

**MEDICAID MANAGED CARE/  
FAMILY HEALTH PLUS/  
HIV SPECIAL NEEDS PLAN  
MODEL CONTRACT**

March 1, 2014

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Pursuant to 42 CFR 455.20, the Contractor will implement a service verification process that accurately evaluates the delivery of billed services to the recipient population by using statistically valid sample sizes and timeframes that determine whether Enrollees received services billed by Providers.

#### 23.4 Withholding of Payments

The Contractor must, if directed by SDOH or OMIG, withhold payments to Participating Providers, in whole or in part, when SDOH or OMIG has determined or has been notified that a Participating Provider is the subject of a pending investigation of a credible allegation of fraud unless SDOH or OMIG finds good cause not to direct the Contractor to withhold payments in accordance with 18 NYCRR § 518.7.

- a) The Contractor shall provide notice to the Participating Provider of the withhold as directed by SDOH or OMIG and in accordance with 18 NYCRR § 518.7(b) and § 518.7(c).
- b) The Contractor shall direct all appeals of the withhold to:

Office of the Medicaid Inspector General  
Office of Counsel  
800 North Pearl Street  
Albany, New York 12204  
ATTN: Withhold Appeal

#### **24. AMERICANS WITH DISABILITIES ACT COMPLIANCE PLAN**

Contractor must comply with Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 for program accessibility, and must develop an ADA Compliance Plan consistent with the SDOH Guidelines for MCO Compliance with the ADA set forth in Appendix J, which is hereby made a part of this Agreement as if set forth fully herein. Said plan must be approved by the SDOH, be filed with the SDOH, and be kept on file by the Contractor.

#### **25. FAIR HEARINGS**

##### 25.1 Enrollee Access to Fair Hearing Process

Enrollees may access the fair hearing process in accordance with applicable federal and state laws and regulations. Contractors must abide by and participate in New York State's Fair Hearing Process and comply with determinations made by a fair hearing officer.

##### 25.2 Enrollee Rights to a Fair Hearing

Enrollees may request a fair hearing regarding adverse LDSS determinations concerning enrollment, disenrollment and eligibility, and regarding the denial, termination, suspension or reduction of a clinical treatment or other Benefit Package services by the Contractor. For issues related to disputed services, Enrollees must have received an adverse determination from the Contractor or its approved utilization review agent either overriding a recommendation to provide services by a Participating Provider or confirming the decision of a Participating Provider to deny those services. An Enrollee may also seek a fair hearing for a failure by the Contractor to act with reasonable promptness with respect to such services. Reasonable promptness shall mean compliance with the timeframes established for review of grievances and utilization review in Sections 44 and 49 of the Public Health Law, the grievance system requirements of 42 CFR Part 438 and Appendix F of this Agreement. The Contractor may not act in any manner so as to restrict the Enrollee's right to a fair hearing or influence an Enrollee's decision to pursue a fair hearing.

### 25.3 Contractor Notice to Enrollees

- a) Contractor must issue a written notice of Action and right to fair hearing within applicable timeframes to any Enrollee when taking an adverse Action and when making an Appeal determination as provided in Appendix F of this Agreement.
- b) Contractor agrees to serve notice on affected Enrollees by mail and must maintain documentation of such.

### 25.4 Aid Continuing

- a) Pursuant to SSL §365-a(8) and 10 NYCRR §360-10.8(g)(2), the Contractor shall be required to continue the provision of the Benefit Package services that are the subject of the fair hearing to an Enrollee (hereafter referred to as "aid continuing") if so ordered by the NYS Office of Administrative Hearings (OAH) under the following circumstances:
  - i) Contractor has or is seeking to restrict, reduce, suspend or terminate a treatment or Benefit Package service currently being provided; and
  - ii) Enrollee has filed a timely request for a fair hearing with OAH
- b) If so ordered by OAH, the Contractor shall be responsible for providing aid continuing, and shall not cease to provide aid continuing until one of the following occurs:
  - i) the Enrollee withdraws the request for aid continuing or the fair hearing;  
or

- ii) OAH determines that the Enrollee is not entitled to aid continuing; or
  - iii) OAH completes the administrative process and/or issues a fair hearing decision adverse to the Enrollee; or
  - iv) the provider order has expired, except in the case of a home bound Enrollee or where the Enrollee is challenging the restriction.
- c) The Contractor shall provide aid continuing in a manner and duration as ordered by OAH. If the Contractor believes the Enrollee is not eligible for aid continuing, the Contractor may provide documentation of such to OAH and seek rescission of the aid continuing order.
  - d) If the services and/or benefits in dispute have been terminated, suspended or reduced and the Enrollee timely requests a fair hearing, Contractor shall, at the direction of either SDOH or LDSS, restore the disputed services and/or benefits consistent with the provisions of Section 25.4 (b) of this Agreement.

#### 25.5 Responsibilities of SDOH

SDOH will make every reasonable effort to ensure that the Contractor receives timely notice in writing by fax, or e-mail, of all requests, schedules and directives regarding fair hearings.

