



DRAFT FOR PUBLIC COMMENT
High-Level Liquidated Damages Matrix

Level	Noncompliant Behavior and/or Practices (Non-Exhaustive List)	Liquidated Damages Range
LEVEL 1 MCO action(s) or inaction(s) that seriously jeopardize the health, safety, and welfare of member(s); reduces members' access to care; and/or the integrity of the managed care program	Failure to substantially provide medically necessary covered services	\$25,000 per each failure
	Discriminating among members on the basis of their health status or need for health care services	\$100,000 per violation
	Imposing arbitrary utilization management criteria, quantitative coverage limits, or prior authorization requirements prohibited in the contract	\$25,000 per violation
	Imposing on members premiums or charges that are in excess of the premiums or charges permitted by DHHS	\$10,000 per violation (DHHS will return the overcharge to the member)
	Continuing failure to meet minimum care management, care coordination and transition of care policy requirements	\$25,000 per week of violation
	Continuing failure to meet minimum behavioral health (mental health and substance use disorder) requirements, including regarding the full continuum of care for members with substance use disorders	\$25,000 per week of violation
	Continuing failure to meet or failure to require their network providers to meet the network adequacy standards established by DHHS (without an approved exception)	\$1,000 per day per occurrence until correction of the failure or approval by DHHS of a Corrective Action Plan \$100,000 per day for failure to meet the requirements of the approved Corrective Action Plan
	Misrepresenting or falsifying information furnished to CMS or to DHHS or a member	\$25,000 per violation
	Failure to comply with the requirements of Section 5.3 (Program Integrity) of the contract	\$10,000 per month of violation (for each month that DHHS determines that the MCO is not substantially



DRAFT FOR PUBLIC COMMENT
High-Level Liquidated Damages Matrix

Level	Noncompliant Behavior and/or Practices (Non-Exhaustive List)	Liquidated Damages Range
		in compliance)
	Continuing failure to resolve member appeals and grievances within specified timeframes	\$25,000 per violation
	Failure to submit timely, accurate, and/or complete encounter data submission in the required file format <i>(For submissions more than 30 calendar days late, DHHS reserves the right to withhold 5% of the aggregate capitation payments made to the MCO in that month until such time as the required submission is made)</i>	\$5,000 per day the submission is late
	Failure to comply in any way with financial reporting requirements (including timeliness, accuracy, and completeness)	\$25,000 per violation
	Failure to adhere to the Preferred Drug List requirements	\$25,000 per violation
	Continued noncompliance and failure to comply with previously imposed remedial actions and/or intermediate sanctions from a Level 2 violation	\$25,000 per violation
	Continued failure to comply with the Mental Health Parity and Addiction Equity Act of 2008, 42 CFR part 438, subpart K, which prohibits discrimination in the delivery of mental health and substance use disorder services and in the treatment of members with, at risk for, or recovering from a mental health or substance use disorder	\$50,000 per violation for continuing failure
	Continued failure to meet the requirements for minimizing psychiatric boarding	\$5,000 per day for continuing failure
	In-network provider not enrolled with NH Medicaid	\$1,000 per provider not enrolled, \$500 per additional day provider is not suspended once MCO is notified of non-enrollment, unless good cause is determined at the discretion of DHHS
	Two or more Level 1 violations within a contract year	\$75,000 per occurrence
LEVEL 2 MCO action(s) or	Failure to meet readiness review timeframes or address readiness deficiencies in a timely manner as required under the Agreement	\$5,000 per violation (DHHS reserves the right



