Policy for the Protection of Confidential Health Information for Minors Enrolled in NYS Medicaid Managed Care Plans

Effective July 1, 2016

Purpose: To provide an effective, uniform and systemic mechanism for Medicaid Managed Care Plans (MMCPs) to comply with confidentiality protections for health care services provided to minors who are enabled by statute to consent to their own heath care.

Background: Medicaid Managed Care Plans (MMCPs) are required through federal and NYS statute and regulations to prevent unauthorized disclosure of their enrollee's protected health information. Minors are entitled to same, or stricter, confidentiality protections for certain services or under certain conditions. These include, but are not limited to: the Health Insurance Portability and Accountability Act; 42 CFR §2.14; NYS Public Health Law §§18, 2305(2), 2306, and 2504(1); NYS Public Health Law Article 27-f; NYS Mental Hygiene Law §§22.05(b), 22.11(c), 33.13, and 33.16; 18 NYCRR §360-8; and Carey v Population Services International, 431 U.S. 678 (1977).

MMCPs, however, are required to provide enrollees with written notice of all adverse Actions (in general terms, where the plan denies a service authorization request, approves a services authorization request for less than what was requested, or denies payment for a claim) in the normal course of business between health care providers and MMCP. The notice of Action describes the enrollee's appeal rights and right to fair hearing should the enrollee disagree with the MMCP's determination. MMCPs are also required to provide phone notice to the enrollee when a service authorization request is denied as not medically necessary.

MMCPs have met existing requirements to protect confidential information in a variety of ways:

- Requiring providers to obtain consent from the enrollee to send notices to home or alternate address.
- Requiring providers to inform enrollees of adverse determinations.
- Ensure written notices are addressed only to the minor.
- Modify service and payment codes that appear on EOBs to non-specific explanations.
- Suppress EOBs for all minors.

In the case of minors, Notice of Actions, and other routine payment notices such as: explanation of benefits (EOB); authorization notices; and provider invoices, may inadvertently release protected information to a parent or guardian, even if addressed to the enrollee. Simplification of coding does not necessarily protect enrollees from questions about health services received. Provider level "opt out" choices (to decline receiving payment denial notices) are difficult to convey to enrollees and may be systemically inoperable by the MMCP. There may also be inconsistent application or success of provider/enrollee education regarding potential disclosure. Concern over such disclosure is a known barrier for adolescents to seek necessary and timely health care services, particularly for family planning, HIV testing, sexually transmitted disease treatment, mental health services and substance use disorder treatment.

This potential for disclosure rests primarily with notices that may be received after an enrollee has received the health care service. Due to free access requirements for family planning and routine nature for many mental health, substance use disorder and primary care, there are no prior authorization requirements imposed by MMCPs that would necessitate a written Notice of Action, should the plan determine to deny a service authorization request. Medicaid providers and MMCP participating providers are prohibited from balance billing enrollees for covered services. Enrollees have no co-pays or deductibles that would necessitate provider billing. There may be circumstances, however, where a provider's claim for services rendered to an enrollee is denied payment for various administrative issues ranging from service coding to network participation. This denial of payment may trigger a Notice of Action or EOB to be sent to the enrollee.

The Department believes that, to the extent possible, targeted suppression of these claim denial notices is necessary to meet statutory requirements to protect the confidentiality rights of adolescents and foster access to family planning, HIV testing, sexually transmitted disease treatment, mental health services, substance use disorder treatment, and health care services related to pregnancy and childbirth. This policy shall apply to all health care service confidentiality rights provided to minors by federal or New York State law or regulation.

Procedure: To ensure the potential for inadvertent disclosure of confidential health information is minimized for all minor MMCP enrollees, MMCPs will implement one of the following procedures:

1) Where the MMCP's systems have the capacity to control the issuance of notices based on diagnosis or service code:

    a) The MMCP will suppress all Notice of Actions and any associated EOB notices addressed to enrollees or their parents/guardians, which regard services provided to enrollees who are under 18 years of age:

        i) where the services provided are family planning, HIV testing, sexually transmitted disease treatment, mental health, substance use disorder

treatment, pregnancy, childbirth, or, where documented, the adolescent consented to their own health care;

ii) the enrollee has received the service;

iii) the MMCP determines to deny the provider's claim for reimbursement for such services, in whole or in part, for any reason, **except** medical necessity determinations made pursuant to New York State Public Health Article 49[1]; ***and***

iv) the enrollee is not liable for the cost of the services.

b) MMCPs will continue to send adverse determination notices to providers, as required.

c) MMCPs will include information in the Member Handbook and on their websites, that if an enrollee receives a bill for health care services, the enrollee may contact the MMCP for assistance and affirm the enrollee's to right to a State fair hearing if the enrollee disagrees with the MMCP's determination to deny payment for a health care service he/she received.[2]

d) MMCPs will continue to ensure prompt response to an enrollee's, or his/her designee's, request to see his/her case file (a case file contains information related to a specific service request and information reviewed by the MMCP in the process of reaching a coverage determination). MMCPs will adhere to confidentiality requirements and, where required by law or regulation, obtain appropriate authorization prior to release of protected health information that may be included in the enrollee's case file.

2) Where the MMCP's systems do not have the capacity to control the issuance of notices based on diagnosis or service code:

a) For all services covered in the MMCP Benefit Package, the MMCP will suppress all Notice of Actions and any associated Explanation of Benefit notices addressed to enrollees or their parents/guardians, which regard services provided to enrollees who are under 18 years of age:

i) where the enrollee has received the service;

[1] If an MMCP elects to issue Explanation of Payment or Explanation of Benefits to enrollees for paid claims, the MMCP will suppress such notices to the enrollee in the same manner as for unpaid claims where the circumstances described in paragraph VII(1)(a)(i),(ii) and (iv) exist.

[2] Medicaid recipients may request a fair hearing whenever they believe their benefits have been delayed or denied. The Office of Administrative Hearings determines if the enrollee has a right to a fair hearing for a specific concern if the regular time to request a hearing (60 days from adverse determination notice) has expired.

ii) the MMCP determines to deny the provider's claim for reimbursement for such services, in whole or in part, for any reason, **except** medical necessity determinations made pursuant to New York State Public Health Article 49[3]; ***and***

iii) the enrollee is not liable for the cost of the services.

b) MMCPs will continue to send adverse determination notices to providers, as required.

c) MMCPs will include information in the Member Handbook and on their websites, that if an enrollee receive a bill for health care services, the enrollee may contact the MMCP for assistance, and affirm the enrollee's right to a State fair hearing if the enrollee disagrees with the MMCP's determination to deny payment for a health care service he/she received.

d) MMCPs will continue to ensure prompt response to an enrollee's, or his/her designee's, request to see his/her case file (a case file contains information related to a specific service request and information reviewed by the MMCP in the process of reaching a coverage determination). MMCPs will adhere to confidentiality requirements and, where required by law or regulation, obtain appropriate authorization prior to release of protected health information that may be included in the enrollee's case file.

[3] If an MMCP elects to issue Explanation of Payment or Explanation of Benefits to enrollees for paid claims, the MMCP will suppress such notices to the enrollee in the same manner as for unpaid claims where the circumstances described in paragraph VII(2)(a)(i) and (iii) exist.