

Comments for Chapter 538

Effective Date August 1, 2017

<u>Date Received</u>	<u>Comment</u>	<u>Result</u>	<u>No Change Reason</u>	<u>Change New Language Below</u>
<p><u>3/3/017</u></p>	<p>The [redacted] submits the following comments related to the proposed changes to Chapter 538 School-Based Health Services (SBHS); specifically to Section 538.4, Provider Exclusions to Rendering Service.</p> <p>The current section requires a background check to be conducted initially and again every three years. It also requires an additional federal background check through the WV State Police (WVSP) on hire and every three years of employment if the individual has lived or worked out of the state currently or within the last five years. Additionally, it requires the provider check the Federal Office of the Inspector General (OIG) list of Excluded individuals and Entities (LEIE) prior to employment and monthly thereafter.</p> <p>The Council has serious concerns about the apparent intent to relax these basic standards that help to ensure the safety of WV's children while they are being served in the school system!</p> <p>The requirement for a background check initially and every three years has been removed. The requirement for an additional federal background check through the WVSP for individuals living or working out of state presently or in the past has been removed. The requirement to check the Federal OIG LEIE monthly has been removed.</p>	<p>Change</p>		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.</p>

	<p>Other Medicaid funded programs, such as the IDDW program, now require providers use the WV Clearance for Access: Registry & Employment Screening (WV CARES) system to establish that potential hires are fit for employment. The WV CARES system then provides monthly rechecks of current employees against the required registries and notifies the employer of any potential negative findings.</p> <p>The WV CARES system is intended to help with making sure those who serve our most vulnerable citizens have not been convicted of crimes that cause them to be a danger to those they serve. School children, especially those served in special education, are another vulnerable population for whom the State must do all it can to ensure their protection. The Council writes to adamantly oppose these proposed lessening of restrictions, and to recommend the WV CARES system be adopted instead. At the very least, the current system of checks should remain in place and not be weakened.</p> <p>Thank you for this opportunity to provide comment on the proposed change.</p>			
<p><u>Received duplicate comments on 4/21/17 4/22/17 4/23/17</u></p>	<p>We support the elimination of the fingerprinting requirement of this updated policy for a number of reasons:</p> <p>1. This policy effectively places West Virginia in line with most of the other States which do not have a fingerprinting requirement for local education agencies (LEAs) as they are typically considered a low risk Medicaid Screening Provider (although some do place LEAs as moderate); regardless only high risk providers are required to submit fingerprinting and the previous policy labeling West Virginia LEAs as high risk was unsupported by any rationale or justification and</p>	<p>Change</p>		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.</p>

	<p>was not in accordance with how other States had designated their LEAs.</p> <p>2. Teachers and school personnel are already required to receive fingerprinting prior to and in continuation of employment in West Virginia – like most other States.</p> <p>3. The West Virginia Department of Education is the appropriate body to develop, implement, and enforce a policy ensuring the protection of our children and accompanied school based health needs from employed school personnel.</p> <p>4. The West Virginia Department of Education has a comprehensive and continuing obligation to ensure the protection of our children at school, in general. This policy now recognizes that this obligation includes ensuring that West Virginia students receive the health based services they are otherwise entitled.</p> <p>5. The elimination of the redundant fingerprinting requirement constitutes an enormous savings to the taxpayers of West Virginia and West Virginia students since that cost will be better utilized to ensure the creation of a safe and effective learning environment for the children of West Virginia, including those requiring health based services in the school environment.</p> <p>6. As classified as a low or moderate risk Medicaid Screening Provider, West Virginia LEAs will still be subject to a number of monitoring requirements by BMS to ensure adherence to the law.</p>			
<p><u>4/22/17</u></p>	<p>This policy to take away the need for fingerprinting of LEA agencies seems like a good thing since these employees have already had previous screenings.</p>	<p>Duplicate Comment</p>		

