



MEDICAID PROGRAM INTEGRITY

Toolkits to Address Frequent Findings: 42 CFR 455.104

Disclosures of Ownership and Control

The following information addresses frequent findings from CMS's comprehensive program integrity reviews of State Medicaid Agencies' (SMAs) operations. This regulation is the first of three regulations (the others are 42 CFR 455.105 and 455.106) that address disclosures that must be made by providers. This information helps address common issues for states when collecting appropriate disclosures for persons with ownership or control interest. Although managed care entities (MCEs) are not mandated by this federal regulation to obtain ownership and control disclosures from their network providers, CMS considers the requirements under the regulation to be program safeguards that would be prudent to apply in managed care settings.

42 CFR 455.104 - Disclosure by Medicaid providers and fiscal agents: Information on ownership and control.

(a) *Who must provide disclosures.* The Medicaid agency must obtain disclosures from disclosing entities, fiscal agents, and managed care entities.

(b) *What disclosures must be provided.* The Medicaid agency must require that disclosing entities, fiscal agents, and managed care entities provide the following disclosures:

(1)(i) The name and address of any person (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal agent, or managed care entity. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address.

(ii) Date of birth and Social Security Number (in the case of an individual).

(iii) Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest.

(2) Whether the person (individual or corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) is

related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.

(3) The name of any other disclosing entity (or fiscal agent or managed care entity) in which an owner of the disclosing entity (or fiscal agent or managed care entity) has an ownership or control interest.

(4) The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal agent or managed care entity).

(c) *When the disclosures must be provided.*

(1) *Disclosures from providers or disclosing entities.* Disclosure from any provider or disclosing entity is due at any of the following times:

(i) Upon the provider or disclosing entity submitting the provider application.

(ii) Upon the provider or disclosing entity executing the provider agreement.

(iii) Upon request of the Medicaid agency during the re-validation of enrollment process under §455.414.

(iv) Within 35 days after any change in ownership of the disclosing entity.

(2) *Disclosures from fiscal agents.* Disclosures from fiscal agents are due at any of the following times:

(i) Upon the fiscal agent submitting the proposal in accordance with the State's procurement process.

(ii) Upon the fiscal agent executing the contract with the State.

(iii) Upon renewal or extension of the contract.

(iv) Within 35 days after any change in ownership of the fiscal agent.

(3) *Disclosures from managed care entities.* Disclosures from managed care entities (MCOs, PIHPs, PAHPs, and HIOs), except PCCMs are due at any of the following times:

(i) Upon the managed care entity submitting the proposal in accordance with the State's procurement process.

(ii) Upon the managed care entity executing the contract with the State.

(iii) Upon renewal or extension of the contract.

(iv) Within 35 days after any change in ownership of the managed care entity.

(4) *Disclosures from PCCMs.* PCCMs will comply with disclosure requirements under paragraph (c)(1) of this section.

(d) *To whom must the disclosures be provided.* All disclosures must be provided to the Medicaid agency.

(e) *Consequences for failure to provide required disclosures.* Federal financial participation (FFP) is not available in payments made to a disclosing entity that fails to disclose ownership or control information as required by this section.

This regulation has been, and continues to be, the most widely cited finding in our program integrity (PI) reviews in both fee-for-service and managed care settings. The Affordable Care Act made a number of changes to the Medicare and Medicaid programs and CHIP that enhance the provider and supplier enrollment process in order to improve the integrity of the programs and reduce fraud, waste, and abuse. Part of these enhancements expanded this regulation to include greater scrutiny of managing employees of disclosing entities and capture additional information on individuals and corporate entities.

One of the reasons for the repeated findings with this regulation is the complexity of requirements contained within it. Because of this, we have broken down the regulation into its subparts for better clarification and provided examples¹ where we thought they might be helpful. Each regulation subpart is cited in a box, followed by **Common Issues** we have observed in our reviews and **Solutions** that states could implement to ensure compliance with the regulation.

