

To: National Background Check Program (NBCP) Participating States
From: Centers for Medicare & Medicaid Services (CMS)
Subject: Guidance to NBCP Participating States regarding Letter SMD #15 002:
Medicaid/CHIP Provider Fingerprint-Based Criminal Background Check
Date: June 25, 2015

The Centers for Medicare & Medicaid Services (CMS) letter—SMD #15 002: Medicaid/CHIP Provider Fingerprint-Based Criminal Background Check—issued on June 1, 2015, provides guidance and a timeline for State implementation of a new fingerprint-based background screening requirement for certain Medicaid Providers that present a high risk of fraud and abuse. Sections 6401(a) and (b) of the Affordable Care Act, subsequent modifications of preexisting statutes, and regulation in 42 CFR 455.450, as cited in the letter, require all persons applying to become Medicaid providers to be screened. Now fingerprint-based screening is required for certain providers based on the level of risk for fraud and abuse.

The National Background Check Program (NBCP) is specifically identified as an allowable mechanism for Medicaid/CHIP Provider screening. Page 3 of the letter SMD 15-002 states the following:

The state Medicaid agency may determine the form and manner for submission of fingerprints. It may require a “high” risk provider to pay the costs associated with obtaining fingerprints. States also have discretion to decide the type and extent of their criminal background checks. We recommend conducting a FBI criminal history record check, which provides information that is national in scope. *States may wish to leverage existing protocols for obtaining FCBCs [fingerprint-based criminal background checks] that are used in the state for other purposes, such as hiring, licensing, or screening employees. States may also wish to leverage activities and procedures implemented under the CMS National Background Check Program for Long-Term Care Facilities and Providers.* The specific procedures a state Medicaid agency elects to follow will determine the applicable security and privacy requirements under state or federal law. [Emphasis added].

Your State may be able to incorporate these providers into your NBCP program. Section 6201(a)6(E)(x) allows States to include in the NBCP: “Any other facility or provider of long-term care services under such titles as the participating State determines appropriate.” Coordinate with your State CJIS Agency to determine if your existing authorization can be used.

Also, these individuals may be screened under other NBCP programs. Section 6201(a)4(B)(viii) requires NBCP States to “describe and test methods that reduce duplicative fingerprinting...” Again, coordinate with your State CJIS Agency to determine if your existing authorization can be used.

CMS Guidance for Next Steps:

1. If your State is currently screening or planning to screen Medicaid/CHIP Providers (and owners of 5% or more of such a provider organization) through the NBCP-compliant process, substantial parts of the Medicaid/CHIP Provider screening requirements may be satisfied through the NBCP process. Specifically, if your NBCP process includes fingerprint-based criminal history checks, Office of Inspector General (OIG) List of Excluded Individuals and Entities (LEIE) checks (with automatic re-check), professional licensing registries for your State and prior States, then the NBCP screening will meet the requirements for Medicaid/CHIP Provider enrollment screenings, with the exception of a site visit for providers at certain risk levels. CMS would like to know if you distinguish Medicaid provider enrollment screenings from LTC employment screenings in your program; please inform your State Liaison.
2. If you are not planning to include Medicaid/CHIP Provider enrollment screenings, then determine which providers need to be screened at which levels, and decide if it is feasible to include the fingerprint-based checks in your NBCP program. Coordinate with your State Medicaid provider enrollment unit.
3. The Medicaid/CHIP program staff indicated that the high risk provider program will accept a previous fingerprint-based screening done through a State's NBCP-compliant program. If your State is adopting that approach, you may wish to establish read-only access for the appropriate State Medicaid staff or develop an alternative process to verify the screening and results for those providers. You may use the same set of disqualifying offenses for the high risk provider screenings or you may set up a separate list.

Contact your State Liaison if you have questions about leveraging your NBCP procedures to accommodate this provider type and fingerprint-based screening requirements.