

## **Designation of Categorical Risk Levels for the Drug Medi-Cal (DMC) Program**

In accordance with 42 Code of Federal Regulations (CFR) Sections 455.410 and 455.450, the Department of Health Care Services (DHCS) is required to screen and establish categorical risk levels for all providers participating in the Medi-Cal program. DHCS has implemented 42 CFR Section 455.450 through Welfare and Institutions (W&I) Code Section 14043.38, which established three categorical risk levels of “limited,” “moderate,” or “high,” for screening provider applications. Pursuant to W&I Code Section 14043.38(a), DHCS has assessed the risk of fraud, waste and abuse posed by the category of Drug Medi-Cal (DMC) providers and determined that newly certifying or newly enrolling DMC applicants, and DMC providers who submit an application for revalidation, with the exception of DMC providers operated by governmental entities should be designated as a high categorical risk.

Based upon the authority granted to the DHCS director in the W&I Code Section 14043.75(b), the director of DHCS hereby designates a high categorical risk level for newly certifying or newly enrolling DMC applicants, and DMC providers that submit an application for revalidation, with the exception of DMC providers operated by governmental entities. This bulletin makes specific the requirements of W&I Code Section 14043.38 and has the full force and effect of law. The procedures regarding screening DMC applicants or providers are effective on September 22, 2014.

Effective the date of this bulletin, any DMC provider seeking certification or enrollment in Medi-Cal for the first time or seeking revalidation, with the exception of DMC providers operated by governmental entities, shall be designated as a high categorical risk pursuant to Section 14043.38. All other DMC providers shall be designated a moderate categorical risk pursuant to Section 14043.38.

### **Based on program integrity issues identified, Drug Medi-Cal providers pose a high risk of fraud, waste, and abuse to the Medi-Cal program**

DHCS is designating newly enrolling or certifying and revalidating DMC providers as high risk because this action will reduce the risk of fraud, waste and abuse in the DMC program. DMC providers are hereby designated as “high risk” based upon criteria including but not limited to the following:

- Significant issues with program integrity were uncovered in the DMC program.
- DHCS has undertaken extensive reviews of the DMC program.
- DHCS’ temporary suspensions and referrals to the California Department of Justice of numerous DMC providers.
- DHCS’ experience using claims data to identify fraudulent billing practices;
- DHCS’ expertise in investigating and identifying Medi-Cal fraud across a broad spectrum of providers.

### **Requirements for high risk providers**

Under the Affordable Care Act (ACA), federal law requires DHCS to establish a screening process for Medi-Cal applicants and providers based on the provider types’

categorical risk for fraud, waste, and abuse. In addition to the “limited,” “moderate,” or “high” risk screening level designation, provider applications are also subject to the minimum requirements for screening and research to be conducted during the application review process. Screening levels are determined as follows:

- If Medicare designates a provider type to a specific categorical risk, Medi-Cal must screen that provider type at that same categorical risk level at a minimum.
- Federal law specifies certain criteria that require Medi-Cal to designate a provider or provider type as a certain risk level or to move them to a higher level of screening pursuant to 42 CFR Section 455.450.
- For all other provider types, federal law allows DHCS to designate an appropriate screening level based on the actual risk of fraud, waste, or abuse for that provider type. (42 CFR Sections 455.434 and 455.450)

A provider designated as high risk must undergo all of the screening measures required for limited and moderate risk providers, and in addition submit fingerprints for a criminal background check (CBC) for all individuals who have five percent or greater direct or indirect ownership interest in the provider within 30 days of DHCS’ request. (42 CFR Section 455.434(b)(2).)

Pursuant to 42 CFR Section 455.450, when the State Medicaid agency designates a provider as a “limited,” “moderate,” or “high,” categorical risk, the State Medicaid agency must do all of the following:

Screening for providers designated as limited categorical risk:

- Verify that a provider meets any applicable Federal regulations, or State requirements for the provider type prior to making an enrollment determination.
- Conduct license verifications, including State licensure verifications in States other than where the provider is enrolling, in accordance with Section 455.412.
- Conduct database checks on a pre- and post-enrollment basis to ensure that providers continue to meet the enrollment criteria for their provider type, in accordance with Section 455.436.

Screening for providers designated as moderate categorical risk:

- Perform the “limited” screening requirements described in paragraph (a) of this section.
- Conduct on-site visits in accordance with Section 455.432.

Screening for providers designated as high categorical risk:

- Perform the “limited” and “moderate” screening requirements described in paragraphs (a) and (b) of this section.
- Conduct a criminal background check; and
- Require the submission of a set of fingerprints in accordance with Section 455.434.

Pursuant to W&I Code Section 14043.26(f)(4)(E), failure to submit fingerprints upon the request of CMS or the DHCS will result in the denial of the application package.

### **Implementation of fingerprints and criminal background checks**

Pursuant to federal and state law, DHCS has the authority to require fingerprints and criminal background checks for DMC applicants and providers, as well as fee-for-service applicants and providers, who are designated as a high categorical risk.

### **Nonprofit DMC Providers**

Both Federal and California law state that high risk Medi-Cal providers, and any person with a five percent or more direct or indirect ownership interest in the provider, must submit to fingerprinting and a criminal background check. (42 CFR §§ 455.450, 455.434(b)(2); W&I Code § 14043.38.) DMC providers operating as nonprofit organizations do not have any “owners” and are instead operated by a Board of Directors or other such structure which does not clearly fall within the scope of the fingerprinting and criminal background check requirement. Based on DHCS review, approximately 70 percent of DMC providers are operating as non-profit entities. These nonprofit DMCs would arguably be able to avoid the fingerprinting and criminal background check requirements specifically imposed to address the fraud, waste and abuse concerns leading to the high risk designation of DMCs. This is not consistent with the federal and state intent of a high categorical risk designation. To address this issue, DHCS is seeking a statutory remedy to specifically state that for DMC providers operating as a nonprofit, the fingerprinting and criminal background check requirement applies to the nonprofit’s Executive Directors and Officers.