

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
San Francisco Regional Office
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DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS

May 26, 2015

Jennifer Kent, Director
California Department of Health Care Services
P.O. Box 997413, MS 0000
Sacramento, CA 95899-7413

Dear Ms. Kent,

Thank you for your recent inquiry regarding recertification of Drug Medi-Cal (DMC) providers. As you note, because the DMC program has in the past been victimized by fraud, your agency has appropriately designated DMC providers as “high” categorical risk. Under federal regulations at 42 CFR 455.450(c), this designation carries with it the most rigorous screening protocol, including site visits, criminal background checks, and ownership and control disclosures. Recertification of existing DMC providers is necessary to ensure that only eligible individuals and entities remain enrolled in the program going forward, thereby reducing the risk to state and federal Medicaid funds and to program beneficiaries.

Federal regulations at 42 CFR 455.414 require the recertification (in federal terminology, revalidation) of all currently enrolled providers. This applies not just to DMC providers, but to all provider types. States have discretion as to the frequency at which they revalidate particular provider types, although all types must be revalidated at least every 5 years. As you explain, DHCS prudently began recertification of DMC providers in July 2013. My understanding is that DHCS has experienced significant challenges in obtaining all required ownership and control information and provider agreements from DMC providers seeking recertification.

Since 2011, federal regulations at 42 CFR 455.104 have required that state Medicaid agencies like DHCS require that all providers seeking to enroll or re-enroll in Medicaid disclose identifying information regarding all individuals or corporations with an ownership or control interest of 5 percent or more and all managing employees (these disclosure requirements do not apply to individual practitioners or groups of practitioners). The reason that federal regulations require the disclosure of this information is to enable state and federal agencies to ensure that individuals with ownership or control interests and managing employees have not been excluded from federal health care programs and, in the case of “high” risk providers, do not have criminal records relating to federal health care programs.

Ensuring the integrity of individuals with ownership or control interests in a provider is fundamental to the ability of CMS and state Medicaid agencies to protect the Medicaid program

from fraud. For this reason, failure by a state Medicaid agency to require the submission of these disclosures would put that agency in noncompliance with federal Medicaid requirements. For the same reason, the failure of any provider to furnish the required disclosures would, under 42 CFR 455.104(e), prohibit CMS from approving federal Medicaid matching funds for the cost of any items or services furnished by that provider.

Federal regulations at 42 CFR 431.107 require that all state Medicaid agencies enter into provider agreements with each provider or organization furnishing services to Medicaid beneficiaries. This provider agreement sets forth the terms and conditions on which providers may participate in the Medicaid program and be reimbursed with state and federal funds for furnishing services to Medicaid beneficiaries. Among other things, the provider agreement stipulates that each participating provider agree to make the ownership and control disclosures described above. The requirement that Medicaid providers sign provider agreements with the state Medicaid agency applies to all provider types, not just DMC providers. There is no provision in either the Medicaid statute or CMS regulations for a waiver of this basic program integrity safeguard.

Thank you for your commitment to protecting the integrity of the DMC program in particular, and Medi-Cal in general. Please provide quarterly progress reports outlining the progress you are making toward recertifying DMC providers. If you have any questions, please contact Cheryl Young of my staff at (415) 744-3598 or Cheryl.Young@cms.hhs.gov.

Sincerely,

/s/

Hye Sun Lee, MPH
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations

cc: Tanya Homman, Department of Health Care Services
Andy Schneider, Center for Medicaid and CHIP Services