¹ Examples are provided for illustrative purposes only and are not intended to imply specific requirements of CMS.

455.104(a) *Who must provide disclosures.* The Medicaid agency must obtain disclosures from disclosing entities, fiscal agents, and managed care entities.

This section of the regulation explains from which parties the SMA **must** collect disclosures of ownership and control. Within this subpart is mention of “disclosing entities.” “Disclosing entity” has a unique definition under 42 CFR 455.101:

Disclosing entity means a Medicaid provider (other than an individual practitioner or group of practitioners), or a fiscal agent.

“Disclosing entities” normally are corporations or partnerships where there are owners, officers, partners, or managing employees² who run the company. Disclosures on these individuals are captured as these parties are considered “behind the scenes” and direct how the organization will operate. They are responsible for decisions made in policies and procedures for how services will be provided and for billing. Examples of entities that would be considered “disclosing entities” include, but are not limited to:

- Hospitals
- Nursing homes
- Community Mental Health Centers
- Home Health Agencies
- Group homes
- Clinical labs
- Pharmacies
- Managed care organizations
- Fiscal agents for the state

Individual practitioners and/or groups of practitioners are excluded from this definition as these are direct-care providers responsible for their own business. As providers, they are already directly enrolling in the Medicaid program, and there are no “behind the scenes” individuals. As part of the enrollment process, the state is already collecting information on the provider, whereas, with a “disclosing entity,” if the state only collected the information on the provider (such as a hospital), it would not learn of the other parties who are responsible for the operations of the hospital. Examples of providers who would be excluded from the definition of “disclosing entity” include, but are not limited to:

- Solo practitioners such as an individual physician, psychologist, or chiropractor.
- Group of individual practitioners, such as a group of cardiologists, or a group of radiologists.

² “Managing employee” is defined in 42 CFR 455.101 as “a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency.”

Common Issue:

- States do not collect all the necessary 455.104 disclosure information from fiscal agents and MCEs. This is often because a different component within the SMA (or even outside the SMA) is responsible for procuring state contracts, and this department may not be aware of 455.104 requirements and the need to collect disclosures prior to or at the time of executing a contract.

Solutions:

- a) State PI staff should be consulted on contract language between the SMA and any providers, MCEs, fiscal agents, or vendors to ensure that PI requirements are included, where applicable.
- b) State PI staff and provider enrollment (PE) staff that are knowledgeable about 455.104 disclosures could provide training to procurement staff on the regulations.
- c) State PI staff could share this toolkit and earlier guidance provided by CMS in *Best Practices for Medicaid Program Integrity Units' Collection of Disclosures in Provider Enrollment* (August 2010) with other state staff. The 2010 document can be found at: <http://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforProfs/Downloads/bppedisclosure.pdf>

455.104(b) *What disclosures must be provided.* The Medicaid agency must require that disclosing entities, fiscal agents, and managed care entities provide the following disclosures:

- (1)(i) The name and address of any person (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal agent, or managed care entity. The address for corporate entities must include as applicable primary business address, every business location, and P.O. Box address.

“Person with an ownership or control interest” is defined in 42 CFR 455.101:

Person with an ownership or control interest means a person or corporation that—

- a) Has an ownership interest totaling 5 percent or more in a disclosing entity;
- b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;
- c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;
- d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;
- e) Is an officer or director of a disclosing entity that is organized as a corporation; or
- f) Is a partner in a disclosing entity that is organized as a partnership.

Common Issues:

1. States solicit disclosures and collect the names of some, but not **all**, parties listed under the 455.101 definition of a “person with an ownership or control interest.” Many states solicit information only for those individuals or entities with a 5% ownership or control interest in sections 455.101(a)-(d) of the definition (see below) and do not solicit such disclosures for officers, directors, or partners, as defined in sections 455.101(e) and (f).

