

## EXHIBIT P

### THIRD PARTY RESOURCES AND PERSONAL INJURY LIENS

- A. Contractor shall take all reasonable actions to pursue recovery of Third Party Resources for Capitated Services provided during the Contract Year. "Third Party Resources" means any individual, entity, or program that is, or may be, liable to pay all or part of the medical cost of any medical assistance furnished to a DMAP Member. Third Party Resources include but are not limited to:
1. Private health insurance;
  2. Employment-related health insurance;
  3. Medical support from absent parents;
  4. Automobile insurance;
  5. Workers' compensation;
  6. Medicare; and
  7. Other federal programs, unless excluded by statute as, for example:
    - a. Services provided to DMAP Members pursuant to 42 CFR 36.61 Indian Health Service (IHS) is the payor of last resort and is not considered a Third Party Resource; or
    - b. Services provided to DMAP Members at a tribal facility operated under a "638" agreement pursuant to the Memorandum of Agreement between HIS and CMS (see Native American Services Provider Guide) is a payor of last resort and is not considered a Third Party Resource.
  8. Claims, judgments, settlements or compromises in relation to personal injuries where the covered services paid by Contractor constitute assistance, as these terms are defined in ORS 416.510.
- B. Contractor will develop and implement written policies describing its procedures for Third Party Resource recovery. DMAP may review Contractor's policies and procedures for compliance with the Contract and, to the extent DMAP determines applicable, for consistency with Third Party Resource recovery requirements in 42 USC 1396a(a)(25) and 42 CFR 433 Subpart D. At a minimum, the policies and procedures shall include the following information.
1. Describe Contractor's procedures for identifying Third Party Resource.
    - a. Contractor shall notify the Health Insurance Group, P.O. Box 14023, Salem, Oregon 97309, within thirty (30) days from the time that Contractor learns that a DMAP Member might have other health insurance. Any Contractor that also provides or has an affiliate that provides commercial insurance shall have a systematic process for identifying DMAP Members with dual or

overlapping coverage with Contractor and shall notify the Health Insurance Group or DMAP at the Department of Human Services, 500 Summer St. NE, E44, Salem, Oregon 97310 Attention: HMU, within fifteen (15) Business Days of the time such a DMAP Member is identified. The notification to DMAP will include the DMAP Member's name, Social Security Number, State Medical Identification, the name of the policy holder, the name and address of the insurance company, the group and/or policy number, and any other identifying information available to the Contractor, such as dates of coverage, etc.

b. Contractor shall immediately report that a DMAP Member has a potential third party claim for personal injuries, or has made a claim or begun an action to enforce such claim, as those terms are defined in ORS 416.510, to the DMAP Member's caseworker and the Department's Personal Injury Liens Unit, P.O. Box 14512, Salem, OR 97309-0416.

c. To the extent authorized by law, the Department of Human Services will share client and claim information they receive with Contractor to assist in identifying Third Party Resources.

2. Describe Contractor's procedures for determining the liability of Third Party Resource.

a. Contractor shall require DMAP Members to cooperate in securing payment from Third Party Resources, except when the DMAP Member asserts good cause as defined in OAR 461-120-0350. Contractor may not require DMAP Members to file a claim other than for Personal Injury Protection coverage.

b. If Contractor is unable to gain cooperation from the DMAP Member or their authorized representative or a Third Party Resource in pursuing the Third Party Resource, or if the DMAP Member or their representative asserts good cause, Contractor shall notify the Medical Payment Recovery Unit, P.O. Box 14023, Salem Oregon 97309, of their refusal to cooperate, and provide such records and documentation as may be requested from the Medical Payment Recovery Unit.

3. Describe the circumstances in which Contractor will apply "Cost-avoidance" to Third Party Resources.

a. "Cost-avoidance" is defined as a method for avoiding payment of Medicaid claims when Medicare or other insurance resources are available to the DMAP Member. Using this method, whenever

Contractor is billed first, claims are denied and returned to the provider who is instructed to bill and collect from liable Third Party Resources. Cost-avoidance also includes payment avoided when the provider bills the Third Party Resource first.

b. Contractor may not refuse payment for Covered Services based solely on a diagnosis code if there is no documentation of a potential Third Party Resource other than the diagnosis.

c. Contractor may not delay payment after a provider notifies Contractor that the provider cannot obtain recovery from a Third Party Resource after making reasonable efforts, or cannot obtain information or cooperation needed from the DMAP Member or a Third Party Resource to obtain recovery from a Third Party Resource. Upon notification, Contractor shall process the claim as a valid claim consistent with Section 12 of this Contract; however, Contractor may pursue alternative remedies under paragraph 2 of this Section or may seek to recover payment as provided in paragraph 4 of this Section.

