

Letter of Direction #53

Date: December 9, 2020

To: Centennial Care 2.0 Managed Care Organizations

From: Nicole Comeaux, Director, Medical Assistance Division 

Subject: Managed Care Subrogation Recoveries by the HSD TPL Contractor

Title: Managed Care Subrogation Recoveries

The purpose of this Letter of Direction (LOD) is to provide direction to the Centennial Care Managed Care Organizations (MCOs) for implementing changes in managed care Subrogation Recoveries under Third Party Liability (TPL) processes. Effective January 1, 2021 HSD's TPL contractor, Health Management Services, Inc. (HMS), will be responsible for all managed care Subrogation Recoveries with dates of incident or accident of January 1, 2021 and after, and recovered funds will revert to the State. Any cases with dates of incident or accident prior to January 1, 2021 will remain with the MCOs. MCOs are required to provide reasonable support as described in Section 4 for HMS' recovery efforts. (Note that "Subrogation Recoveries" are also sometimes referred to as "Casualty Recoveries," and for the sake of consistency with the CC2.0 MCO Contracts, we will use the term "Subrogation Recoveries.")

This change is being made to achieve the following goals:

1. Better reporting of subrogation collections;
2. Centralization of contacts for attorneys and other third party insurers; and
3. Standardization of subrogation processes across all Medicaid payors.

1. Subrogation Recoveries Background

NMAC 8.302.3 provides for the State to make recoveries of payments made where there was a third party liability (TPL). As the "payer of last resort" the NM Medicaid program is required by federal statute to pursue TPL recoveries (see 42 CFR Section 433 Subpart D).

Per NMAC 8.302.3.11, "When MAD makes payments on behalf of eligible recipients, HSD is subrogated to the eligible recipient's right against a third party for recovery of medical expenses to the extent of the payment. See Subsection B of Section 27-2-23 NMSA 1978 (Repl. Pamp. 1991)."

Subrogation Recoveries are a subset of Third Party Liability recoveries. TPL for managed care is described in section 4.18.11 (“TPL”) in the current MCO contracts. Within that section, subsection 4.18.11.10 deals with Subrogation Recoveries. This LOD details changes to section 4.18.11.10 and those specific recoveries.

Prior to the effective date noted above, HSD has designated that the MCOs provide these Subrogation recovery services for payments in their managed care programs, and they were allowed to keep the recovered revenues (“...treated by the Contractor as offsets to medical expenses...”). Subrogation Recoveries for payments made in HSD’s Fee-For-Service (FFS) program have been managed by HSD’s Recovery Audit Contractor, HMS. Upon implementation of this LOD, HMS will provide Subrogation Recovery services for HSD in all FFS and Managed Care programs.

2. HSD Recovery Audit Contractor – HMS

HSD has contracted with HMS to provide TPL and various Recovery Audit services for many years. HMS’ current RAC contract began on January 1, 2020. This contract calls for HMS to provide recovery services for all types of TPL and for all programs. Under the scope of their current contract, and with HSD’s guidance, HMS is prepared to begin Subrogation Recoveries for HSD’s Managed Care programs.

3. Changes to MCO Contract Section 4.18.11.10

Section 4.18.11.10 currently states:

4.18.11.10 For purposes of the twelve (12) and fifteen (15) month periods set forth in Section 4.18.11, third-party resources shall not include subrogation resources provided; however, the CONTRACTOR shall be required to seek subrogation amounts regardless of the amount believed to be available as required by federal Medicaid guidelines. The amount of any subrogation recoveries collected by the CONTRACTOR outside of the Claims processing system shall be treated by the CONTRACTOR as offsets to medical expenses for purposes of reporting.

Section 4.18.11.10 will be changed to state:

4.18.11.10 For purposes of the twelve (12) and fifteen (15) month periods set forth in Section 4.18.11, third-party resources shall not include subrogation resources provided; however, HSD’s TPL contractor shall be required to seek subrogation amounts regardless of the amount believed to be available as required by federal Medicaid guidelines. HSD shall be solely responsible for subrogation recovery activities and shall retain any and all funds recovered through these activities.”

4. Subrogation Recovery Cases Currently in Process

Effective January 1, 2021, all new subrogation claims will be pursued by HSD. Open subrogation claims, defined as those claims where settlement or compromise has not been reached, will continue to be pursued by the MCO.

5. Impact on the Medical Loss Ratio (MLR) Calculation

Subrogation recoveries made by HSD through the process described herein are excluded from the MCOs' calculation of the MLR numerator as would otherwise be allowed for such recoveries made by the MCOs per 42 CFR 438.8(e)(2)(i)(E).

This LOD will sunset upon inclusion in the Medicaid Managed Care Services Agreement.