



Rhode Island Executive Office of Health and Human Services  
 3 West Road, Virks Building, Cranston, RI 02920  
 phone: 401.462.5274 fax: 401.462.3677

Name of Regulation: **210-RICR-20-00-1 (Medicaid Payments and Providers)**  
 Posted for Public Comment on **4/7/2023**  
 Public hearing held on **4/28/2023**  
 Comment Period Ended on **5/7/2023**  
 Summary Response to Comments **6/12/2023**

|    | Respondent                                       | Nature of the Comments   | EOHHS' Response  |
|----|--|--|--|
| 1. | Joanne Malise<br>Living Innovations<br>4/7/2023  | Is the state going to fund the cost of these background checks?  | The legislation provides that the individual is responsible for the cost of the fingerprint. See R.I. Gen. Laws §§ 42-7.2-18.1(i) and 42-7.2-18.3(f). Accordingly, Section 1.6(D) of the regulation requires that the individual is responsible for the cost of the fingerprint.   |
| 2. | Joanne Malise<br>Living Innovations<br>4/10/2023 | Will the police be ordered to run these checks?  | Only the Attorney General will be running these checks.  |
| 3. | Hannah Stern<br>ACLU<br>4/26/2023                | It is unclear whether personal care aides and/or personal care attendants (PCAs) are considered providers under the parameters of this regulation.   | Yes, PCAs are considered providers as "individual[s] . . . who are engaged in the delivery of medical/behavioral health care services" under Section 1.3(A)(6).  |
| 4. |  | Broadly-disqualifying background checks can inappropriately perpetuate cycles of discrimination against justice-involved individuals who are otherwise qualified (especially a family member serving as a PCA). This is especially true for records that are outdated or irrelevant to the position being sought. Language should be included to allow Medicaid recipients to submit a request for an exception and for this request to be weighted in the consideration of whether an individual may become a PCA or not. | Both the statute and regulations provide the opportunity for individuals with disqualifying information to request an exception from EOHHS. EOHHS recognizes that, under some circumstances, exceptions to these overall requirements may be appropriate depending on the nature of previous convictions, number of offenses, frequency of offenses, age of offenses, time since last conviction, relevance to position sought, and evidence of rehabilitation. The member may also submit a statement during this process to support making an exception. |
| 5. |  | Providers are exempted from a hearing on the issue of eligibility but instead the appeals process should reflect RI's "fair chance licensing" law [R.I.G.L. § 28-5.1-14(i) – (k)] which ensures that individuals seeking licensure are not unduly denied a license based on their past criminal records.   | The inclusion of "not entitled to a hearing" was an error and the word "not" was stricken in the final amendment. Providers <u>are</u> entitled to a hearing and have appeal rights if there is an adverse action by EOHHS as set forth in 210-RICR-10-05-2, and EOHHS has been recognizing appeal rights under the emergency rule. EOHHS does not receive the detailed  |



Rhode Island Executive Office of Health and Human Services  
 3 West Road, Virks Building, Cranston, RI 02920  
 phone: 401.462.5274 fax: 401.462.3677