<u>4/22/17</u>	They should be drug tested and SSI recipients should be reevaluated every 2 years.	Change		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.</p> <p>This policy is not relevant to SSI recipient eligibility.</p>
<u>4/22/17</u>	You have said it very well. Education employees have already. Even fingerprinted for employment. This is just another way to waste taxpayers dollars! This is just simply another stupid bill , waste	Change		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.</p>
<u>4/15/17</u>	A bus driver in a county near me (I'm in Fayette county) was just arrested for DUI and I talked to people who said people know him and have known for a long time he had a drinking problem and he has done this kinda thing before. They told me you pay for the buses to take kids to school why would you pay them to drive kids around drunk. That sounds wrong to me.	No Change		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.</p>
<u>4/17/15</u>	Yes, let's just protect the adults but not the kids at these schools because that makes sense. You have other policies in place that I saw and read through that require fingerprinting but why would you remove one that have children involved this is terrible. I'm sure good school employees wouldn't	No Change		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If</p>

	care to do this since they know it is to protect children.			no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/22/17</u>	WV students and taxpayers are well served by continuing to keep local education agencies classified as low or moderate risk Medicaid Screening Providers. More regulations won't increase safety, but will cost taxpayers money. There is no upside to increasing the number of times a school employee needs fingerprinted.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/13/17</u>	I am angry to hear that my taxes are paying teachers to drink and drive... the news said she was on a suspended license why are you making me pay for her to teach and be around kids. I have grandchildren this makes me upset and angry. This is a waste.	No Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
	<p>The West Virginia Department of Education (WVDE) fully supports the change in Chapter 538.4 that removes the previous requirement for a fingerprint-based background check every three years for all LEA staff performing Medicaid services. That fingerprinting requirement was not necessary given the already existing fingerprinting requirements for <u>all</u> LEA employees. All county boards of education perform fingerprint-based background checks for all employees upon initial employment. If an applicant failed the background check, it is highly unlikely that he or she would begin employment with the county board of education.</p> <p>In addition to the county background check process for initial employment, under WVC §18A-3-10, all individuals seeking an initial license through the</p>	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.

WVDE must be fingerprinted and receive both a state and federal background check. The results of the background check are analyzed by the WVDE Office of Educator Effectiveness and Licensure and applications for certification are denied as deemed necessary depending on the nature of the crime. County boards of education are precluded from hiring individuals who do not have the required certification for a position. The majority of LEA personnel that perform Medicaid services are subject to the WVDE certification requirements – all teachers, nurses, speech pathologists, and psychologists. Bus drivers are also subject to the fingerprint-based background check requirements under WVC §18A-4-8e(k).

There are also mechanisms in place under WVC §18A-3-6 for the WVDE to revoke the certification of individuals that, among other things, are convicted, plead guilty or plead no contest to a felony charge or any charge involving sexual misconduct with a minor or a student. County superintendents are required to notify the State Superintendent if they become aware of any acts which could result in the revocation of a certificate. In addition, county boards of education are permitted to take necessary personnel action when an individual is arrested or accused of a crime, including but not limited to suspension and ultimately termination, depending on the specific circumstances.

Because fingerprint-based background checks are already routine in the LEAs in West Virginia, a further requirement to perform additional fingerprint-based background checks for only those staff that perform Medicaid services was seen as problematic. All LEA staff would not be treated uniformly for post-employment background checks, which could lead to potential personnel and legal issues for the county boards of education.

	<p>The additional cost of the finger-print based background checks and participation in the WV CARES systems was also going to be a financial burden on county boards of education. Because the fingerprinting would have only been required for a portion of the LEA's employees, that cost was determined to be unfair to pass through to the impacted employees and would therefore be borne completely by the LEA. County boards of education are already facing declining revenues from various funding sources, including Medicaid revenues. Adding duplicative fingerprinting requirements beyond those measures already prescribed by West Virginia Code through Chapter 538.4 was believed to be unnecessary.</p> <p>Further, under 45 CFR 455.450, State Medicaid agencies are supposed to identify providers based on a categorical risk level of limited, moderate, or high. Only those providers deemed to have a high categorical risk are required by federal regulations to submit fingerprints and perform a criminal background check. Given the existing background checks already in place for LEAs as well as no known history of fraud, waste or abuse, ranking school-based health service providers as high categorical risk seems excessive</p>			
<p><u>4/22/17</u></p>	<p>The elimination of the redundant fingerprinting requirement constitutes an enormous savings to the taxpayers of West Virginia and West Virginia students since that cost will be better utilized to ensure the creation of a safe and effective learning environment for the children of West Virginia, including those requiring health based services in the school environment.</p> <p>and</p>	<p>Change</p>		<p>The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.</p>