2. States are collecting disclosure information on some, but not **all**, required parties. This is often discovered when other corporate or organizational documents are reviewed that have corporate officers listed who were not declared on the disclosure form. See example below.

Example:

An MCE's disclosure form contains the Chief Executive Officer. Later, the team reviews the state's contract and notes that the Vice President of Finance/Chief Financial Officer signed the contract but was not listed on the disclosure form.

3. Applications or disclosure forms do not capture all applicable addresses for a corporate entity that is listed by the provider. Instead, often there is only room for one address or the directions on the form do not direct the provider to list all applicable business addresses as required by the regulation. The list of addresses should include not only the sites where services are provided, but also any corporate headquarters address, if at a different location, and any P.O. Box addresses.

Solutions:

- a) Application forms or disclosure documents should clearly instruct the applicant to supply the names of **all** individuals or entities included under persons with an ownership or control interest. States may want to specify the types of parties to be listed in the directions or refer to definitions in another part of the document. (Some states include a list of the federal definitions with their application forms.)
- b) Be sure that enrollment and disclosure forms indicate that applicants should attach additional pages if needed to identify all parties with ownership or control interests.
- c) Have the applicant list the title of the individual (owner, chief executive officer, etc.). This helps state staff to ensure at a glance that all required parties are being collected.
- d) Internal controls such as checking corporate websites or state websites for registering corporations can provide additional quality assurance that the applicant is identifying all relevant parties.
- e) For owners, have the applicant indicate the percentage of ownership in the applicant.

- f) Board members should be listed with other parties under persons with ownership or control interest, to the extent they meet the definition of a person with an ownership or control interest at 455.101.
- g) Ensure that instructions on applications and disclosure forms direct the applicant to provide all applicable business addresses for corporate entities.

Note: For large corporations that may have several entities across the country, e.g. hospital corporation with 5-6 hospitals within the state and numerous others across the country, the applicant needs to provide the address of the corporate headquarters (regardless of where it is located), a listing of all businesses within the state where the applicant is applying to be a Medicaid provider, and all P.O. Box addresses that the organization uses for payment or other types of correspondence. See the following example.

Example:

Hospital Z is applying to be a Medicaid provider in the State of North Carolina. Hospital Z is 100% owned by AlphabetMed, Inc. which owns three other hospitals in North Carolina and many more across the country. AlphabetMed, Inc. is located in New Jersey. On the state's disclosure form, Hospital Z will need to list AlphabetMed, Inc. as its owner and include AlphabetMed's primary business address in New Jersey, along with the address of the other three hospitals it owns in North Carolina, and all P.O. Box addresses that AlphabetMed uses for payment or other types of correspondence.

- h) Have space available and/or prompt for each type of address for corporate listings. This may include having a column for each type of address or a special section for corporate owner information that is separate from information on individual owners. See example on next page.

455.104(b)(1)(ii) Date of birth and Social Security Number (in the case of an individual).

Common Issues:

- Enrollment application and/or disclosure forms do not capture the date of birth **and** social security number, along with the name and address of individuals listed for persons with an ownership or control interest in the applicant. These were new requirements under the Affordable Care Act, and some states have yet to update their forms.

Solutions:

- a) Update application and disclosure forms to comply with the new requirements.
- b) Have separate fields or columns (if using a table) for the applicant to indicate the name, address, date of birth, and Social Security Number for all individuals with an ownership or control interest.
- c) As mentioned earlier, since the applicant may be listing corporate entities with an ownership or control interest along with individuals, it may help to have separate sections to list the various entities since different information is required for each. See the following example.

Example:

Section 7A: Individuals with an Ownership or Control Interest

Please list all individuals with an ownership or control interest in the applicant. Include each person’s name, address, date of birth (DOB), and Social Security Number (SSN). Also indicate the title (e.g. chief executive officer, owner) and if an owner, the percent of ownership. Please see the definition of “persons with an ownership or control interest” on page 3 to ensure that all individuals are included. Attach additional pages as needed.

