NEW YORK STATE OF OPPORTUNITY. | Office of the Medicaid Inspector General

OMIG's Self-Disclosure Process

MMCO Overview

January 11, 2024

MMCO Obligation as a Plan

Federal and State Regulation regarding Self-Disclosure of Medicaid Managed Care:

- **Title 42 of the code of Federal Regulations (C.F.R.):**
  - **§ 438.608(d)(2)** states that each MCO, PIHP, or PAHP requires and has a mechanism for a network provider to report to the MCO, PIHP or PAHP when it has received an overpayment, to return the overpayment to the MCO, PIHP or PAHP within 60 calendar days after the date on which the overpayment was identified, and to notify the MCO, PIHP or PAHP in writing of the reason for the overpayment.

- **Title 18 of the New York Code of Rules and Regulations (NYCRR):**
  - **§ 521-2.4(f)** requires that Medicaid Managed Care Organizations (MMCO) shall establish policies and procedures in accordance with the requirements of section 363-d of the Social Services Law for its participating providers and other subcontractors to report, return and explain overpayments to the MMCO within sixty (60) days of identification. Additionally, it requires the MMCO to promptly report all recoveries, including recoveries which result from a provider or subcontractor reporting, returning and explaining an overpayment.

- **Title 18 of the New York Code of Rules and Regulations (NYCRR):**
  - **§ 521-2.4(h)** requires the MMCO to make available on its website information on how and where to report, return and explain overpayments to the MMCO.
  - **§ 521- 3.3(b)(5)** states that, for an overpayment made by an MMCO to a Network Provider, a Network Provider satisfies its obligation for self-disclosure by reporting, returning and explaining the overpayment to the MMCO, provided that it is reported and returned within sixty (60) days of identification.

❑ Model Contract 3/1/2019:

- **Section 22.7(e)** codifies that the MMCO shall have procedures in place for applicable parties to report when they have received an overpayment, to return the overpayment to the MMCO within sixty (60) days from the identification date, and to notify the MMCO in writing of the reason for the overpayment. The MMCO shall report any amount recovered in its quarterly Medicaid Managed Care Operating Report and its Provider Investigative Report.

MMCO Requirements – As a Plan:

- Have **processes in place** for Network Providers to report, return and explain any self-identified Medicaid Managed Care overpayments. The process must - at minimum - meet the requirements outlined under Social Services Law (SOS)§363-d.
- **Post the details** of these processes - and organizational contact information pertaining to them - on the MMCO website
- **Accept, respond to and process** Network Provider self-disclosures of Medicaid Managed Care overpayments
- **Report** self-disclosure recoveries on the Provider Investigative Report (**PIR)** reports to OMIG and the **MMCOR** reports to DOH

Network Provider Requirements:

- ❑ **Report, return and explain** Medicaid Managed Care overpayments **to the applicable MMCO(s)** within 60 days of identifying the overpayment

- ❑ **Adhere to MMCO policies and procedures** for the report, return and explain requirement pertaining to overpayments

- ❖ If a Network Provider self-discloses Managed Care overpayments to OMIG, the Self-Disclosure Unit will issue a Determination Notice advising the provider to report, return and explain to the applicable MMCO(s)

- ❖ If a Network Provider determines an MMCO is unresponsive to the Provider's attempts to report, return & explain Managed Care overpayments, Network Providers are instructed to document their attempts and submit a Full Self-Disclosure to OMIG.

MMCO Obligation as a Provider

Federal and State Regulation regarding Self-Disclosure of Medicaid Managed Care:

- **Affordable Care Act (ACA) of 2010:**
  - **§6402** states that Medicaid and Medicare overpayments must be returned within 60 days of identification, or by the date any correspondence cost report was due, whichever is later.

- **Title 42 of the United States Code (USC):**
  - **§1320a-7k(d)(1) & (2)** requires a person who has received an overpayment to report the overpayment, the reason for the overpayment, and to return the overpayment within 60 days of identification or by the date the corresponding cost report is due, if applicable.

❑ Social Services Law (SOS):

- **§363-d(6) & (7)** requires a person to report and return overpayments under the medical assistance program to OMIG within 60 days of identification, or by the date any corresponding cost report is due, if applicable. It also outlines eligibility criteria for participation in the self-disclosure program and overpayment report processing timeframes.

- **§363-d(6)(d)** states that any overpayment retained after the deadline for reporting and returning shall be subject to monetary penalties as outlined in §145-b

❑ Social Services Law (SOS):

- **§145-b(4)(D)(iii)** states that payment of monetary penalties may be required in restitution to the medical assistance program for any person who knew or should have known that an overpayment was identified and was not reported, returned and explained in accordance with SOS §363-d.