	2. Teachers and school personnel are already required to receive fingerprinting prior to and in continuation of employment in West Virginia – like most other States.			
<u>4/15/17</u>	Kids are vulnerable some that go to school can't or don't understand when bad things are being done for them and now you want to take a layer of protection away. I am highly against removing the fingerprint requirement. You should protect our children because obviously, the people in education are not. Every day it seems there is a report of a child be hurt, assaulted, or even bullied by teachers or school staff. Please help us protect the kids.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/22/17</u>	I support the elimination of the fingerprinting requirement of this updated policy.	Duplicate Comment		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/21/17</u>	I feel this is a step in the right direction for the protection of our most vulnerable population; our at risk children. As an Aide in the school system I am one of the first to see a student upon arrival at school. I should not be considered as high risk because I have already been fingerprinted and passed all tests required by both the state and county before being hired. To make the school system do this procedure again is both expensive and counterproductive and takes much needed money from the budget. Please pass this change and help us protect our children.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/21/17</u>	I support the change. School employees are already subject to background checks, including fingerprinting, for pre-employment and continuation of employment. The classification change from	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid

	high to low/moderate risk eliminates the redundant fingerprinting requirement for those education employees who do Medicaid billing.			Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/22/17</u>	I support the policy change that would classify West Virginia school-based health services providers as a low or moderate risk Medicaid Screening Provider. A high risk classification with accompanied fingerprinting requirement for WV schools is unnecessary to protect the students and will severely drain resources away from students.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/21/17</u>	School personnel should not be treated differently than any other Medicaid provider. They should be subject to WV CARES laws and rules.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/22/17</u>	I am writing to express concern over two proposed changes to TCM: <ul style="list-style-type: none"> • 538.12.1: 8 units per month for speech therapy billing seems quite limited. Many students require intensive speech therapy several days per week. It would help to be able to bill for more frequent services • 538.17: It would be a logistical nightmare for transportation providers to bill for services. How could they get all this completed in addition to transporting children all day? 	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/20/17</u>	WVEA supports the removal of the fingerprinting requirement for Medicaid billing. Education	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of

	employees have already been fingerprinted for employment purposes and any additional fingerprinting requirement is redundant.			Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>4/20/17</u>	I think is absolutely essential that schools participate in a program like WV CARES so that if a school employee commits a crime, there is an alert sent once that employee is in the system. I do not know exactly how the WV CARES program works at present but think the alert should be sent to more than one level of administration. Not just local where it can be hidden. Not just state where it can be lost.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>3/31/17</u>	Since our teachers are fingerprinted during the hiring process, asking them to be re-fingerprinted seems to be a redundant requirement. I am not in favor of that requirement. Thank you.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>3/31/17</u>	The elimination of the need to re-fingerprint and re-background check on working school staff currently billing Medicaid services is a good idea. School systems require these service prior to hiring individuals coming in contact with students. Along with specific guidance on insuring that individuals are not on the Federal Office of Inspector General's List of Excluded Individuals will further expedite processes in place and not become an expensive burden or redundancy.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>3/30/17</u>	I am against school employees from being exempt to background checks due to financial hardship. If	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of

	foster parents, nursing homes, and SFC providers are required to have regular background checks then so should school employees. Thank you.			Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.
<u>3/31/17</u>	Children are being hurt everyday by the school staff you hear about it and read about it, yes they have police there sometimes but they are not in the classroom to see what happens we should be keeping our kids safe whatever is needed so we should check their backgrounds out not just once but several times.	Change		The LEA or educational entity operated under the auspices of the State Board of Education or West Virginia Department of Education is required to submit a monthly report to the WVDE Medicaid Coordinator that indicates whether any Medicaid Providers employed by an LEA (either billing fee for service or included on the Random Moment Time Study rosters/annual cost report) have been arrested for any of the crimes listed above. If no arrests in a particular month have taken place, a report will still be submitted to the WVDE Medicaid Coordinator stating that no arrests are reported.