

## **PROVIDER COMPLIANCE ALERT**

### **COMPLIANCE REMINDER # 3**

**October 10, 2024**

**Target Audience: All Community Based Behavioral Health Providers**

The following is extremely important compliance information. Organization management is responsible to ensure that this information is shared with all employees, volunteers, and contractors in your organization.

#### **FEDERAL PERM AUDITS**

The Payment Integrity Information Act (PIIA) of 2019 requires that Federal agencies review programs they administer on an annual basis to identify programs that are susceptible to significant improper payments, estimate the amount of improper payments, and take action to reduce improper payments. To comply with the PIIA, the Centers for Medicare and Medicaid Services (CMS) developed the Payment Error Rate Measurement (PERM) program to measure improper payments in Medicaid and the Children's Health Insurance Program (CHIP).

The most recent PERM audit found several medical review errors. The Maryland Department of Health (MDH) will be implementing the following corrective actions based on the findings:

- Providers shall comply with provider audits authorized by State and federal law in accordance with COMAR 10.09.36.03A(23). PERM auditors review provider documentation against paid claims. MDH has made multiple attempts to communicate with providers that are required to submit documentation to support the claims being reviewed during the PERM audit. Providers who either fail to respond to document requests from MDH or PERM contractors or are unable to provide necessary documentation supporting a service will be referred to the Office of the Inspector General (OIG) for further review and possible sanction.
- Review of provided documentation found that providers are either upcoding or downcoding for billed services. Providers must review and confirm that the participant's medical record supports the number of units billed on the claim before submitting it to the Administrative Services Organization (ASO) for payment. Providers may be selected for a Compliance Audit, which may result in possible retractions for incorrectly billed services.

**FOLLOW UP REMINDERS - ILLEGAL USE OF HOUSING AND OTHER INCENTIVES TO ENCOURAGE PARTICIPATION IN A PARTICULAR PROGRAM**

1. BHA and the Office of the Inspector General continue to investigate situations in which organizations are providing housing (either directly or by arrangement with others) that mandates individuals to attend particular IOP, PHP and PRP programs as a condition of remaining housed. This is both an illegal Medicaid incentive, regardless of who operates the housing, and a violation of Medicaid's requirement for free participant choice of provider. Continuation of this practice will likely result in significant retractions, licensing action and/or prosecution. Providers are also reminded that under Maryland law, there are no exceptions to landlord-tenant law for healthcare providers operating unlicensed housing programs, and that any provider offering housing must be familiar with and follow the local landlord-tenant requirements, including the state prohibition on non-judicial evictions found at Md. Code Real Prop. §8-216.
2. BHA has also been made aware of an increasing number of situations in which individuals are being paid to broker referrals to specific providers. Providers are reminded that under the Eliminating Kickbacks in Recovery Act of 2018, it is illegal to "solicit[s] or receive[s] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring a patient or patronage to a recovery home, clinical treatment facility, or laboratory...." 18 U.S.C. § 220

## **PSYCHIATRIC REHABILITATION PROGRAM (PRP) DOCUMENTATION REQUIREMENTS**

Optum's Authorization team has been tracking a significant increase in claims submissions with false credentials or signatures. Submitting claims with false credentials or signatures is a violation of federal and State law. All providers, particularly those referring to PRP, are reminded that:

1. The person who is providing treatment, and performing the assessment of clinical need for PRP, **must** sign their own notes, assessment and referrals. (COMAR 10.09.59.05).
2. LMSW and LGPC staff making referrals **must** list their clinical supervisor in the request - this individual **must** have a documented formal supervision relationship with the clinician. (COMAR 10.42 and 10.58)
3. Pre-printed or photo-copied signatures and credentials on a document are not permitted except as clarifying material for an actual signature which is signed on the note *at the time of writing by the individual delivering the service*, whether through wet signature or e-signature.
4. The signature *itself* shall be dated *at the time it is affixed*. The best practice for late entries (generally more than 24 hours after the service) should reflect the date/time they are actually written and by whom, and reflect that they are a "late entry" for a particular service date/time. Late entries should be kept to a minimum.

5. Providers shall only use their own professional credentials, and **must** include these in the signature.
6. Staff of a PRP shall avoid conflicts of interest and/or playing a “dual role” by not making referrals to the PRP.
7. **Upcoding is not permitted.** All providers must be careful to avoid up-coding (entering a CPT/Revenue code for a level of service higher than was actually performed). This includes avoiding billing for no-shows or services that were not actually performed. (COMAR 10.09.)
8. COMAR 10.63.03.09 and COMAR 10.63.03.10 requires a PRP program to be under the direction of a rehabilitation specialist for 20 hours per week when the program serves less than 30 individuals and 40 hours per week when the program serves 30 individuals or more. This requires the Rehabilitation Specialist to be onsite during hours of operation at a minimum of 50% of their required working hours per the regulations.

Staff who are asked to violate any of the above requirements should understand that, for their own protection, they should report these violations, at minimum, to their corporate compliance officer or a supervisor. They may also report directly to any Local Behavioral Health Authority or to [bha.licensingcompliance@maryland.gov](mailto:bha.licensingcompliance@maryland.gov) at the Maryland Behavioral Health Administration.