❑ State Finance Law (SFL) – New York False Claims Act:

- **§189** explains that the retention of an overpayment retained after the deadline for reporting and returning may give rise to liability under the False Claims Act

- **Title 18 of the New York Code of Rules and Regulations (NYCRR):**
  - **§ 521-3** establishes the requirements that persons shall report, return and explain overpayments to the OMIG, and explains the requirements of the self-disclosure program administered by OMIG.
- **Model Contract 3/1/2019:**
  - **Section 18.5(a)(viii)(G)** states that the Medicaid Managed Care Organization (MMCO) shall report to the Department of Health (SDOH) and OMIG within sixty (60) days of identification of any capitation payments in excess of amounts specified in the Model Contract Agreement.

MMCO Requirements – As a Provider:

- **Report, return and explain** any self-identified **Capitation Payment** overpayments within 60 days from the date the overpayment is identified.

OMIG's Self-Disclosure Program

OMIG's Self-Disclosure Program

NYS OMIG's Self-Disclosure Program provides avenues for Medicaid Entities/Providers to satisfy their obligation to report, return and explain self-identified Medicaid overpayments within 60 days from the date of identification. This is an obligation under Federal and State law and regulation.

Please note: Voiding or adjusting claims does not satisfy the obligation to report and explain identified overpayments.

Benefits of Self-Disclosure

- Promotes an environment of compliance and integrity within an organization
- Enables OMIG to work with the disclosing entity on repayment terms
- Satisfies the disclosing entity's obligation to report, return and explain under Federal and State law

Common Issues Disclosed

- Commonly self-disclosed errors that led to a Medicaid overpayment include, but are not limited to:
  - Billing errors
  - Fraudulent behavior by employees
  - Discovery of an employee on the Excluded Provider list
  - Documentation errors
  - Changes in billing systems which caused claims to be billed incorrectly

Two Self-Disclosure Avenues

All identified Medicaid overpayments must be self-disclosed.

OMIG has developed two paths for different types of Medicaid Self-Disclosures. Disclosing entities choose the appropriate type of Self-Disclosure based on the type of overpayment identified.

- ❑**Self-Disclosure Full Statement** (existing form & process)
- ❑**Self-Disclosure Abbreviated Statement** (new as of August 2023)

Which type of self-disclosure do I have?

Determination should be based on the error or issue that occurred that caused the overpayment of Medicaid funds.

- ❑ The first step is to fully investigate and identify the error that caused the overpayment.

Self-Disclosure Abbreviated Statement

- ❑ Routine credit balance/coordination of benefits overpayments
- ❑ Typographical human errors
- ❑ Routine Net Available Monthly Income (NAMI) adjustments
- ❑ Instances of missing or faulty authorization for services due to human error
- ❑ Inappropriate rate, procedure or fee code used due to typographical or human error
- ❑ Routine recipient enrollment issue

❖ **All overpaid Medicaid claims appropriate for the Abbreviated process must be voided or adjusted.**

❖ **Capitation Payments and Medicaid Managed Care Overpayments cannot be self-disclosed using the Abbreviated Process.**

Self-Disclosure Full Statement

- ❑ Any error that requires a Medicaid entity/Provider to create and implement a formal corrective action plan
- ❑ Actual, potential or credible allegation of fraudulent behavior by employees or others
- ❑ Discovery of an employee on the Excluded Provider list
- ❑ Non-claim-based Medicaid overpayments
- ❑ Systemic billing or claiming issues
- ❑ Any error with substantial monetary or program impacts
- ❑ Any instance upon direction by OMIG
- ❖ **Self-identified Capitation overpayments**
- ❖ **Instances when an MMCO is unresponsive to a Network Provider's attempts to report, return and explain Medicaid Managed Care overpayment**

Submit a Full Self-Disclosure

- ❑ Complete the Self-Disclosure Full Statement, Certification form and Claims Data or Mixed Payer Calculation spreadsheet (as applicable)
- ❑ If repaying by voids or adjustments, void or adjust the overpaid claim(s)
- ❑ Utilize the secure uplink on OMIG's website to submit the completed Self-Disclosure documentation

Matters That Should Not Be Self-Disclosed

- ❑ The overpayment is included in another separate review or audit being conducted by OMIG, the Office of the Inspector General, Attorney General, etc.
- ❑ The overpayment is included in a broader state-initiated rate adjustment, cost settlement, or other payment adjustment mechanism. For example: retroactive rate adjustments, charity care, cost reporting, etc.
- ❑ Any underpayments; these must be re-billed to eMedNY. Claims are subject to their own rules and regulations

Repayment Options

Voiding or Adjusting Overpaid Claims

Voiding or adjusting Medicaid claims is an acceptable way to **repay** Medicaid but does not satisfy a provider's obligation to **report and explain** the identified overpayment.

- **Full Process:** Void or adjust the overpaid Medicaid claims prior to submitting the Self-Disclosure Full Statement. If this isn't possible, indicate within the Statement that voids or adjustments are in process for repayment.

Check, Money Order or Electronic Payment

- **Lump Sum Payment**: Once the self-disclosure is processed, you may pay by check, electronic payment or money order. A Determination Notice will be sent with instructions on lump sum repayment. DO NOT SEND PAYMENT ALONG WITH SELF-DISCLOSURE.

