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October 10, 2017

MassHealth Providers Cannot Require MassHealth Members to Pay Cash For Covered Substance Use Disorder Treatment

Dear Provider:

The opioid crisis continues to devastate communities across Massachusetts, with nearly 1,000 opioid-related deaths in just the first six months of 2017 and thousands more overdoses. The Attorney General's Office recognizes that substance use disorder ("SUD") treatment providers are on the front lines of this crisis. Our office is actively working to reduce the immeasurable human toll caused by this epidemic through education, outreach, intervention, enforcement, and promoting safe prescribing and dispensing practices. We are also committed to collaborating with healthcare professionals to make sure that SUD treatments are widely accessible to people struggling with addiction.

Our Medicaid Fraud Division works to guarantee that MassHealth members, in particular, have access to treatment. One way in which we do this is to investigate complaints of SUD providers who solicit and receive excess payments from MassHealth members for covered SUD treatments, such as Suboxone and Subutex. MassHealth providers' solicitation of money or anything of value for covered SUD treatment undermines access to the type of medical care needed to break the cycle of addiction, and is strictly prohibited by both 130 CMR 405.203¹ and G.L. c. 118E, section 42.²

Our office has brought numerous criminal and civil enforcement actions against MassHealth providers who solicited and received cash payments from MassHealth members for

¹ ". . . [P]articipation in MassHealth [is] limited to providers who agree to accept, as payment in full, the amounts paid in accordance with the applicable fees and rates or amounts established under a provider contract or regulations applicable to MassHealth payment. (See 42 CFR § 447.15 and M.G.L. c. 118E, § 36.) **No provider may solicit, charge, receive, or accept any money, gift, or other consideration from a member, or from any other person, for any item or medical service for which payment is available under MassHealth, in addition to, instead of, or as an advance or deposit against the amounts paid or payable by the MassHealth agency for such item or service . . .**" (emphasis added).

² "Whoever knowingly and willfully charges for any service provided to a patient under this chapter, money or other consideration at a rate in excess of the rates established in accordance with this chapter, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years, or by both such fine and imprisonment."



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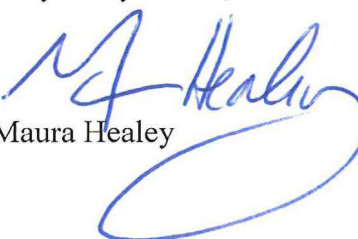
Page 2

covered SUD treatments. Working closely with MassHealth, we continue to actively investigate and prosecute such cases throughout the Commonwealth. (See attached press releases.)

Because the practice nonetheless continues, we are writing today to alert the MassHealth provider community that we will take immediate and aggressive action against treatment providers who seek to illegally profit off this crisis. Requiring MassHealth members to pay cash in order to obtain their Suboxone prescriptions, which are fully covered by MassHealth, is both unethical and illegal. This unacceptable practice is undermining critical access to care for a deeply vulnerable population and exacerbating the opioid crisis. It must stop immediately. As an important partner in addressing this crisis, we ask that you review your prescribing and billing practices to ensure compliance with Massachusetts law. It will save lives.

If you have any questions concerning the relevant MassHealth regulation cited here, please contact the MassHealth Customer Service line at 1-800-841-2900 or email providersupport@mahealth.net. If you have any questions regarding this letter or the laws referenced herein, please contact the Attorney General's Medicaid Fraud Hotline at (617) 963-2360 or www.eform.ago.state.ma.us/ago_eforms/forms/med_ecompliment.action.

Very Truly Yours,



Maura Healey

cc:

Commonwealth of Massachusetts
Executive Office of Health and Human Services
MassHealth

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Board of Registration in Medicine

Commonwealth of Massachusetts
Office of the State Auditor

United States Department of Health
and Human Services
Office of Inspector General

United States Department of Justice
Office of the Attorney General
Federal Bureau of Investigation

United States Department of Justice
Office of the Attorney General
Drug Enforcement Administration

United States Department of Justice
Office of the Attorney General
U.S. Attorney's Office
District of Massachusetts