Name of Individual	Title	% Ownership (if applicable)	Address	DOB	SSN

Section 7B: Corporations with an Ownership or Control Interest

Please list all corporations with an ownership or control interest in the applicant. Include the Tax Identification Number (TIN), the percent of ownership in the applicant, the primary business address, every business location, and P.O. Box address(es). Attach additional pages as needed.

Name of Corp.	TIN	% Ownership	Primary Business Address	Every Business Locations	P.O. Box Address(es)

455.104(b)(1)(iii) Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest.

Common Issues:

1. States' application or disclosure forms fail to solicit the tax identification number (TIN) of corporations listed as having ownership or control interest in the applicant.
2. States fail to solicit the TIN of subcontractors in which the applicant has a 5 percent or more ownership or control interest.

Solutions:

- a) Have a separate section of the application or disclosure form for collecting information on corporations with an ownership or control interest in the applicant. Have separate fields or columns for the name, all required business addresses, and the TIN for each corporation. This section could be listed before or after the listing of individuals with an ownership or control interest. See our example in the previous section.
- b) Although not required, it can be helpful to have the applicant list the percentage of ownership that the corporation holds in the applicant.

- c) Have another section of the application or disclosure form for the applicant to list any subcontractor, along with the address and TIN, in which the applicant has a 5 percent or more ownership or control interest.
- d) Board members should be listed as managing employees, to the extent they meet the definition of a managing employee at 455.101.

455.104(b) (2) Whether the person (individual or corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.

This is probably one of the most complex parts of the regulation as it deals with relationships among parties at two different levels. On the surface, the information may not seem relevant when enrolling providers. However, relationship information can become useful in an investigation where there may be collusion among family members of different organizations which are engaged in fraudulent or abusive activities.

Common Issues:

1. States' application or disclosure forms fail to ask if any of the individuals who were listed as having an ownership or control interest are related as a spouse, parent, child, or sibling.
2. Forms do not correctly ask about relationships between individuals listed as having an ownership or control interest in the applicant and those individuals having an ownership or control interest in any subcontractors that were listed previously where the applicant has a 5 percent or more interest. See the example below of how an applicant with a 5 percent or more interest in a subcontractor should provide relevant disclosures.

Example:

A hospital applies to be a Medicaid provider. John Smith is the Chief Executive Officer of the hospital. The hospital owns 33 percent of an ambulatory surgical center where John's son is the Chief Financial Officer.

The hospital subcontracts with the ambulatory surgical center to perform some of its outpatient procedures.

On the enrollment application or disclosure form, the hospital should disclose John Smith as a person with an ownership or control interest in the hospital since he is an officer.

Later in the enrollment application or disclosure form, the hospital should disclose the ambulatory surgical center as a subcontractor in which the hospital has a 5 percent or more interest since it owns 33 percent.

Last, the hospital should disclose that John Smith is related to a person with ownership or control interest in the ambulatory surgical center (his son is an officer) by indicating his name and the relationship.

Solutions:

- a) As this section of the regulation can be very confusing for providers who are completing the application or disclosure forms, it can help to ask specific questions for each subpart. See example below.

Example:

If the state's application or disclosure form has all individuals with an ownership or control interest listed in one section—similar to section 7A in our earlier scenario—the form can later ask the question, “Are any parties listed in 7A related to each other as a spouse, parent, child, or sibling? If “Yes,” please list their names and the relationship.”

In a similar manner, if subcontractors, in which the applicant has a 5 percent or more interest, are listed in 7C (in our scenario above, this is where we would expect to see the ambulatory surgical center), a later question could ask, “Are any parties listed in 7A related to any individuals with an ownership or control interest in any of the subcontractors listed in 7C? If “Yes,” please list their names and the relationship.” In our scenario described previously, this is where we would expect to see John Smith and his son listed.