#### 25.6 Contractor's Obligations

- a) Contractor shall appear at all scheduled fair hearings concerning its clinical determinations and/or Contractor-initiated disenrollments to present evidence as justification for its determination or submit written evidence as justification for its determination regarding the disputed benefits and/or services. If Contractor will not be making a personal appearance at the fair hearing, the written material must be submitted to OAH at least three (3) business days prior to the scheduled hearing and contain a phone number by which the hearing officer may contact a Contractor's representative, who has knowledge of the issue under review, during the hearing. If the hearing is scheduled fewer than three (3) business days after the request, Contractor must deliver the evidence to the hearing site no later than one (1) business day prior to the hearing, otherwise Contractor must appear in person. Notwithstanding the above provisions, Contractor may be required to make a personal appearance at the discretion of the hearing officer and/or SDOH.
- b) The Contractor must provide to the Enrollee or the Enrollee's authorized representative copies of the documents the Contractor will present at the fair hearing, also known as the "evidence packet." Copies of the evidence packet must be provided without charge. Within ten (10) business days of receiving notification of a hearing request, the Contractor must mail copies of the

evidence packet to the Enrollee or the Enrollee's authorized representative. If, due to the scheduling of the fair hearing, the evidence packet cannot be prepared at least five (5) business days before the hearing, and there is not sufficient time for the evidence packet to be mailed, the Contractor must provide the Enrollee or the Enrollee's authorized representative such copies no later than at the time of the hearing.

- c) Upon request, the Contractor must provide the Enrollee or the Enrollee's authorized representative access to the Enrollee's case file, and provide copies of documents contained in the file. If so requested, copies of the case file must be provided without charge and within a reasonable time before the date of the hearing. If the request for copies of the case file is made less than five (5) business days before the hearing, the Contractor must provide the Enrollee and the Enrollee's authorized representative such copies no later than at the time of the hearing. Such documents must be provided to the Enrollee and the Enrollee's authorized representative by mail within a reasonable time from the date of the request if the Enrollee or the Enrollee's authorized representative request that such documents be mailed; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing, such documents may be presented at the hearing instead of being mailed.
- d) Despite an Enrollee's request for a State fair hearing in any given dispute, Contractor is required to maintain and operate in good faith its own internal Complaint and Appeal processes as required under state and federal laws and by Section 14 and Appendix F of this Agreement. Enrollees may seek redress of Adverse Determinations simultaneously through Contractor's internal process and the State fair hearing process. If Contractor has reversed its initial determination and provided the service to the Enrollee, Contractor may request a waiver from appearing at the hearing and, in submitted papers, explain that it has withdrawn its initial determination and is providing the service or treatment formerly in dispute.
- e) Contractor shall comply with all determinations rendered by OAH at fair hearings.
  - i) Contractor shall cooperate with SDOH efforts to ensure that Contractor is in compliance with fair hearing determinations. Failure by Contractor to maintain such compliance shall constitute breach of this Agreement. Nothing in this Section shall limit the remedies available to SDOH, LDSS or the federal government relating to any non-compliance by Contractor with a fair hearing determination or Contractor's refusal to provide disputed services.
  - ii) If the Contractor believes there is an error of law or fact in the fair hearing decision, the Contractor must comply with the fair hearing decision while

seeking a correction or review of the decision from OAH, pursuant to 18 NYCRR Part 358-6.6.

- f) If SDOH investigates a Complaint that has as its basis the same dispute that is the subject of a pending fair hearing and, as a result of its investigation, concludes that the disputed services and/or benefits should be provided to the Enrollee, Contractor shall comply with SDOH's directive to provide those services and/or benefits and provide notice to the Enrollee to which services have been authorized. The Contractor may request a waiver from appearing at the hearing and, in submitted papers, explain that it has withdrawn its initial determination and is providing the service or treatment formerly in dispute.
- g) If SDOH, through its Complaint investigation process, or OAH, by a determination after a fair hearing, directs Contractor to provide a service that was initially denied by Contractor, Contractor may either directly provide the service, arrange for the provision of that service or pay for the provision of that service by a Non-Participating Provider. If the services were not furnished during the period the fair hearing was pending, the Contractor must authorize or furnish the disputed services promptly and as expeditiously as the Enrollee's health condition requires.
- h) Contractor agrees to abide by changes made to this Section of the Agreement with respect to the fair hearing, Action, Service Authorization, Complaint and Appeal processes by SDOH in order to comply with any amendments to applicable state or federal statutes or regulations.
- i) Contractor agrees to identify a contact person within its organization who will serve as a liaison to SDOH for the purpose of receiving fair hearing requests, scheduled fair hearing dates and adjourned fair hearing dates and compliance with State directives. Such individual: shall be accessible to the State by e-mail; shall monitor e-mail for correspondence from the State at least once every business day; and shall agree, on behalf of Contractor, to accept notices to Contractor transmitted via e-mail as legally valid.
- j) The information describing fair hearing rights, aid continuing, Action, Service Authorization, utilization review, Complaint and Appeal procedures shall be included in all MMC and FHPlus member handbooks and shall comply with Section 14, Appendices E and F of this Agreement.
- k) Contractor shall bear the burden of proof at hearings regarding the reduction, suspension or termination of ongoing services. In the event that Contractor's initial adverse determination is upheld as a result of a fair hearing, any aid continuing provided pursuant to that hearing request, may be recouped by Contractor.

## **26. EXTERNAL APPEAL**