|    | Respondent   | Nature of the Comments  | EOHHS' Response  |
|----|--|---|--|
|    |  |   | information on a person's criminal record; however, the individual may get a copy of their record from the Attorney General and share it with EOHHS to aid in determining whether to make an exception.  |
| 6. |  | These regulations should include a mechanism for the waiving of a background check fee, especially in circumstances where an indigent family member may be caring for a patient.  | The background check fee is not charged by EOHHS. The Attorney General's office does not provide for a waiver of a background check fee.   |
| 7. |  | ACLU recommends similar amendments to 210-RICR-50-10-2.   | This regulation, 210-RICR-50-10-2, is not currently up for public comment. However, 210-RICR-50-10-2 provides the same process for an individual to request an exception from EOHHS.   |
| 8. | Nicholas Oliver<br>RI Partnership for Home Care<br>4/28/2023 | Would the Board of Directors of a nonprofit provider company, individuals with 5% or more of total stock of a publicly-traded, venture capital or private equity company, or a proprietor residing outside of Rhode Island with no hands-on involvement in the operations of the business be subject to these screening requirements? None of these individuals would be involved in the direct care of a Medicaid beneficiary or likely have control of specific Rhode Island-based operational assets of the company. How would EOHHS operationalize this requirement and accommodate out-of-state, including outside of the United States, direct and indirect owners pursuant to proposed Section 1.6(C)? | In order to be eligible to enroll in and be paid by Rhode Island Medicaid, any individual with a 5% or more ownership interest in a provider subject to fingerprinting requirements will need to come to Rhode Island to be fingerprinted. If a high risk provider has already been fingerprinted for the purposes of enrollment in Medicare, EOHHS will accept the Medicare certification and will not require additional fingerprints. |
| 9. |  | Does Section 1.6(C) conflict or duplicate the national criminal background check requirements for the administrator or individual professional and paraprofessional licensees per the Rhode Island Department of Health? If this section is enacted, can the owner or partial owner(s), upon request of EOHHS, provide recent proof of screening in accordance with their Rhode Island Department of Health background check to fulfill this requirement, if said individual has recently completed such screening?   | The system does not permit an individual to transfer a fingerprint that was completed for licensure. The individual will need to be fingerprinted again.   |



Rhode Island Executive Office of Health and Human Services  
 3 West Road, Virks Building, Cranston, RI 02920  
 phone: 401.462.5274 fax: 401.462.3677

|     | Respondent                                       | Nature of the Comments  | EOHHS' Response   |
|-----|--|---|---|
| 10. |  | What is the rationale for proposed Section 1.6(C) when EOHHS subjects all Administrators of contracted providers to be held accountable for any fraud, waste and abuse within the scope of EOHHS' Office of Program Integrity and the Attorney General?                                 | This is a federal requirement. See 42 C.F.R. Part 455, Subpart E.   |
| 11. | Jennifer Crosbie<br>Careforth<br>4/28/2023       | Why are shared living provider agencies required to be fingerprinted?   | Shared living provider agencies are not required to be fingerprinted. The language has been modified in the final version of the regulation to clarify that the fingerprinting requirement applies only to caregivers.  |
| 12. |  | Careforth regularly reports all incidents to the state and there is no evidence that would demonstrate heightened risk to the overall safety and care of members participating in Shared Living.  | Incidents often go unreported, especially when perpetrated by someone known to the victim. Fingerprints provide a mechanism to assess and mitigate risk before an individual provides services.   |
| 13. |  | Careforth already completes rigorous background check and credentialing processes to mitigate risk to members. There is no added value of national fingerprint background checks to enhance the safety or integrity of services provided to individuals participating in Shared Living. | EOHHS appreciates the existing credentialing processes that are in place. The addition of fingerprint-based national background checks ensures continuous quality improvement. The State has an obligation to protect the health and welfare of all home and community-based services (HCBS) participants, which includes identifying and mitigating risks. See 42 C.F.R. 302 and the HCBS Technical Guide. Other providers who provide direct care in the home are required to undergo fingerprinting, such as licensed nurses, nurse assistants, and home care aides. |
| 14. |  | The process and costs associated with conducting national fingerprint background checks creates a barrier for members seeking to access care and remain at home. Administrative tasks pile up and become overwhelming.  | A fingerprint must be completed once every five (5) years. EOHHS believes that this is a reasonable requirement in light of the protection that it provides.  |
| 15. |  | Caregivers are not employees of Shared Living agencies and are not seeking employment to receive a paycheck.  | Caregivers are paid by Medicaid to provide direct, unsupervised personal care to older adults and adults with disabilities.   |
| 16. | Joanne Malise<br>Living Innovations<br>4/28/2023 | Why are Shared Living, Independent Provider, and Personal Choice considered high risk?  | The rule does not classify Shared Living, Independent Provider, or Personal Choice programs as high risk.   |
| 17. |  | The individuals that provide care are often independent contractors, not employees.   | The rule covers any individual seeking to be paid by Medicaid to provide services, regardless of whether the individual is  |



