



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 2, 2017

Dear CEO/Administrator:

This is to clarify earlier guidance issued on June 2, 2017 regarding payment of Ambulatory Payment Groups (APGs) and government rates for all behavioral health outpatient programs. As previously stated, Chapter 111 of the Laws of 2010 establishes, for Medicaid managed care, including HARP and HIV-SNP lines of business, APGs for the reimbursement of outpatient mental health services at Article 28 hospital-based and free-standing clinics and Article 31 and Article 32 outpatient clinics; rehabilitation and Opioid Treatment Programs. Subsequent amendments thereto, including Chapter 57 of the Laws of 2017, require MCOs to pay the APG or government rate for all OMH licensed or OASAS certified ambulatory behavioral health services, including behavioral health home and community based services, to Medicaid eligible enrollees unless an alternative payment arrangement is approved by the Department. This mandate extends beyond clinic services paid at APGs, to include all other ambulatory behavioral health services paid at government rates. The alternative payment arrangement may be a shared savings arrangement and must achieve quality and efficiency objectives, i.e., value based payment. The reimbursement of charges is not an alternative payment arrangement under the law.

It has come to the Department's attention that many contracts for ambulatory behavioral health services include language regarding payment to providers that allow the Managed Care Organization (MCO) to pay "the lesser of APGs or charges". As this payment provision is in violation of law for both APGs or other forms of government rates, the Department is directing MCOs to ensure reimbursement to providers, including those directly contracted with the plan and those who participate in the network through a contract with a participating IPA, for ambulatory behavioral health services is at the APG rate for behavioral health clinic services or the published government rate for other ambulatory behavioral health services as defined above. Absent a Department approved alternative payment arrangement, MCOs must ensure that its current claim processing system, inclusive of claims processing systems operated by delegated entities, is updated to pay at the APG or published government rate even if a provider bills for charges.

Moreover, in accordance with 10 NYCRR 98-1.5(b)(6) and the Provider Contract Guidelines, the Department is further directing MCOs to strike from its existing contracts, and discontinue the use in future contracts, "the lesser than" language pertaining to provision of services for all behavioral health ambulatory services paying at APGs or government rates. MCOs may utilize any appropriate amendment mechanism, i.e., notice of amendment to the provider (as per the terms of the agreement), to effectively strike this language.

Please review your claims processing system and inventory your behavioral health contracts for compliance with Part P of Chapter 57 of the Laws of 2017, and notify the Department that your MCO is either in compliance with reimbursement of both APGs and government rates, as applicable, by November 13, 2017. Your response should be sent to (bho@omh.ny.gov). If either your claims processing system or the terms of a contract are not compliant with NYS law, your response should include a corrective action plan, including a time line and responsible parties to correct your claims processing system and/or amend the identified language in your contracts. If you have any questions, please do not hesitate to contact Liz Vose at bho@omh.ny.gov.

Sincerely,

A handwritten signature in black ink that reads "Susan R. Bentley". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'y'.

Susan R. Bentley Director
Bureau of Managed Care Certification and Surveillance
Division of Health Plan Contracting and Oversight

cc: Jonathan Bick
Tom Smith
Gary Weiskopf
Robert Kent
Hope Goldhaber
Pat Lincourt
Charlotte Carito
Ilyana Meltzer
Elizabeth Vose
George Fleury
Matthew Tierno
Courtney Mauger