



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

September 10, 2008

Mark Corcoran, CFO  
Affinity Health Plan  
2500 Halsey Street  
Bronx, NY 10461

Re: Medicaid Managed Care Third Party Health Insurance Recovery Actions

Dear Mr. Corcoran:

It has come to the attention of the New York State Department of Health (SDOH) that Medicaid managed care plans (MMC) may have been involved in the pursuit of enrollee's personal injury awards or settlements. New York State Medicaid managed care plans are not allowed to pursue recovery against personal injury lawsuits. MMC plans are allowed to pursue Third Party Health Insurance (TPHI) that the consumer has; personal injury award liens are clearly not TPHI. I have excerpted the relevant passage from an opinion written by our Deputy Director of Legal Affairs, Dan Tarantino.

Pursuant to various State Medicaid statutes, the New York State Department of Health and county social services districts are subrogated to any rights a Medicaid recipient has to health insurance, other medical care coverage, medical support, or third party reimbursement. These are broad rights and, except as indicated below, have not been transferred or delegated to Medicaid Managed Care (MMC) or Family Health Plus (FHP) plans.

Instead, the model MMC/FHP contract only authorizes and requires the MMC and FHP plans to pursue third party health insurance (TPHI). Section 3.7 of the contract reads as follows:

#### "3.7 Third Party Health Insurance Determination

The Contractor will make diligent efforts to determine whether Enrollees have third party health insurance (TPHI). The LDSS is also responsible for making diligent efforts to determine if enrollees have TPHI and to maintain third party information on the WMS/eMedNY Third Party Resource System. The contractor shall make good faith efforts to coordinate benefits with and collect TPHI recoveries from other insurers, and must inform the LDSS of any known changes in status of TPHI insurance eligibility within thirty (30) days of learning of a change in TPHI. The Contractor may use the Roster as one method to determine TPHI information. The Contractor will be permitted to retain one hundred percent (100%) of any reimbursement for Benefit Package services obtained from TPHI. Capitation Rates are net of TPHI recoveries. In no instances may an Enrollee be held responsible for disputes over these recoveries."

In my opinion, this contract provision is analogous to the requirement in fee-for-service Medicaid that a provider pursue TPHI before submitting a claim to Medicaid. Because Medicaid is the payor of last resort, collecting available TPHI reduces Medicaid expenditures. Similarly, in the MMC context, the collection of TPHI by the plan reduces Medicaid expenditures because, as indicated in Section 3.7, TPHI recoveries are taken into account in setting capitation rates.

We would not define TPHI to include a personal injury award or settlement. In New York, it would be the province of the county social services district to seek to identify such awards and settlements, and to take any necessary action with respect to the enrollee's Medicaid case, including, if appropriate, recouping the amount of managed care premiums paid on the enrollee's behalf.

In summation, there is a distinct line between what the MMC plans are allowed to recover and what they can not. Third Party Health Insurance is recoverable by the MMC plans. The pursuit of personal injury awards is not allowed. MMC plans should notify the Local District of Social Services if they become aware of such awards. This is existing Program policy and any ongoing efforts to lien personal injury awards or settlements must be ceased. Any past occurrences must be rectified.

Please contact me with any questions at (518) 473-1134.

Sincerely,



Timothy Byers  
Bureau of Program Planning and Implementation  
Office of Health Insurance Programs  
New York State Department of Health

cc: Lois Simon  
Jennifer Dean  
James Milon