DRAFT FOR PUBLIC COMMENT
High-Level Liquidated Damages Matrix

Level	Noncompliant Behavior and/or Practices (Non-Exhaustive List)	Liquidated Damages Range
inaction(s) that jeopardize the integrity of the managed care program, but does not necessarily jeopardize member(s) health, safety, and welfare or access to care.		to suspend enrollment of members into the MCO until deficiencies in the MCO's readiness activities are rectified)
	Failure to maintain the privacy and/or security of data containing protected health information (PII) which results in a breach of the security of such information and/or timely report violations in the access, use, and disclosure of PII	\$100,000 per violation
	Failure to meet prompt payment requirements and standards	\$25,000 per violation
	Failure to meet Medical Loss Ratio requirements	\$100,000 per violation, assessed at end of fiscal year
	Failure to cost recover at least 1% of claims in the first year of the contract, 1.2% in the second year, and 1.5% in contract years 3, 4, and 5	\$50,000 per violation
	Failure to cost avoid claims of known third party liability (TPL)	\$250 per member and total claim amount paid that should have been cost avoided
	Failure to collect overpayments for fraud, waste, and abuse in the amount of 0.10% of claims in the first year of the contract, 0.12% in the second year, and 0.15% in years 3, 4, and 5	\$50,000 per violation
	Failure to refer at least 20 potential instances of subcontractor or provider fraud, waste, or abuse to DHHS annually	\$10,000 unless good cause determined by Program Integrity
	EQR or other program audit reports with substantial findings	\$5,000 per violation
	Using unapproved beneficiary notices, educational materials, and handbooks and marketing materials, or materials that contain false or materially misleading information	\$5,000 per violation
	Failure to comply with member services requirements (including hours of operation, call center, and online portal)	\$5,000 per day of violation
	Member in pharmacy "lock-in" program not locked into a pharmacy and no documentation as to waiver or other excuse for not being locked in	\$500 per member per occurrence and total



DRAFT FOR PUBLIC COMMENT
High-Level Liquidated Damages Matrix

Level	Noncompliant Behavior and/or Practices (Non-Exhaustive List)	Liquidated Damages Range
		pharmacy claims amount paid while not locked-in
	Continued noncompliance and failure to comply with previously imposed remedial actions and/or intermediate sanctions from a Level 3 violation	\$25,000 per week of violation
	Failure to suspend or terminate providers in which it has been determined that the provider has committed a violation or is under fraud investigation	\$500 per day of violation
	Two or more Level 2 violations within a contract year	\$50,000 per occurrence
LEVEL 3 MCO action(s) or inaction(s) that diminish the effective oversight and administration of the managed care program.	Failure to submit to DHHS within the specified timeframes any documentation, policies, notices, materials, handbooks, provider directories, provider agreements, etc. requiring DHHS review and/or approval	\$10,000 per violation
	Failure to implement and maintain required policies, plans, and programs	\$500 per every one-week delay
	Failure to comply with provider relations requirements (including hours of operation, call center, and online portal)	\$10,000 per violation
	Failure to report subrogation settlements that are under 80% of the total liability (50% of the lien amount)	\$10,000 per violation
	Failure to enforce provisions under its agreements with Subcontractor	\$25,000 per violation
	Failure to submit and obtain DHHS review and approval for applicable Subcontracts	\$25,000 per violation
	Failure to comply with ownership disclosure requirements	\$10,000 per violation
	Continued noncompliance and failure to comply with previously imposed remedial actions and/or intermediate sanctions from a Level 4 violation	\$25,000 per week of violation
	Failure to meet minimum social services and community care requirements, as described in Section 4.10.10 (Coordination and Integration with Social Services and Community Care) of the contract, with respect to unmet resource needs of members	\$10,000 per violation
	Failure to ensure that clinicians conducting or contributing to a comprehensive assessment are certified in the use of New Hampshire's CANS and ANSA, or an alternative evidenced based assessment tool approved by DHHS within the specified timeframe	\$10,000 per violation



DRAFT FOR PUBLIC COMMENT
High-Level Liquidated Damages Matrix

Level	Noncompliant Behavior and/or Practices (Non-Exhaustive List)	Liquidated Damages Range
	Two or more Level 3 violations within a contract year	\$100,000 per occurrence
LEVEL 4 MCO action(s) or inaction(s) that inhibit the efficient operation the managed care program.	Submission of a late, incorrect, or incomplete report or deliverable (excludes encounter data and other financial reports)	\$500 per day of violation
	Failure to comply with timeframes for distributing (or providing access to) beneficiary handbooks, identification cards, provider directories, and educational materials to beneficiaries (or potential members)	\$5,000 per violation
	Failure to meet minimum requirements requiring coordination and cooperation with external entities (e.g., the New Hampshire Medicaid Fraud Control Unit, Office of the Inspector General) as described in the contract	\$5,000 per violation
	EQR or other program audit reports with non-significant findings	\$10,000 per occurrence
	Failure to meet staffing requirements	\$5,000 per violation
	Failure to ensure provider agreements include all required provisions	\$10,000 per violation