NYS Council for Community Behavioral Healthcare

ISSUE BRIEF

Background. New York State's transition of individuals served by the public behavioral health sector under the Medicaid fee-for-service (FFS) program to a managed care environment was accompanied by legislation to prevent resources that had been historically devoted to providing behavioral health services to individuals with mental illness and/or substance use disorders from being deployed for other purposes. That legislation, Chapter 60 of the Laws of 2014, requires that any savings in behavioral health expenditures be reinvested into community behavioral health services, including residential services, and directing DOH and the budget director to develop the methodologies used to calculate the savings in consultation with OMH and OASAS. (Social Services Law, § 365-M(5).

Lack of Transparency from DOH. DOH announced its intention to establish Behavioral Health Expenditure Targets (BHETs) for mainstream (non-HARP) plans, referred by some as "Behavioral Health MLRs".

- If a plan's behavioral health expenditures fell below 96% of the BHET, DOH reserved the right to recover the difference between actual behavioral health expenditures and the expenditure targets. (Medicaid Managed Care/ Family Health Plus/ HIV Special Needs Plan/ Health And Recovery Plan, Model Contract, Mar. 1, 2019, § 3.22(b)(i)).

To date, DOH has not disclosed information related how it established BHETs for mainstream plans, whether mainstream plans met the BHETs, and whether it has recovered amounts from any mainstream plans that did not meet BHETs.

Instead of establishing BHETs for HARP plans, DOH indicated that it would establish a single, integrated MLR of 89%. ("DOH, Implementing Medicaid Behavioral Health Reform in New York, MRT Behavioral Health Managed Care Update, Mar. 27, 2015, p.23.)

- Because MLR calculations are based on claims incurred for any medical expense, not just those claims incurred for behavioral health services, it is not clear how establishing a single, integrated MLR would satisfy the legislation enacted prior to the transition.
- DOH pledged that any MLR recoveries from HARP plans would be reinvested in services for individuals with behavioral health disorders. (DOH, "Transition of Behavioral Health Benefit into Medicaid Managed Care and Health and Recovery Program Implementation, Oct. 2015, p. 48.).

To date, DOH has not disclosed its rationale for excluding HARP plans from BHETs, whether HARP plans met MLR requirements, and whether DOH has recovered amounts from any HARP plans that did not meet MLR requirements.

FOIL Requests Go Unanswered. Disappointingly, DOH has not disclosed any information related to the savings in behavioral health expenditures resulting from the transition to managed care and how those savings have been reinvested into the behavioral health system. Due to the lack of publicly available information, the NYS Council filed four separate Freedom of Information Law (FOIL) requests through its legal counsel in late October and November 2020. As of today's date, the NYS Council has not received substantive responses to any of its FOIL requests.