

PROVIDER COMPLIANCE ALERT

COMPLIANCE REMINDER # 2

February 7, 2024

**Target Audience: All Programs,
With Emphasis on SUD IOP and PHP Programs**

Dear Providers:

This alert is an urgent reminder to all enrolled Medicaid providers of their obligations to abide by state and federal laws or regulation.

When a provider accepts Medicaid, they are accepting payment by the program as payment in full for covered services rendered and make no additional charge to any person for covered services. A provider shall not require any additional payments or forms of payment, regardless of whether or not Medicaid pays their claims. Additionally, if Medicaid denies payment or requests repayment on the basis that an otherwise covered service was not medically necessary or preauthorized, the provider may not seek payment for that service from the participant.

Under these regulations, unallowable practices include, but are not limited to:

- Requiring beneficiaries to enter into any additional agreements in order to receive treatment.
- Confiscation of benefits (regardless of the source thereof).
- Requiring individuals to sign housing agreements.
- Requiring participants to pay for Medicaid services, or for “no-shows.”
- Paying participants or providing other incentives to engage in services.
- Submitting claims for prohibited combinations of service.

While all providers are required to comply with all of [COMAR 10.63](#), [COMAR 10.09.36](#), [COMAR 10.09.06](#), (Residential Treatment) and [COMAR 10.09.80](#) (Outpatient Treatment), **MDH has detected evidence of the above issues within SUD PHP and IOP programs, including, but not limited to the following practices of fraud, waste, and abuse:**

- Requiring patients to attend program services if they are to remain in housing.
- Confiscating SNAP cards, wallets, phones and other personal materials.
- Requiring patients to hand over SNAP PINs and using the cards to pay for food for the whole program, while also billing the State for RESRB room and Board codes.
- Placing residents in inadequate, unlicensed housing but not providing tenant rights.
- Paying patients to attend services.
- Billing Medicaid and the Behavioral Health Administration for illegal service combinations.
- Requiring additional payment (e.g., kickbacks) while submitting Medicaid claims.

MDH takes the responsibilities of enrolled Medicaid providers seriously and requests immediate attention to ensure that your organization is abiding by all state and federal regulation. For providers who have failed to comply with applicable federal or State laws or regulations, MDH may initiate one or more of the following actions against the responsible party: (1) Suspension from the Program; (2) Withholding of payment by the Program; (3) Recovery of an overpayment; (4) Removal from the Program; and (5) Disqualification from future participation in the Program, either as a provider or as a person providing services for which Program payment will be claimed.

Detailed examples of fraud, waste, and abuse practices cited above and corresponding regulations are as follows to support your review and immediate attention to this request:

Combination of Outpatient Substance Use Disorder Treatment Services: ([COMAR 10.09.80.06 B](#))

This regulation outlines prohibited combinations of service for SUD Treatment Providers, as well as some rules specific to PHP Level 2.5 and IOP Level 2.1 provider types. Providers cannot submit claims which violate these requirements. Please review and ensure compliance with ([COMAR 10.09.06.07](#)) and ([SUD Combination of Service](#), [MH Combination of Service](#)) which outline unacceptable combinations in detail.

Providing Illegal Incentives to participate in services

[Section 1128A\(a\)\(5\) of 42 CFR 1003.101](#) bars the offering of remuneration to Medicare or Medicaid beneficiaries where the person offering the remuneration knows or should know that the remuneration is likely to influence the beneficiary to order or receive items or services from a particular provider. The “should know” standard is met if a provider acts with deliberate ignorance or reckless disregard. No proof of specific intent is required.

Under this provision, it is clear that:

- Providing free or reduced cost housing exclusively to program participants is an illegal incentive.
- Payments of any significant amount to participants is illegal. (The Health and Human Services Office of the Inspector General (OIG) suggests that any payment in excess of \$10 per incident with a maximum of \$50 per year would be a significant amount).
- Any payment that is used to encourage an individual to participate in the services of one provider rather than another is illegal.

Other Legal Concerns Regarding Provision of Free or Reduced Cost Housing

- Individuals in housing that is not a licensed treatment program or a certified recovery residence are entitled by law to protection under State landlord-tenant laws, and cannot be removed from housing without the provider following the proper legal process.

Requiring participants to hand over Supplemental Nutrition Assistance Program (SNAP) benefits or cards and PINs allowing access to SNAP benefits.

It is illegal to sell, trade, or give away food benefits, or any EBT cards or documents, and programs are not to require handover of SNAP cards. Please contact 1-877-823-4369 to inquire how to legally accept SNAP benefits payments from participants.

Requiring attendance at specific programs

[COMAR 10.09.36.03.\(13\)](#) states that a program shall “Place no restriction on a participant’s right to select health care providers of the participant’s choice”. A participant cannot be required to attend a specific provider’s programs.