4. Describe the circumstances in which Contractor will “Pay and Chase” Third Party Resources. “Pay and Chase” is defined as a method used where Contractor pays the recipient’s medical bills and then attempts to recover from liable Third Party Resources. “Pay and Chase” is mandatory whenever the following conditions exist:

a. Contractor must Pay and Chase in situations where the claim is for prenatal care (including labor and delivery and post-partum care) for pregnant women or preventive pediatric services that are Covered Services, although Contractor may cost-avoid claims associated with the inpatient hospital stay for labor and delivery and post-partum care.

b. Contractor shall Pay and Chase for prescription drug payments, subject to initial offset for known coordination of benefits in Contractor’s pharmacy payment system.

5. Describe the procedures for identifying and requesting payment from a Third Party Resource that applies to personal injury.

a. Contractor’s recourse for obtaining an assignment of lien rights shall be the process provided in ORS 416.510 to 416.610 and OAR 461-195-0301 to 461-195-0350. Contractor shall not request an assignment of right to recovery or assignment of a lien right from a DMAP Member or their representative.

b. When another party may be liable for a personal injury, Contractor may make the payments and (consistent with subsection (a) of this section 5) place a lien against a judgment, settlement or compromise. Once Contractor has made the payment for covered services and a lien has been sought, no additional billing or claim for enhanced reimbursement (e.g., balance billing) to the third party or to the DMAP Member or their finally responsible representative is permitted.

6. Contractor shall maintain records of Contractor's actions and Subcontractors' actions related to Third Party Resource recovery, and make those records available for DMAP review.

a. Contractor shall report all Third Party Resource payments to DMAP on the OHP Coordination of Benefits and Subrogation Recovery Section on the Quarterly Report, Report A-8 of Exhibit A.

b. Contractor shall maintain records of Third Party Resource recovery actions that do not result in recovery, including Contractor's written policy establishing the threshold for determining that it is not cost effective to pursue recovery action.

c. Contractor shall provide documentation about personal injury recovery actions and documentation about personal injury liens to the Department's Personal Injury Liens Unit consistent with OAR 461-195-0301 to 461-195-0350.

- C. Contractor may not refuse to provide Covered Services, and shall require that its Subcontractors may not refuse to provide Covered Services, to an DMAP Member because of a Third Party Resource's potential liability for payment for the Covered Service.
- D. Contractor is the payer of last resort when there is other insurance or Medicare in effect. At DMAP's discretion or at the request of the Contractor, DMAP may retroactively Disenroll a DMAP Member to the time the DMAP Member acquired Third Party Resource insurance, pursuant to OAR 410-141-0080(2)(b)(D) or 410-141-0080(3)(a)(A), based on DMAP's determination that services may be provided cost effectively on a fee-for-service basis. When a DMAP Member is retroactively Disenrolled under this Section of the Contract, DMAP shall recoup all Capitation Payments to Contractor after the effective date of the Disenrollment. Contractor and its Providers may not seek to collect from a DMAP Member (or any financially responsible representative of the DMAP Member) or any Third Party Resource, any amounts paid for any covered services provided on or after the date of disenrollment.

- E. Contractor shall comply with 42 USC 1395y(b), which gives Medicare the right to recover its benefits from employers and workers' compensation carriers, liability insurers, automobile or no fault insurers, and employer group health plans before any other entity including Contractor or its Subcontractor.
1. Where Medicare and Contractor have paid for services, and the amount available from the Third Party Resource is not sufficient to satisfy the claims of both programs to reimbursement, the Third Party Resource must reimburse Medicare the full amount of its claim before any other entity, including Contractor or its Subcontractor, may be paid.
  2. If the Third Party Resource has reimbursed Contractor or its Subcontractor, or if a DMAP Member, after receiving payment from the Third Party Resource, has reimbursed Contractor or its Subcontractor, the Contractor or its Subcontractor must reimburse Medicare up to the full amount the Contractor/Subcontractor received, if Medicare is unable to recover its payment from the remainder of the Third Party Resource payment.
  3. Any such Medicare reimbursements described in this Section are the Contractor's responsibility on presentation of appropriate request and supporting documentation from the Medicare carrier. Contractor shall document such Medicare reimbursements in its report to DMAP, described in paragraph B (5) of this section.
- F. When engaging in Third Party Resource recovery actions, Contractor shall comply with, and require its Subcontractors or agents to comply with, federal and state confidentiality requirements, described in Section 27 of this Contract. DMAP considers the disclosure of DMAP Member claims information in connection with Contractor's Third Party Resource recovery actions a purpose that is directly connected with the administration of the Medicaid program.