Rhode Island Executive Office of Health and Human Services  
 3 West Road, Virks Building, Cranston, RI 02920  
 phone: 401.462.5274 fax: 401.462.3677

|     | Respondent   | Nature of the Comments   | EOHHS' Response  |
|-----|--|--|--|
|     |  |  | classified formally as an employee or an independent contractor.   |
| 18. |  | BHDDH providers are told that the state will cover the cost of fingerprints.   | The legislature did not provide funding to EOHHS to cover the cost of fingerprinting. The EOHHS provisions specifically state that the individual is responsible for the cost of the fingerprint.  |
| 19. | Jeffrey F. Chase-Lubitz, Esq<br>Morgan Goulet, Esq<br>Husch Blackwell (on behalf of Careforth)<br>5/5/2023 | Neither federal law nor state law require national criminal background checks and the amended rule exceeds the scope of EOHHS's cited authority for this requirement. <ul style="list-style-type: none"> <li>• The rule states that Rite@Home shared living providers are subject to the national criminal background checks. According to definitions in the rule, "providers" do not include shared living caregivers.</li> <li>• Neither Rite@Home shared living providers nor their shared living caregivers are personal care aides and therefore do not fall within the ambit of 42-7.2-18.3</li> <li>• To be included under § 42-7.2-18.3, a Rite@Home shared living provider, however defined, would have to be "seeking employment" as a "personal care aide." Putting aside whether the statute applies to a person who is already employed, § 42-7.2-18.3 cannot apply to Rite@Home shared living providers because, however defined, they are not "seeking employment" as personal care aides, as that term is defined in § 42-7.2-18.3(a).</li> </ul> | Providers include "individual[s] . . . who are engaged in the delivery of medical/behavioral health care services" under Section 1.3(A)(6), which includes shared living caregivers who are reimbursed by Medicaid to provide routine, unsupervised care to members enrolled in the program. EOHHS has added language in the rule to clarify that the fingerprinting requirement specifically applies to shared living caregivers. Shared living caregivers are responsible for providing, among other things, personal care services to older adults and individuals with disabilities and seek payment from Rhode Island Medicaid to do so. Accordingly, shared living caregivers are within the scope of § 42-7.2-18.3. |
| 20. |  | The rule references 42 C.F.R. 424.518 which requires an NCBC from all individuals who maintain a 5 percent or greater direct or indirect ownership interest in <i>Medicare</i> providers.  | CMS regulations require an NCBC for high risk Medicaid providers under 42 C.F.R. Part 455; however, the federal Medicaid regulations do not define the provider types that are high risk. Instead, CMS guidance requires states to follow, at a minimum, the same high/moderate/low categorization as Medicare, or those listed in 42 C.F.R. 424.518. <i>See, e.g., State Medicaid Director Letter #15-002</i> . The rule references 424.518 to define the categories, accordingly. States may also add  |



Rhode Island Executive Office of Health and Human Services  
 3 West Road, Virks Building, Cranston, RI 02920  
 phone: 401.462.5274 fax: 401.462.3677

