

From: Sheri Jurad [KDADS] <Sheri.Jurad@ks.gov>

Sent: Wednesday, May 1, 2024 9:21 AM

Subject: Implementation of Fingerprint-based Criminal Background Checks (FCBC)

May 1, 2024

Kansas Nursing Facility Association Representatives:

Re: Implementation of Fingerprint-based Criminal Background Checks (FCBC):

We would like your assistance in notifying Kansas skilled nursing facilities of a major adjustment in enrollment and change in ownership requirements. Effective January 1, 2023, the Centers for Medicare and Medicaid Services (CMS) designated skilled nursing facilities (SNFs) that are initially enrolling (which includes most undergoing a change in ownership (CHOW)) as “High” Risk. This change was published in the Federal register on November 18, 2022; however, states were not directly notified until December 29, 2023. Two federal regulations, §§ 424.518(c) and 455.450(e), are used to indicate the providers and provider types that State Medicaid Agencies (SMAs) must categorize as “high” risk. Section 424.518(c)(1) lists the provider types under the “high” risk category. During initial enrollment and most CHOWs all individuals with 5 percent or more direct or indirect ownership interest in a SNF are required to obtain and submit fingerprints either to CMS or to the Kansas Department of Health and Environment Division of Health Care Finance (KDHE/DHCF) within 30 days of emailed notification. Any SNF with a 5% owner barred from enrollment, or failure to submit fingerprints, may result in termination or denial per 42 CFR 455.416. Please see 42 C.F.R. § 455.101 for the definition of person with an ownership or control interest and § 455.102 for determination of ownership or control percentages.

SNFs that initially enrolled or underwent a CHOW in Kansas from **January 1, 2023**, through **April 30, 2024**, will fall into two categories:

1-For those SNFs that have received approval from Medicare, SMAs may rely on the fingerprinting results completed by CMS. KDHE/DHCF and our fiscal agent have access to view these results and will document compliance with the fingerprinting requirements. KDHE/DHCF will inform the Kansas Department for Aging and Disability Services (KDADS) if a provider has been barred from Medicaid enrollment. These facilities do not need to take any action.

2-The 5% of owners of SNFs that initially enrolled or underwent a CHOW from **January 1, 2023**, through **April 30, 2024**, and have not yet received approval from Medicare and were enrolled in Kansas Medicaid will be receiving notices via email from the Kansas Medical Assistance Program (KMAP) with instructions on how to obtain and submit fingerprints. These emails should be acted upon quickly as there is a 30-day due date for the fingerprints in order to avoid termination. Currently there are approximately 7 facilities that fall into this category.

SNFs that will be initially enrolling or undergoing a CHOW effective **May 1, 2024**, will have four options (the SNF will indicate their option when completing the National Provider Identifier Update and Enrollment Type Form):

Option 1-Enroll in Medicare first: submit fingerprinting and fee to CMS as they request and receive approval from CMS prior to enrolling in Kansas Medicaid. If the CMS enrollment information

matches the Kansas Medicaid enrollment information the SMA may rely on the CMS results to meet the FCBC requirement. KDHE/DHCF and our fiscal agent will review and document CMS fingerprinting results and notify KDADS if a provider failed to submit fingerprinting or has been barred from Medicaid enrollment. Once approved, KDHE and the fiscal agent will provide KDADS with the new provider number indicating the provider has passed the fingerprinting. As CMS approval will be needed first, this option may significantly delay the process to enroll in Kansas Medicaid.

Option 2-Enroll only in Kansas Medicaid: During the enrollment/CHOW process, once KDADS has confirmed payment, all individuals with 5 percent or more direct or indirect ownership interest will receive notices via email from KMAP with instructions on how obtain and submit fingerprints. These emails should be acted upon quickly as there is a 30-day due date for the fingerprints in order to avoid denial for Medicaid enrollment. KDHE/DHCF will receive, review, and document the fingerprinting results and notify KDADS of any provider failing to submit fingerprints or barred from Medicaid enrollment. Once approved, KDHE and the fiscal agent will provide KDADS with the new provider number indicating the provider has passed the fingerprinting. Delays in Kansas Medicaid enrollment will be affected by the time needed to submit, receive, review and document fingerprinting results.

Option 3-Enroll in Kansas Medicaid and Medicare simultaneously: SNFs may choose to enroll in both Federal and State programs at the same time. In these instances, all individuals with 5 percent or more direct or indirect ownership interest will receive fingerprinting notices from KMAP and CMS and will need to submit fingerprinting to both KDHE/DHCF and to CMS. This will involve paying the background check fee to both the State and to CMS. Choosing this option may allow a provider to begin filing Medicaid claims before the Medicare/CMS approval is received.

Option 4-Enroll only in Medicare: there is no KDHE/DHCF or KDADS involvement in these enrollments.

Your support in helping inform the SNFs of these requirement changes is much appreciated. We will also be sending this notification as an email blast to nursing facility administrators via the Kansas Organization Tracking Application (KOTA). Please let us know of any questions or issues as they arise.

Sheri Jurad
Director of NF/ACH Programs
Aging Services Commission
Kansas Department for Aging and Disability Services
503 S. Kansas Ave
Topeka, KS 66603
785-296-2916
Sheri.Jurad@KS.gov

