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New York State Budget Bill Amends Various Medicaid Requirements, Including Compliance Program Requirements Applicable to Health Care Providers and Managed Care Plans

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New York State has enacted amendments to provisions of the Social Services Law governing the compliance program requirements applicable to Medicaid providers. These changes generally took immediate effect on April 1, 2020, but due to the COVID-19 public health emergency, these amendments went largely unnoticed in the provider community. Some of the most significant changes include:

1. **Penalties**: The Medicaid Inspector General may impose penalties on providers who:
    a. Fail to grant timely access to facilities and records, upon reasonable notice, to various regulatory agencies for the purpose of audits, investigations, or reviews;
    b. Know or should have known that an overpayment has been identified and does not report and return such overpayment in 60 days of identification; and
    c. Contract with or employ an individual or entity who the provider knows or should know is suspended or excluded from the Medicaid Program. N.Y. Soc. Serv. Law § 145-b(4)(a)(ii)-(iv).

    Penalties for violations of (b) and (c) above are limited to $10,000 for each item or service that was the subject of the determination (except where penalties have been imposed on the person or entity within the previous five years, such penalty may not exceed $30,000 per item or service) and penalties for (a) may not exceed $15,000 for each day a provider fails to grant timely access. Id. at § 145-b(4)(c).

2. **Compliance Program**: The requirement to have an effective compliance program is now a condition of payment. Id. at § 363-d(2). This is significant as a technical failure to comply could theoretically be used to deny payment. In addition, the Medicaid Inspector General can impose a monetary penalty of $5,000 per month for a maximum of twelve months against a provider that has failed to adopt and implement a compliance program. If the Medicaid Inspector General imposed a penalty within the previous five years, the Medicaid Inspector General can impose a penalty of $10,000 per month for a maximum of twelve months against such provider for failure to maintain an effective compliance program. Id. at § 363-d(3)(d). These penalties may be imposed on or after January 1, 2021.

3. **Inclusion of Managed Care Plans**: Medicaid managed care plans, which are defined to include managed long-term care plans and other health plans licensed under Article 44 of the New York Public Health Law and Article 43 of the New York Insurance Law, are now explicitly required to adopt and implement a compliance plan and policies and procedures designed to detect and prevent fraud, waste and abuse. These managed care plans are also subject to the penalties and potential payment denials described above for failing to do so. Id. at §§ 363-d(3)(d)(1)-(2); 363-d(4)(c); 364-j(39).

4. **Compliance Officer and Committee**: The requirement that a Compliance Officer be employed by the entity was removed. Additionally, the law now requires a Compliance Committee that reports directly to the CEO or another member of the Senior Management Team. Id. at § 363-d(2)(b), (d).

5. **Formal Protocols for Overpayment Refunds and Self-Disclosures**: Prior to these amendments, the New York Medicaid Program did not have formal protocols similar to the federal requirements related to identifying, reporting and returning overpayments. New York's requirements now generally reflect the federal requirements at 42 CFR § 401.301-305. Id. at § 363-d(6)-(7).

6. **Misstated Cost Reports**. The Medicaid Inspector General may impose a penalty on a managed care provider (defined above) whose filed cost report contains a misstatement of fact including (a) unsubstantiated or improper costs; (b) number of member months; or (c) number of events. Id. at § 364-j(38)(b). The penalties vary depending on the misstatement as follows:
    a. For misstatements found in (a), the penalty will be 2x the amount of the misstatement;
    b. For misstatements found in (b), the penalty will be the amount of the premium capitation paid by the State for the region per member month; and

a. For misstatements found in (c), the penalty will be the amount of the supplemental capitation paid by the State for the region per member event.

Id. at § 364-j(38)(c).

7. **Home Care Service Workers**: The New York State Department of Health maintains a Home Care Registry to ensure that individuals employed by home care agencies have been properly educated and trained. Before employing a home health aide, home care agencies must check the registry. Now, home health aides are required to obtain unique identifiers from the State for purposes of this registry. N.Y. Pub. Health Law § 3613.

We expect the Office of the Medicaid Inspector General to revise and update the compliance program regulations at 18 NYCRR Part 521 in the near future so as to keep such regulations consistent with the implementing statutes.

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