

Sub Regulatory Guidance for State Medicaid Agencies (SMA): Fingerprint-based Criminal Background Checks (FCBC) (2016-002)

This sub regulatory guidance provides two methods for state Medicaid Agencies to comply with the requirement for conducting FCBCs under 42 CFR 455.434 and 455.450(c).¹

On June 1, 2015, CMS published a State Medicaid Director (SMD) letter, “Medicaid/CHIP Provider Fingerprint-Based Criminal Background Check” (<http://www.medicaid.gov/federal-policy-guidance/downloads/SMD060115.pdf>). This letter described requirements for conducting Fingerprint-based Criminal Background Checks (FCBCs) and set forth the following deadline for compliance:

States have 60 days from the date of this letter to begin implementation of the FCBC requirement. States must complete implementation within 12 months of this letter. Implementation means that the state Medicaid agency has conducted an FCBC with respect to each provider that the agency has designated as “high” risk. This includes all “high” risk providers newly enrolling in Medicaid, “high” risk providers seeking re-enrollment in Medicaid, and currently enrolled “high” risk providers at the time of revalidation.

In the June 1, 2015 SMD letter, we recommended that states conduct a criminal history record check via the Federal Bureau of Investigation (FBI), as doing so would yield information that is national in scope. CMS continues to work with the FBI to facilitate SMAs access to the infrastructure to conduct a national criminal history record check. In light of this, we are providing an alternate pathway to compliance.

Under this new guidance, there are two ways a SMA can achieve compliance with the FCBC requirement by June 1, 2016.

1. Implementation by June 1, 2016

Under this option, a SMA complies with the implementation timeframe set forth in the June 1, 2015 SMD by conducting either an FBI or State FCBC for each “high” risk provider by June 1, 2016. We will consider a State to have completed implementation by the deadline if the following requirements are met:

- The SMA has notified each “high” risk provider subject to the FCBC requirement;
- The SMA has collected fingerprints and used the fingerprints to verify whether the provider has a state or national criminal history;
- By June 1, 2016, the SMA has taken any necessary termination action based on the criminal history data, and has updated enrollment records to reflect FCBC status; and,

¹ States are permitted to rely on the results of screening conducted by Medicare or another State, as long as the provider is in the same or a higher risk category in that other program.

- By June 1, 2016, the enrollment record for a “high” risk provider subject to the FCBC requirement indicates whether the provider passed, “failed,”² or failed to respond to the requirement for an FCBC. Those providers that fail the background check or fail to respond must be terminated by June 1, 2016 unless the SMA determines that termination is not in the best interests of the Medicaid program and documents that determination in writing.

2. Alternate Compliance Pathway: FCBC Compliance Plan Approved by June 1, 2016

Under this option, a state is considered to be in compliance with the FCBC requirement if, by June 1, 2016, CMS has approved the state’s FCBC Compliance Plan, and the state successfully complies with the approved plan thereafter. We require the submission of certain information and have provided a template which states can, if they choose, use to submit a Compliance Plan. CMS will accept FCBC Compliance Plans until 11:59 p.m. Pacific Standard Time on April 15, 2016. Late submissions will not be reviewed. CMS will review and approve FCBC Compliance Plans on a case by case basis. If CMS approves a state’s proposed FCBC Compliance Plan, it will issue a letter to the SMA confirming approval and setting forth the conditions the SMA must meet to maintain its compliance status. Submitting a plan does not constitute compliance; only receipt of a CMS approval letter on or before June 1, 2016 indicates compliance.

With regard to revalidation, the guidance herein applies to the extent an FCBC is required to revalidate a “high” risk provider. However, this guidance does not apply to other screening activities that are required to be conducted upon revalidation. Therefore, except FCBC, providers at all risk levels must be revalidated based on the regulations at 455 Subparts B and E and the sub regulatory guidance regarding revalidation found at the following link (<https://www.medicaid.gov/affordablecareact/provisions/downloads/Revalidation-2016-001.pdf>).

Please contact Jen Bean at jennifer.bean@cms.hhs.gov if you have any questions about this guidance or the FCBC requirement generally.

² Under 42 CFR 455.416, a state Medicaid agency must terminate or deny enrollment of a provider if the provider, or any person with a 5% or greater direct or indirect ownership interest, who is required to submit fingerprints:

- fails to submit them within 30 days of the Medicaid agency’s request;
- fails to submit them in the form and manner requested by the Medicaid agency; or
- has been convicted of a criminal offense related to that person’s involvement with the Medicare, Medicaid or CHIP program in the last 10 years.

In all three cases, the agency may allow the provider to enroll if the agency determines that termination or denial of enrollment is not in the best interests of the Medicaid program and documents that determination in writing.

State Medicaid Agency Compliance Plan for Fingerprint-based Criminal Background Checks (FCBC) under 42 CFR 455.434 and 455.450(c)

1. If state law interferes with your agency's complying with 42 CFR 455.434 and 455.450(c); please describe it, along with your plan to address the barrier.
2. Please briefly describe how your state will operationalize the FCBC requirement, including information regarding both how and when (by what date(s)) you will:
 - a. Identify providers subject to the FCBC requirement
 - b. Notify providers subject to the FCBC requirement
 - c. Respond to providers' questions about the FCBC requirement
 - d. Terminate providers who do not respond to the FCBC requirement
 - e. Evaluate criminal history information, and please list your SMA's "fitness criteria"
3. Will you rely on Medicare's FCBC when possible? If no, explain why.
4. Will you conduct a local or a national (FBI) criminal background check?
5. Does your provider enrollment system require any changes to implement FCBC; if so, what do you need your system to do, and what is the anticipated time frame for any system change(s)?
6. Please provide a copy of your state Medicaid agency's notification letter to those providers subject to the FCBC requirement.
7. Please describe what support you are getting from your state repository.
8. How will the provider's enrollment record be updated to reflect a FCBC?
9. When do you anticipate fully implementing the FCBC requirement?
10. If you would like to discuss any additional barriers to your state's full implementation of the FCBC requirement, please do so here.