

Convenient Law Library

Below please find applicable Federal Law and recent CMS guidance on two frequently asked questions on the Provider person and Provider Entity Ownership & Disclosure forms, namely the application of the rules to non-profit entities, and questions on the disclosure of Social Security numbers. This general information is presented for the convenience of persons filling out these forms. ***This information is not legal advice. For answers to questions about how these laws and guidance apply to your specific situation consult your attorney.***

Profit v. non-profit

CMS Best Practices letter Aug 2010

“We have also noted confusion in some States over whether the mandates in section 455.104 apply equally to not-for-profit and for-profit organizations. The regulation requires disclosure of ownership and control information from persons, who may be individuals or corporations, with a direct or indirect interest of five percent or more. *See* 42 CFR 455.104(a)(1). The definition of “person with an ownership or control interest” includes one who “is an officer or director of a disclosing entity *that is organized as a corporation.*” 42 CFR 455.101. ***Thus, State Medicaid agencies must collect disclosures from all provider applicants regardless of for-profit status.***”

Social security Numbers

42 cfr 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.

(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).

Ownership or Control Interest

42cfr 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.

76 FedReg 5896

Comment: Commenters expressed concerns about new and existing disclosure requirements under § 455.104, including our proposal to add to the disclosure requirements collection of SSNs and DOBs of persons with an ownership or control interest in the disclosing entity. Some States support the proposal, already having instituted the disclosure requirement in their enrollment application procedures. Other States support the proposal but request additional time for implementation, including forms and system changes. Two States expressed concern about the impact the requirement might have upon beneficiary access to providers.

Response: We will not address the comments directed at the existing language of § 455.104. The regulation was rearranged for ease of application by States and disclosing entities, but with the exception of the addition of SSNs and DOBs, as well as changes suggested by a few commenters regarding corporate entity addresses and familial relationships, the language is substantially unchanged from the language currently in effect. We acknowledge the commenters' concerns about collection of SSNs and DOBs, however, **collection of SSNs and DOBs is necessary to complete the screening process and be certain of the identity of the party being screened.** We recognize that the addition of SSNs and DOBs and other improvements in disclosure collection will require systems and forms changes and States will need time for implementation. We encourage States to contact us about their specific timeframes. Furthermore, we do not believe that this requirement will have an adverse impact on beneficiary access as the majority of disclosure requirements have not changed, and our experience with the same requirement in Medicare indicates that such a requirement does not adversely impact beneficiary access.

76 FedReg 5897

Comment: Several commenters expressed concern regarding collection of disclosures under § 455.104. One commenter expressed concern about the confidentiality and privacy of board member identity and the protection from disclosure to the general public. **Other commenters were concerned that not-for-profit board members were volunteers and might not serve were they compelled to provide their SSNs and DOBs as a condition of the entity being enrolled.**

Response: We have previously provided guidance to States that § 455.104 requires disclosures from persons with ownership and control interests in the disclosing entity, which includes officers and directors of a disclosing entity that is organized as a corporation, without regard to the for-profit or not-for-profit status of that corporation. That guidance is available at <http://www.cms.gov/FraudAbuseforProfs/Downloads/bppedisclosure.pdf>. **We are sensitive to the concerns related to confidentiality of identifiable information such as SSNs. We are also concerned about issues that arise out of identity theft. We encourage States to institute appropriate safeguards to protect the information they gather as required by these rules. However, collection of disclosures including the SSNs and DOBs of persons with ownership and control interests in a disclosing entity, and of managing employees, is necessary to protect the integrity of the State Medicaid programs. Therefore, we are finalizing the proposal requiring provision of SSNs and DOBs.**