455.104(b)(3) The name of any other disclosing entity (or fiscal agent or managed care entity) in which an owner of the disclosing entity (or fiscal agent or managed care entity) has an ownership or control interest.

Essentially, this subpart is asking if any **owners** of the applicant (not including parties with only a control interest) have an ownership or control interest in any other organization that would qualify as a disclosing entity. These other disclosing entities need not be subcontractors of the applicant.

“Other disclosing entity” in this section of the regulation has a uniquely different meaning from “disclosing entity” in section 455.104(a) discussed on page 2. Below is the definition of “other disclosing entity” as provided under 42 CFR 455.101:

Other disclosing entity means any other Medicaid disclosing entity and any entity that does not participate in Medicaid, but is required to disclose certain ownership and control information because of participation in any of the programs established under title V, XVIII, or XX of the Act. This includes:

- (a) Any hospital, skilled nursing facility, home health agency, independent clinical laboratory, renal disease facility, rural health clinic, or health maintenance organization that participates in Medicare (title XVIII);
- (b) Any Medicare intermediary or carrier; and
- (c) Any entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health-related services for which it claims payment under any plan or program established under title V or title XX of the Act.

Whereas “disclosing entity” is limited to Medicaid providers, “other disclosing entity” can include entities that are not enrolled in a Medicaid program.

Common Issue:

- States fail to adequately solicit this information from the applicant which may be due to the complexity of the language in the regulation.

Solutions:

- a) To assist providers in completing this element of the application or disclosure form, we recommend using a clear step-by-step approach in describing the information being elicited.

Example:

Using the previous example where we have individual owners included in 7A and information on corporate owners included in section 7B, for this part of the regulation, the form could subsequently ask, “Do any of the **owners** listed in Sections 7A and 7B have an ownership or control interest in another organization(s) that would qualify as a disclosing entity? (Have options for the applicant to indicate “Yes” or “No.”) If so, please list the name of each owner and the name of the other disclosing entity(ies) in which they have an ownership or control interest.”

Note: It would be helpful at this point to include the definition of “other disclosing entity” from 42 CFR 455.101 or refer the applicant to the definition elsewhere in the application or disclosure form.

- b) Because this question would not apply to providers who have no owners, such as non-profit corporations, it is important to have an option for the applicant to indicate “N/A.” This can be achieved by having a box for the applicant to check or directing the provider to write in “N/A” for any questions that are not applicable. Note: An “N/A” response should be accepted only for those providers with no owners. If a provider lists owners on their list of persons with an ownership or control interest, then their response to this question should be “Yes” or “No.”

455.104(b)(4) The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal agent or managed care entity).

Common Issue:

1. As this is a new requirement under the Affordable Care Act, many states have yet to update their forms to include this information.

Solutions:

- a) Update application or disclosure forms to capture managing employee information.
- b) Include a definition of a managing employee from 42 CFR 455.101 or refer the applicant to the definition in this regulation.
- c) Board members should be listed as managing employees, to the extent they meet the definition of a managing employee at 455.101.

- d) Note: Managing employees do not need to be listed as persons with an ownership or control interest, so subsequent questions related to subcontractors and familial relationships do not apply to managing employees.

455.104(c) *When the disclosures must be provided.*

This section addresses the timeliness for collecting disclosures. This subpart is further subdivided to specify the required timing of disclosures for providers and disclosing entities, fiscal agents, and managed care entities, respectively. The regulation specifies that providers in primary care case management (PCCM) programs must comply with the provisions for providers and disclosing entities, even though they are normally considered as operating within a managed care model, and are included within the definition of “managed care entity” in 42 CFR 455.101.

It should be noted that each of the subparts describes below states that disclosures must be obtained “at any of the following times,” which means that these disclosures are due at **each** of the listed times, when applicable.

