visit the Department's Provider Enrollment website at: <http://www.dhs.pa.gov/provider/promise/enrollmentinformation/index.htm> and select the link for the FBI criminal background check for the instructions provided by the vendor for obtaining a fingerprint-based criminal background check for Pennsylvania Department of Human Services, Medical Assistance providers.

Every provider and any person with a 5% or more ownership interest in the provider that must obtain a FBI criminal background check should register on the vendor's website. Once registered, the person registering will receive a unique registration number. This unique registration number and the date the person selected to have fingerprints taken will be requested during the enrollment or revalidation application process for "high" categorical risk providers and for any person with a 5% or more ownership interest in a "high" categorical risk provider. The unique registration number and the date the person selected to have fingerprints taken will also be requested if an enrolled provider has been assigned to the "high" categorical risk level. After the provider and any other person that must obtain fingerprints have obtained the fingerprints, Department staff will be able to obtain the results of the FBI criminal background check using the registration numbers supplied.

To obtain a Pennsylvania State Police Criminal Record Check, the provider or any person with a 5% or more ownership interest in the provider should visit the Department's Provider Enrollment website at: <http://www.dhs.pa.gov/provider/promise/enrollmentinformation/index.htm> and select the link for a Pennsylvania State Police Criminal Record Check which will direct the provider or any person with a 5% or greater ownership interest in the provider to the Pennsylvania State Police website where a criminal history record can be requested. Criminal history records can be obtained online or by submitting a form via the mail. Results will be sent via e-mail or mail. The results of the record check will be requested during the enrollment, revalidation or re-enrollment (reactivation) application process or when the provider has been assigned to the "high" categorical risk level.

There are fees associated with obtaining the FBI criminal background check and the Pennsylvania State Police Criminal Record Check.

As of April 1, 2017, when a "high" categorical risk provider uses an electronic application to enroll in the MA Program, the provider will be asked if the provider is enrolled in the Medicare Program or another state's Medicaid or CHIP Program. If the provider answers yes, the electronic application will request information related to the state or Program that previously conducted the fingerprint-based criminal background check. However, if the Department cannot verify that a fingerprint-based criminal background check was completed for the provider or every person with a 5% or greater ownership interest in the provider by Medicare or another state's Medicaid or CHIP Program, the application will be returned to the provider, and the provider will need to obtain and submit a FBI criminal background check registration number and upload the results of a Pennsylvania State Police Criminal Record Check for the provider or any person with a 5% or greater ownership interest in the provider.

As of April 1, 2017, when a “high” categorical risk provider uses a paper application to enroll in the MA Program, the application will be returned to the provider if the Department cannot verify that a fingerprint-based criminal background check was conducted for the provider and every person with a 5% or greater ownership interest in the provider by Medicare or another state’s Medicaid or CHIP Program. The provider will need to resubmit the application with FBI criminal background check registration number(s) and the results of a Pennsylvania State Police Criminal Record Check for the provider or any person with a 5% or greater ownership interest in the provider.

If the Department notifies a provider that it requires a criminal background check of the provider or any person with a 5% or greater ownership interest in the provider, the FBI criminal background check registration number(s) and the results of a Pennsylvania State Police Criminal Record Check must be returned to the Department within 30 days of the Department making the request. If the provider is enrolled in the MA Program and information is not returned within 30 days, the provider may be disenrolled from the MA Program. If a provider is seeking to enroll in the MA Program and the Department notifies the provider that the provider needs to submit additional information related to the criminal background check and the provider does not submit the requested information within 30 days of the request, the provider’s application will be returned and the provider will need to submit a new enrollment application.

**REFERENCES:**

- The Department’s Enrollment Information website - <http://www.dhs.pa.gov/provider/promise/enrollmentinformation/index.htm>
- Pennsylvania State Police Criminal Record Check website- <https://epatch.state.pa.us>