



MCOs participating in the carve in of behavioral health services to the state's Medicaid managed care program are required to spend the vast majority of the funds they receive from the state on **services for Medicaid beneficiaries**. The NYS Council has tracked plan compliance with various state laws and contract requirements since the implementation of the carve-in that began in 2015. New York's record of enforcement of various laws, regulations and guidance that directly impact access to and continuity of care, is anemic at best.

In 2021, NYS Council attorneys issued a total of 25 FOIL requests across 6 state agencies/regulators. We confirmed the state had failed to enforce the BHET contract provision from the inception of managed care in behavioral health to the present day. As such, MCOs had been permitted to retain hundreds of millions of public dollars that was not theirs to keep. They had failed to meet the BHET contract requirement. This deprived the mental health and substance use disorder systems of care of hundreds of millions of dollars at a moment in time when overdose rates were reaching all-time highs, the youth mental health crisis was increasing, suicide rates in certain minority and underserved communities, and the opioid epidemic was raging in local communities across New York.

In December 2022, and after a full year of intense advocacy, NYS Council representatives met with officials from the Hochul Administration where we presented the problem and notified Counsel that we were ready to take legal action. Shortly thereafter, the state began recouping the overpayments from MCOs. The NYS Council remains deeply grateful to the current Administration for addressing some of the problems associated with Medicaid managed care however we have serious and ongoing concerns about transparency of the ongoing enforcement of BHETs and more generally, with the disregard MCOs have shown time and again to state laws requiring timely and full payment of government rates as well as numerous other tactics they continue to use that have the effect of tying the hands of providers who cannot recruit and retain the workforce they need due to MCO tactics that compromise cash flow, restrict expansion to meet growing demand, and require agencies to waste precious resources chasing MCOs.

The result of NYS Council advocacy regarding the behavioral health expenditure targets (described above) resulted in a state recoupment of \$222M from MCOs that failed to meet required targets from 2019-2021. However, despite budget language that requires the Department of Health/OHIP to post online the results of the yearly enforcement of the BHETs, the state has failed to provide this transparency, and we are concerned about ongoing enforcement and collections of overpayments made to the MCOs.

The carve-in of behavioral health services to Medicaid managed care has failed to deliver any of its intended objectives of advancing clinical integration and innovation. Instead, incorporating mental health and substance use disorder services has reduced timely access to care, decreased funding for these services, jeopardized provider viability and provided for-profit MCOs with a windfall of funds from the years where the expenditure targets were not enforced.

Carving out these services will result in very significant savings for the state that can and should be used to address workforce and other crises facing New York's overwhelmed and under-resourced mental health and substance use disorder systems of care.

We urge the Hochul Administration to carve out mental health and substance use disorder services and reimburse them through the Medicaid Fee for Service system.

To be clear, decreasing the total number of MCOs participating in the carve-in is an inadequate remedy to address the systemic problems and far-reaching consequences associated with a policy that permits massive insurance companies (most of which are for-profit) to 'manage' benefits for New Yorkers with significant mental health and/or substance use disorders. New Yorkers seeking services through the public mental hygiene system deserve more than the delay and deny tactics employed by most MCOs.

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