|     | Respondent   | Nature of the Comments   | EOHHS' Response  |
|-----|--|--|--|
|     |  |  | similar fingerprinting requirements for other provider types that are not covered by Medicare, such as HCBS providers. The Rhode Island legislature added this requirement for individuals providing unsupervised personal care services by enacting R.I. Gen. Laws § 42-7.2-18  |
| 21. | 23 caregivers supporting members in the Shared Living program provided comments between April 7 and May 7. Caregiver names are redacted to protect members' identities. Several caregivers provided multiple comments. | <b>Burdensome (19 comments)</b> <ul style="list-style-type: none"> <li>• Time and travel concerns to get to Cranston, especially for individuals who do not have their own means of transportation</li> <li>• Difficult to juggle/make arrangements for members to go get fingerprinted</li> <li>• \$46.20 is costly</li> <li>• Burden on elderly caregivers</li> </ul>  | EOHHS understands that it may be difficult for some caregivers to arrange for a fingerprint. However, the fingerprint must only be done once every five (5) years and is a quick process. The fingerprinting requirement for caregivers is mandated by law at R.I. Gen. Laws § 42-7.2-18.3. This law requires any person who provides routine, unsupervised care to older adults and individuals with disabilities to undergo a national criminal background check, which includes shared living caregivers. EOHHS does not have the ability to circumvent this requirement and was not given funding to cover the cost. |
| 22. |  | <b>Unnecessary (13 comments)</b> <ul style="list-style-type: none"> <li>• Already do annual state background checks electronically at no cost</li> <li>• Already have regular home visits</li> <li>• Other oversight requirements (weekly check in, First Aid and CPR certifications, car insurance, etc.) are in place</li> <li>• Have never been in trouble with the police/do not have a record</li> <li>• Fingerprints do not change</li> <li>• Some caregivers never leave the State</li> <li>• A national check will not find anything that a state background check does not cover</li> </ul> | A national background check is more comprehensive than a state background check. The system requires a new fingerprint every 5 years because of the FBI's rules.   |
| 23. |  | <b>Unfair/unclear why this is required (8 comments)</b> <ul style="list-style-type: none"> <li>• Unjust and unfair to caregivers who dedicate their time and effort to provide quality care for their loved ones</li> <li>• Caregivers are not strangers</li> <li>• Caregivers are already stressed and overwhelmed</li> <li>• Distracts from providing care</li> </ul>  | This requirement was not added because caregivers are in trouble, but to ensure quality of care and safety of Medicaid members who are vulnerable and may be at risk for abuse. EOHHS is responsible for ensuring that all individuals receiving Medicaid services are safely cared for by screening providers before getting paid by the State to provide care. The need for screening is heightened when caregivers are unlicensed, like in  |



Rhode Island Executive Office of Health and Human Services  
 3 West Road, Virks Building, Cranston, RI 02920  
 phone: 401.462.5274 fax: 401.462.3677

|     | Respondent | Nature of the Comments  | EOHHS' Response   |
|-----|------------|---|---|
|     |            | <ul style="list-style-type: none"> <li>Fingerprinting causes fear, makes caregivers feel like they are in trouble</li> </ul>  | the shared living program. EOHHS recognizes that caregivers are often family members and not strangers; however, abuse can be perpetrated by anyone, including family members.  |
| 24. |            | Privacy concerns ( <b>4 comments</b> ) <ul style="list-style-type: none"> <li>Fingerprint connects to hackers</li> <li>Government overreach</li> </ul>  | The system is very secure and safeguarded by the FBI. It is normal to require fingerprinting for jobs that involve routine contact with vulnerable populations or sensitive information.  |
| 25. |            | Not common in the field ( <b>2 comments</b> ) <ul style="list-style-type: none"> <li>Other states do not require a national background check</li> <li>Nurses and home care workers are not asked to do this fingerprinting for home care</li> </ul>   | Nurses and home care workers are required to be fingerprinted under state law. <i>See, e.g.</i> , R.I. Gen. Laws § 23-17-34. In addition, other states require a national background check for caregivers. These requirements exist for Massachusetts and North Dakota adult foster care programs, and for caregivers in Illinois, Maine, Maryland, New Mexico, and North Dakota, among others. |
| 26. |            | There should be exceptions to the fingerprinting requirement ( <b>1 comment</b> ): <ul style="list-style-type: none"> <li>Those with clean state background checks when the person started the program</li> <li>When the caretaker is a family member that lives with the member since they are not a stranger</li> <li>When the caretaker is a senior citizen</li> </ul> | Exceptions can be requested after the fingerprint if a prior conviction appears on a person's record. EOHHS will not make an exception for family members or based on the caregiver's age, as family members may be involved in abuse or neglect of their vulnerable relatives and can be of any age.   |
| 27. |            | Fingerprinting should be optional ( <b>1 comment</b> )  | The legislature did not make fingerprinting optional.   |