HINMAN STRAUB PC
ATTORNEYS AT LAW

121 State Street
Albany, New York 12207-1693
Tel: 518-436-0751
Fax: 518-436-4751

TO: **Memo Distribution List**

FROM: Hinman Straub P.C.

RE: Implementation of the Managed Care Organization ("MCO") Tax

DATE: January 2, 2025

NATURE OF THIS INFORMATION: This is information explaining new requirements that you need to be aware of or implement.

DATE FOR RESPONSE OR IMPLEMENTATION: The tax is effective January 1, 2025, however, the first payment is likely to be due by February or March 2025.

HINMAN STRAUB CONTACT PEOPLE: Sean Doolan, Stephanie Piel, Matthew Leonardo, and Colleen Rumsey

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
Category: #10 Miscellaneous/Other Suggested Key Word(s):

The Centers for Medicare and Medicaid Services ("CMS") recently approved the Managed Care Organization Tax ("MCO Tax") request submitted by the New York Department of Health ("DOH"). The 2024-2025 State Budget authorized this submission to CMS. The tax takes effect on January 1, 2025. This memo explains the background of the MCO Tax, and the information provided by the DOH to date on its implementation.

## 1. Background

Under federal law, taxes on MCO plans must be broad-based and uniform and are prohibited from holding the taxpayer harmless. Broad-based means that the tax must apply to plans within the same class, meaning both Medicaid and non-Medicaid (i.e. commercial coverage) MCO plans. Uniform means that the tax must be applied at the same rate within the same class, meaning Medicaid and non-Medicaid MCO plans must pay the same rate. To approve a waiver of the broad-based requirement, a state must demonstrate to CMS that the net impact of the tax is "generally redistributive", as demonstrated by a detailed calculation. California, among other states, received approval of an expanded waiver in January 2024 of a tax on plans based on enrollment, with Medicaid plans paying a sizable tax while non-Medicaid plans pay a nominal amount. This differential permits California to collect the federal match for a Medicaid plan's payments of the tax, generating significant federal dollars for the state. As part of the 2024-2025 State Budget, Public Health Law § 2807-ff was added to require the DOH to apply for a federal waiver of the broad-based and uniformity requirements to allow New York to establish an MCO Tax, modeled on the California approach.

## 2. Applicability

The MCO Tax applies to individual, group, or blanket health insurance policies or contracts, including comprehensive health insurance issued in the individual, small group, and large group markets, qualified health plans ("QHPs") and non-QHPs, Healthy New York, and grandfathered and non-grandfathered health plans. The law applies to Child Health Plus ("CHP"), the Essential Plan, Medicaid managed care plans, managed long term care ("MLTC") plans, and Medicaid Advantage Plus ("MAP").

The MCO Tax does not apply to Program of All-Inclusive Care for the Elderly ("PACE"), Medicare Advantage plans, Medicare supplement insurance, Medicare prescription drug plans, or Federal Employees Health Benefit Plans.

The MCO Tax does not apply to self-funded plans. However, the DOH is collecting information on enrollment in self-funded plans to perform its calculation.

## 3. Tax Rates

CMS approved the requested tax rates below. These tax rates are based on per member per month enrollment. The tax will apply on a calendar year basis, effective January 1, 2025.

| **Medicaid MCO Member Months** | **Per Member Per Month** |
|---|---|
| <250,000 | $126.00 |
| 250,000-500,000 | $88.00 |
| 500,000+ | $25.00 |
| **Essential Plan MCOs** | **Per Member Per Month** |
| <250,000 | $13.00 |
| 250,000+ | $7.00 |
| **Non-Essential Plan MCOs** | **Per Member Per Month** |
| <250,000 | $2.00 |
| 250,000+ | $1.50 |

Based on the above rates, it is not clear which rate will apply to Child Health Plus. We are seeking clarification from the DOH regarding the appropriate rate.

4. **Information Request for Implementation**

The DOH is collecting information from MCO plans to prepare for implementation. Using a template, they will request information by NAIC Company Code. The DOH has prepopulated a template with NAIC Company Codes and requests that any additional NAIC Company Codes be added. The template requests information by markets (self-insured, individual, small group, and large group). MCO plans are expected to provide information on 2024 member months and premium by market, along with projected 2025 member months and premium by market. Although the MCO Tax does not apply to self-funded plans, the DOH is requesting member months and premium information for 2024 and 2025 from self-funded plans. Please note that they are requesting this information from licensed insurers and any third-party administrators affiliated with the licensed insurer administering self-funded coverage.

5. **Payments**

The first payment of the MCO Tax will occur during the first quarter of 2025. It is anticipated that the payments will be collected in a similar manner as the Covered Lives Assessment, meaning that it may be collected on a quarterly or monthly basis. The current HCRA Pools Administrator will be administering the MCO Tax. After the conclusion of each calendar year, there will be a reconciliation process, to ensure that the MCO Tax was accurately assessed and paid.

Please contact us with any questions regarding the MCO Tax or the information in this memo.

4900-3917-9019, v. 5