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To Whom It May Concern:

You have asked the New Hampshire Department of Health and Human Service (DHHS) whether the disclosure of the social security numbers of all board members of a board of directors is a requirement for enrolling in the Medicaid program. Federal law and the associated guidance by CMS have made it clear that the State agency must require such disclosure and that the state agency does not have discretion to enroll or revalidate a provider without such disclosures. While we understand your concern in maintaining the security of personally identifying information, if the provider entity is organized as a corporation, whether for profit or non-profit, then DHHS must require the social security numbers of all members of the board of directors because it is required by federal law.

Federal guidance recognizes that there may be concerns surrounding safeguarding this personal information but still makes the requirement clear: “We recognize that there may be privacy concerns raised by the submission of this personally identifiable information as well as concerns about how the States will assure individual privacy as appropriate; however, we believe this personally identifiable information is necessary for States to adequately conduct the provider screening activities ”

76 Fed. Reg. 22, 5897 (2011).

Federal law requires Medicaid providers to disclose the name and address of any person with an ownership or control interest in the disclosing entity, including the date of birth and social security number (in the case of an individual), or other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity as a requirement for enrolling in the Medicaid program. See 42 CFR 455.104 (b)(4).

A disclosing entity is defined in this law as a “Medicaid provider (other than an individual practitioner or group of practitioners), or a fiscal agent.” 42 CFR 455.101. The definition goes on to state that a “person with an ownership or control interest” is one who is an “officer or director of a disclosing entity that is organized as a corporation.” See 42 CFR 455.101(e). The Medicaid Provider Enrollment Compendium further states that non-profit entities “generally do not have owners” however, “entities, including non-profit entities, that are organized as corporations must provide disclosures regarding their officers and directors.” **Simply put, a director on a board of directors or board of trustees for a non-profit or for-profit organization which is organized as a corporation must provide the disclosures required under 42 CFR 455.104 which includes the social security number.**

If the non-profit is not organized as a corporation, then we would be required to review whether the board members must disclose as managing employees on a case-by-case basis.

In accordance with the federal requirements, DHHS conducts a number of checks on providers for Medicaid program integrity purposes. For example, prior to enrollment, we are required to ensure that neither the medical providers nor anyone with an ownership or control interest has been excluded from Medicare or a Medicaid program in another state.

December 22, 2022

Page 2

Members of boards of directors and all Medicaid providers can be assured that DHHS and its contractor, will take appropriate measures to safeguard their personal information. The contractor is under an obligation with DHHS to implement security measures so that all the information is secured and protected. In fact, the contractor is required to treat all information obtained through its performance under the contract as confidential and not use any information obtained in any manner except as necessary for the proper discharge of its contract obligations. In addition, the MMIS contractor administering the Medicaid enrollment is required to adhere to the following: “The contractor shall ensure that the MMIS conforms to the following relevant State and federal regulations and publications related to security, privacy, confidentiality, and auditing as well as any additional updated publications and regulations:

- a) Section 1902(a)(7) of the Social Security Act, codified at 42 U.S.C. Sec. 1396a(a)(7).
- b) 42 CFR Part 431, Subpart F Safeguarding Information on Applicants and Recipients.
- c) 45 CFR Part 95.621(f) ADP System Security Requirements and Review Process.
- d) Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and 45 CFR Parts 160, 162, and 164.
- e) FIPS PUB 31 Automatic Data Processing Physical Security and Risk Management.
- f) FIPS PUB 112 Password Usage.”

I hope this answers your question as to why certain entities must share personal identifying information when enrolling in the Medicaid program, how the information is used, and how it is securely maintained. Please do not hesitate to contact Karen Carleton, Program Integrity Administrator, at 271-8029 if you have any further questions or concerns.

Sincerely,

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