

Managed Care Organizations

Effective Date: 9/23/15

Pursuant to the authority vested in the Commissioner of Health by section 4403(2) of the Public Health Law, section 98-1.2 and subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of the Notice of Adoption in the New York State Register, to read as follows:

Section 98-1.2 is amended by adding a new subdivision (pp) to read as follows:

(pp) HARP (Health and Recovery Plan) means a line of business operated by an MCO to administer the full continuum of mental health, substance use disorder, and physical health services covered under the Medicaid State Plan as well as the enhanced Home and Community Based Services benefits (1915 (i)) for adults with serious mental illness (SMI) and/or Substance Use Disorders (SUDs) who meet eligibility requirements.

Subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 is amended to read as follows:

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care, Family Health Plus [and], HIV SNP , and HARP programs shall be:

- (a) 7.25 percent of net premium income for 2011;
- (b) 7.25 percent of net premium income for 2012;
- (c) [8.25] 7.25 percent of net premium income for 2013;

- (d) [9.25] 7.25 percent of net premium income for 2014;
- (e) [10.25] 7.25 percent of net premium income for 2015;
- (f) [11.25] 8.25 percent of net premium income for 2016;
- (g) [12.25] 9.25 percent of net premium income for 2017;
- (h) [12.5] 10.25 percent of net premium income for 2018;
- (i) 11.25 percent of net premium income for 2019
- (j) 12.5 percent of net premium income for 2020;
- (k) 12.5 percent of net premium income for calendar years after 2020.

The provisions of this subparagraph shall not apply to HMOs and PHSPs beginning operations in 2011 or after.

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 to further implement the provisions of Article 44 of the Public Health Law. The proposed amendment to §98-1.11(e) allows implementation of certain provisions of the state fiscal year (SFY) 2012-2013 and 2013-2014 budgets and continues the Medicaid Redesign Team Proposal #6 (2% reduction in Medicaid premium rates) by temporarily reducing the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC), Family Health Plus (FHP) and HIV Special Needs Plan (SNP) programs.

Needs and Benefits:

The approved SFY 2011-2012 and SFY 2012-2013 NYS Budgets incorporated a proposal from the Medicaid Redesign Team that reduced the premium rates of MMC, FHP and HIV SNP managed care plans by 2%. This was accomplished by lowering the rate component for surplus/reserves from 3% to 1% effective April 1, 2011.

The actuarial firm employed by the Department of Health (DOH), Mercer Consulting, must certify the actuarial soundness of the premium rates to Centers for Medicare and Medicaid Services (CMS). Mercer determined that reducing the rate component for surplus/reserves by 2% would result in rates that were not actuarially

sound, as such rates would be insufficient to support the contingent reserve requirement specified in §98-1.11(e)(1). As a result, Mercer recommended that the contingent reserve requirement for Medicaid product lines be reduced from 10.5% to 7.25% of premium revenue. This change was implemented in revised regulations promulgated on an emergency basis effective July 7, 2011 and adopted permanently on February 15, 2012. The 2% reduction of the premium rates resulted in savings to the Medicaid program of approximately \$188 million (federal and state shares combined) in SFY 2011-2012 and \$310 million in SFY 2012-2013.

The new revision to 98-1.11(e) maintains the 7.25% contingent reserve requirement through calendar year 2015. This will permit DOH to maintain the 2% reduction in the premium rates and allow Mercer to certify the actuarial soundness of the premium rates to CMS.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Health Department or by the MCOs.

Local Government Mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

Paperwork:

Paperwork associated with filings to DOH or Department of Financial Services should be minimal and would be no more substantial than the current regulation.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

There were minimal alternative standards considered. Revisions to §98-1.11(e) are needed to implement provisions of SFY 2012-2013 and SFY 2013-2014 budgets.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

Managed care organizations should be able to comply with the proposed regulations when they become effective.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

Companies affected by the proposed regulation include all Managed Care Organizations (MCOs) certified under Article 44 of the Public Health Law. Inasmuch as most of these companies are not independently owned and operated and employ more than 100 individuals, they do not fall within the definition of "small business" found in section 102(8) of the State Administrative Procedure Act. No local governments will be affected.

Compliance Requirements:

The amended regulation would not impose additional reporting, recordkeeping or other requirements on small businesses or local governments since the provisions contained therein apply only to MCOs authorized to do business in New York State and regulated by the NYS Health and Insurance Departments.

Professional Services:

There are no professional services that will need to be provided by small businesses or local government as a result of the amended regulation.

Compliance Costs:

The amended regulation would not impose any new reporting, recordkeeping or other requirements on small businesses or local governments.

Economic and Technical Feasibility:

There are no compliance requirements for small businesses or local governments.

Minimizing Adverse Impacts:

The amendment will have no adverse impact on small businesses or local governments since the provisions contained therein apply only to regulated MCOs authorized to do business in New York State.

Small Business and Local Government Participation:

As the amendments have no impact on small businesses or local governments, no input was sought from these entities.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Companies affected by the proposed regulation include all Managed Care Organizations (MCOs) certified under Article 44 of the Public Health law. The companies affected by this regulation do business in certain "rural areas" as defined under section 102(1) of the State Administrative Procedure Act, although none do so exclusively or have a significant portion of their business in rural areas. Some of the home offices of these companies may lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

Reporting, Recordkeeping and Other Compliance Requirements:

None of the compliance requirements are significantly different from requirements presently contained in Part 98 and none pertain exclusively to rural areas. The amendments should not impose any significant additional paperwork, recordkeeping or compliance requirements upon any regulated party.

Costs:

The amended regulation imposes no additional compliance costs on MCOs or state and local governments.

Minimizing Adverse Impact:

The proposed regulation applies to all MCOs certified under Article 44 to do business in New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

Rural Area Participation:

In developing the amended regulation, the Health Department conducted outreach to regulated managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

Nature of Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

Not Applicable.

Regions of Adverse Impact:

No region in New York should experience an adverse impact on jobs and employment opportunities.

Minimizing Adverse Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Assessment of Public Comment

The public comment period for this regulation ended on November 24, 2014. The Department received one comment.

The comment was from a law firm on behalf of a managed care organization that offers Medicaid Managed Care (MMC) and Family Health Plus (FHP) programs and supports the extension of the reduced contingent reserve requirement through 2015. However, it asked that the Department consider amending 10 NYCRR 98-1.11 (b)(1) and (2) relating to intercompany transactions. It recommended that, as the contingent reserve is being reduced, MCOs be permitted to undertake intercompany transactions that may result in the MCO's net worth falling below the percentages contained in 10 NYCRR 98-1.11 (b)(1) and (2), but remaining higher than the current contingent reserve requirement.

The Department will consider a subsequent amendment to the regulations to allow the Commissioner to waive the MCO minimum net worth requirements in appropriate circumstances. No changes were made to the proposed regulation as a result of this comment.