455.104(c)(1) *Disclosures from providers and disclosing entities.* Disclosure from any provider or disclosing entity is due at any of the following times:

- (i) Upon the provider or disclosing entity submitting the provider application.
- (ii) Upon the provider or disclosing entity executing the provider agreement.
- (iii) Upon request of the Medicaid agency during the re-validation of enrollment process under § 455.414.
- (iv) Within 35 days after any change in ownership of the disclosing entity.

Our reviews have found that all states are familiar with and have implemented processes for obtaining disclosures of ownership and control from their providers and other disclosing entities at the time of enrolling with the SMA, at re-validation of enrollment, and within 35 days of any change in ownership. Any issues identified are related to the quality and/or quantity of the information collected as described throughout this document.

455.104(c)(2) *Disclosures from fiscal agents.* Disclosures from fiscal agents are due at any of the following times:

- (i) Upon the fiscal agent submitting the proposal in accordance with the State's procurement process.
- (ii) Upon the fiscal agent executing the contract with the State.
- (iii) Upon renewal or extension of the contract.
- (iv) Within 35 days after any change in ownership of the fiscal agent.

Common Issue:

- Some states are not collecting disclosures of persons with an ownership or control interest in their fiscal agents (where applicable) at any of the time periods mentioned in the regulation. Two reasons for this are that the state was unaware of the need to collect disclosures from its fiscal agent and/or, as mentioned earlier, a different component within the SMA (or even outside the SMA) is responsible for procuring state contracts, and this department may not be aware of 455.104 requirements and the need to collect disclosures prior to or at the time of executing a contract.

Solutions:

- a) Require vendors to submit disclosures in their proposal to contract with the state. This practice allows the state the opportunity to conduct exclusion checks on all key parties and to use this information to screen potential vendors.
- b) If the state failed to obtain disclosures as part of the proposal process, or in states where there is no proposal process, then the state would need to obtain the disclosures prior to executing the contract. If disclosures were obtained earlier, then it would be important to confirm whether there were any changes in the disclosures of persons with an ownership or control interest between the time the vendor had submitted its proposal and the state executed its contract.
- c) If/when the state renews a contract with its fiscal agent or extends the current contract, the state should have the fiscal agent submit new disclosures of persons with ownership or control or confirm that there have been no changes.
- d) Include contract language that requires the fiscal agent to notify the state within 35 days of a change in ownership of the fiscal agent and to disclose all persons with an ownership or control interest in the new owner.

455.104(c)(3) *Disclosures from managed care entities.* Disclosures from managed care entities (MCOs, PIHPs, PAHPs, and HIOs), except PCCMs are due at any of the following times:

- (i) Upon the managed care entity submitting the proposal in accordance with the State's procurement process.
- (ii) Upon the managed care entity executing the contract with the State.
- (iii) Upon renewal or extension of the contract.
- (iv) Within 35 days after any change in ownership of the managed care entity.

Common Issue:

- Some states fail to obtain disclosures at any time from the MCEs. The reasons for this are usually the same as mentioned earlier for the fiscal agent—contracts are procured through a separate division within the state that is not familiar with disclosure requirements.

Solutions:

- a) As with the fiscal agent, require MCEs to submit disclosures as part of their proposal to contract with the state, so that the state can conduct exclusion checks to screen potential vendors.
- b) If the state failed to obtain disclosures during the proposal stage of procuring the contract or does not require a proposal to be submitted, then disclosures should be obtained when an MCE contract is executed.
- c) If/when the state renews a contract with an MCE or extends the current contract, the state should have the MCE submit new disclosures of persons with ownership or control interest or confirm that there have been no changes.
- d) Include contract language that requires MCEs to notify the state within 35 days of a change in ownership of the MCE and to disclose all persons with an ownership or control interest in the new owner.

We hope this information on collecting federally mandated ownership and control disclosures has been helpful to states. Please direct any suggestions or feedback to: Medicaid_Integrity_Program@cms.hhs.gov.