- **Extended Repayment**: A disclosing entity may request installment payments via a Self-Disclosure and Compliance Agreement (SDCA) prior to the issuance of a Determination Notice. This payment option is granted or denied at the discretion of OMIG. The disclosing entity must supply all supporting financial documentation requested by OMIG (i.e., tax returns) by the due date specified to be considered for this payment option.

Self-Disclosure Best Practices

Investigate

Fully investigate what caused the overpayment, who was involved, and determine what will be done to ensure nonrecurrence

- ❑ Determine what caused the overpayment to occur
- ❑ Identify who caused the overpayment (if identifiable)
- ❑ Identify who was involved in discovering the overpayment
- ❑ Quantify the overpayment to the best of your ability and determine an estimated overpayment amount
- ❑ Determine what corrective action needs to take place (if any) to ensure the overpayment does not reoccur

Visit the OMIG Website

Forms, instructions and options for secure submission can be found on OMIG's website for both the Self-Disclosure Abbreviated Process and the Self-Disclosure Full Process

https://omig.ny.gov/provider-resources/self-disclosure

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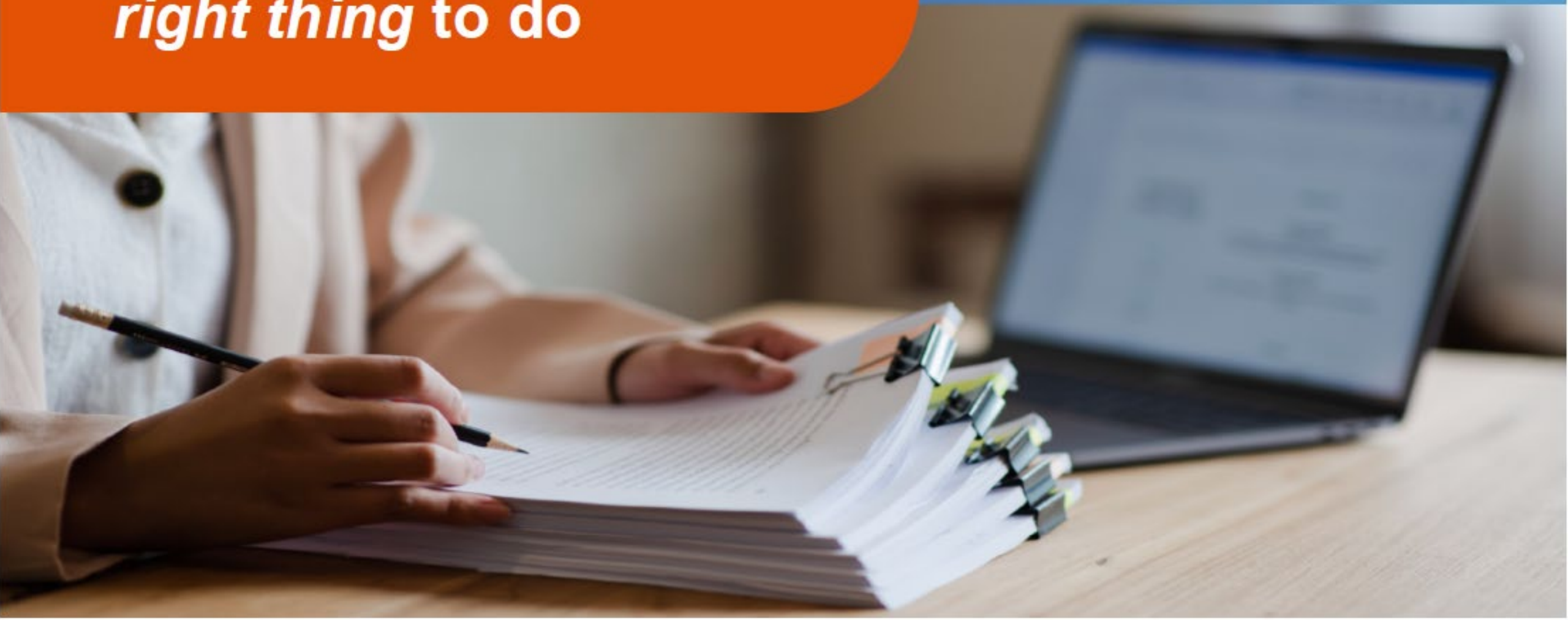
Self-Disclosure: It's the *right thing* to do



Contacts

Self-Disclosure Unit Resources and Contact Information

- Self-Disclosure web page: https://omig.ny.gov/provider-resources/self-disclosure
- Self-Disclosure dedicated email: selfdisclosures@omig.ny.gov
- Self-Disclosure dedicated phone line:

  518-402-7030

Agency Contact & Resource Information

- OMIG Executive Staff: 518-473-3782
- Website: www.omig.ny.gov
- Bureau of Medicaid Fraud Allegations: bmfa@omig.ny.gov
- Medicaid Fraud Hotline: 877-873-7283
- Join our listserv
- Follow us on X (formerly Twitter): @NYSOMIG
- Dedicated e-mail: information@omig.ny.gov