

DATE: May 8, 2023

ALL PLAN LETTER 23-011
SUPERSEDES ALL PLAN LETTER 17-003

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: TREATMENT OF RECOVERIES MADE BY THE MANAGED CARE
HEALTH PLAN OF OVERPAYMENTS TO PROVIDERS

PURPOSE:

The purpose of this All Plan Letter (APL) is to provide guidance and clarification to Medi-Cal managed care health plans (MCPs) regarding federal and state legal requirements for MCPs' recovery of all Overpayments to Providers. This APL supersedes APL 17-003.

BACKGROUND:

Title 42 of the Code of Federal Regulations (CFR), section 438.608(d), requires the Department of Health Care Services (DHCS) to specify in its Contracts, policies and procedures (P&Ps) related to the treatment of MCPs' recovery of overpayments made to Providers. The MCP Contract generally sets forth the requirements of 42 Code of Federal Regulations (CFR) section 438.608(d).¹ This APL provides additional guidance and clarification on (1) overpayment retention and reporting policies; (2) annual reporting requirements; and (3) the MCP's duty to require reporting by Network Providers.²

An "overpayment" is any payment made to a Network Provider by an MCP to which the Network Provider is not entitled, under Title XIX of the Social Security Act.³

A "Network Provider" is any Provider, group of Providers, or entity that has a Network Provider agreement with an MCP, or a Subcontractor, and receives Medi-Cal funding directly or indirectly to order, refer, or render Covered Services as a result of the state's Contract with an MCP.⁴

¹ MCP contracts can be found at:

<http://www.dhcs.ca.gov/provgovpart/Pages/MMCDBoilerplateContracts.aspx>

² 42 CFR section 438.608(d). The CFR is searchable at

<https://www.ecfr.gov/>

³ 42 CFR section 438.2.

⁴ 42 CFR section 438.2.

“Fraud” is an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to themselves or some other person. This includes any act that constitutes fraud under applicable federal or state law.⁵

“Waste” is the overutilization, underutilization or misuse of resources, and typically is not a criminal or intentional act.⁶

“Abuse” is Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not Medically Necessary or that fail to meet professionally recognized standards for health care. This also includes beneficiary practices that result in unnecessary costs to the Medicaid program.⁷

POLICY:

This policy applies to all overpayments from the MCP to a Network Provider, and recoveries of such overpayments, including but not limited to overpayments due to fraud, waste, or abuse, identified by the MCP. Recoveries retained under False Claims Act cases, or through other investigations by DHCS, the California Department of Justice, the Centers for Medicare and Medicaid Services, or any other duly authorized law enforcement or investigatory agency, are not subject to this policy.⁸

A. MCP Retention and Reporting of Provider Overpayments

Each MCP must create an internal retention and documentation process for recovery of all overpayments and review bi-annually for accuracy.

Recoveries less than \$25 million

An MCP can retain each overpayment recovery that is less than \$25 million.⁹ MCPs are required to report all overpayments in their annual report to DHCS, using the rate development template, including recoveries that are less than \$25 million. However, MCPs do not need to report overpayments that are less than \$25 million within 60 calendar days of when the overpayment was identified,

⁵ 42 CFR section 455.2; Welfare and Institutions Code section 14043.1.

⁶ Fraud, Waste, and Abuse Toolkit. Healthcare Fraud and Program Integrity: An Overview for Providers. (2015). Centers for Medicare and Medicaid Services. Retrieved at <https://dbhids.org/wp-content/uploads/2015/10/Health-Care-Fraud-and-Program-Integrity-An-Overview-for-Providers.pdf>.

⁷ 42 CFR section 455.2.

⁸ 42 CFR section 438.608(d)(1).

⁹ The \$25 million threshold represents one overpayment recovery, not cumulative.

which is an MCP reporting requirement for overpayments that are equal to or more than \$25 million.

Recoveries equal to or more than \$25 million

MCPs must split equally all overpayment recoveries of \$25 million or more with DHCS. MCPs must report an overpayment of \$25 million or more to DHCS through their assigned Managed Care Operations Division (MCPD) Contract Manager (CM) within 60 calendar days of the date that the overpayment of \$25 million or more was identified, and provide the following information:

1. The overpayment amount that was recovered;
2. The reason for the overpayment;
3. The service(s) the overpayment was related to, if applicable;
4. The Provider(s) information; and
5. The steps taken to correct and/or prevent future occurrences.¹⁰

DHCS will work directly with the MCP to either recoup the overpayment from the MCP's capitated payment (and reflect the overpayment in the statement issued to the MCP) or require a check or wire from the MCP.

Recoveries of any amount related to potential fraud, waste or abuse

In the event an MCP identifies or recovers an overpayment to a Provider due to potential fraud, waste or abuse the MCP must notify its MCPD CM and the DHCS Audits and Investigations Intake Unit at piu.cases@dhcs.ca.gov within 10 days of identifying the overpayment, regardless of the amount.¹¹

B. MCP Annual Reporting Requirements

Each MCP must report annually to DHCS using the rate development template on its recoveries of overpayments, regardless of amount or category. This includes overpayments made to a Network Provider that was otherwise excluded from participation in the Medicaid program, and those made to a Network Provider due to fraud, waste, or abuse.¹²

MCPs must submit P&Ps, including, but not limited to, any retention policies, process, timeframes, and documentation required for reporting the recovery of all overpayments, upon request by DHCS.¹³

¹⁰ 42 CFR section 438.608(c)(3).

¹¹ 42 CFR section 438.608(a)(2).

¹² 42 CFR section 438.608(d)(3).

¹³ 42 CFR section 438.608(d)(1).

C. Provider Reporting Requirements to MCPs

Each MCP must require, and have a mechanism for, Network Providers to report to the MCP when they have received an overpayment, to return the overpayment to the MCP within 60 calendar days after the date on which the overpayment was identified, and to notify the MCP in writing of the reason for the overpayment.¹⁴

This section does not address a situation where an MCP identifies an overpayment and notifies the institutional or professional provider. In this case, MCPs must follow the requirements in Health and Safety Code section 1371.1.

If the requirements contained in this APL, including any updates or revisions to this APL, necessitate a change in an MCP's contractually required P&Ps, the MCP must submit its updated P&Ps to its MCOD CM within 90 days of the release of this APL. If an MCP determines that no changes to its P&Ps are necessary, the MCP must submit an email confirmation to its MCOD CM within 90 days of the release of this APL, stating that the MCP's P&Ps have been reviewed and no changes are necessary. The email confirmation must include the title of this APL as well as the applicable APL release date in the subject line.

MCPs are further responsible for ensuring that their Subcontractors and Network Providers comply with all applicable state and federal laws and regulations, Contract requirements, and other DHCS guidance, including APLs and Policy Letters.¹⁵ These requirements must be communicated by each MCP to all Subcontractors and Network Providers. DHCS may impose Corrective Action Plans (CAP), as well as administrative and/or monetary sanctions for non-compliance. For additional information regarding administrative and monetary sanctions, see APL 22-015, and any subsequent iterations on this topic. Any failure to meet the requirements of this APL may result in a CAP and subsequent Sanctions.

If you have any questions regarding this APL, please contact your MCOD CM.

¹⁴ 42 CFR section 438.608(d)(2).

¹⁵ For more information on Subcontractors and Network Providers, including the definition and applicable requirements, see APL 19-001, and any subsequent APLs on this topic.

ALL PLAN LETTER 23-011
Page 5

Sincerely,

Original Signed by Dana Durham

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