Blog Post

Florida Medicaid Providers: Action is Required by October 1, 2022

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By Marcy Hahn-Saperstein

Check your mailboxes. AHCA is sending out postcards to existing Florida Medicaid providers (Providers) alerting them to upcoming changes in the Florida Medicaid program. These changes require Providers to pay certain of their employees a minimum wage of at least $15.00 per hour. Governor Ron DeSantis's "Freedom First Budget for Fiscal Year 2022-2023" includes funding for AHCA to increase reimbursement rates and capitation rates in order to ameliorate the cost increases to Providers and Plans. AHCA has released guidance to assist Providers in complying with this new obligation.

The guidance includes frequently asked questions. We have summarized below the most salient points:

First Deadline – October 1, 2022

- By October 1, 2022, Providers must enter into the Supplemental Wage Agreement with AHCA pursuant to which each Provider agrees to pay certain of its employees (as further defined below) at least $15.00 per hour. The Provider's attestation is made under penalty of perjury. Providers are urged to sign into their account on the Florida Medicaid portal immediately.
- Providers may not avoid this obligation without consequences. The failure to sign the supplemental wage agreement will subject the Provider to recoupment of funds associated with

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the minimum wage requirement and, if not completed by the second deadline described below, to additional risks.

Second Deadline – January 1, 2023

- In addition to the recoupments referenced above, Providers who fail to sign the supplemental wage agreement and commence paying their employees in accordance with that agreement by the new year may face civil liability to their employees. As of January 1, 2023, any employee of a Provider who should have received the wage increase, but did not, may bring a civil action against the Provider and be eligible to: (i) recover the full amount of back wages unlawfully withheld; (ii) receive the same amount as liquidated damages; (iii) receive attorneys' fees and costs; and (iv) receive appropriate legal or equitable relief, including, but not limited to, reinstatement in employment and/or injunctive relief. Attorneys who represent employees in wage and hour related cases will likely be communicating with the staff of health care providers to alert them to this new obligation because their fees would be paid by their Provider employer who fails to comply.

Employees Eligible for Pay Increases

- With the exception of nursing homes, the pay increase applies only to a Provider's direct care employees.
    - A "direct care employee" is "an individual that has direct contact with a Medicaid recipient for purposes of providing a Medicaid reimbursable service. Direct care workers do not include individuals who do not provide a Medicaid reimbursable service, whose primary duty is maintaining the physical environment of the workplace, or whose duties are primarily administrative." Direct care employees falling within this definition also include 1099 employees.

- Nursing homes, however, are required to pay the increased salary to ***all of their employees***, regardless of whether they are direct employees or not.

Impacted Fee for Service Providers

- With the exception of the Providers identified as exempt as outlined below, the Freedom First Budget applies to all Providers who will receive an increase in their Medicaid Fee-For-Service Fee Schedule.
- A full list of the applicable Fee Schedules is provided here.

Exempt Providers

- Providers who bill ***exclusively*** under the following Fee Schedules, are **not** required to sign the supplemental wage agreement and are exempt from the minimum wage requirements discussed in this blog:
    - Behavior Analysis Fee Schedule
    - Community-Based Substance Abuse County Match Fee Schedule
    - County Health Department Certified Match Program Fee Schedule
    - Durable Medical Equipment and Medical Supply Services Provider Fee Schedule for All Medicaid Recipients
    - Early Intervention Services Fee Schedule
    - Medicaid Certified School Match Program Fee Schedule
    - Physician Pediatric Surgery Fee Schedule
    - Prescribed Drugs Immunization Fee Schedule
    - Prescribed Drugs Physician Administered Billing Codes
    - Regional Perinatal Intensive Care Center (RPICC) Neonatal Services Fee Schedule

- RPICC Obstetrical Services Fee Schedule
- Targeted Case Management for Children at Risk of Abuse and Neglect

Impacted Managed Care Plans

- Managed care plans are required to pay Providers an enhanced capitation rate associated with the minimum wage requirement.
- For the contract year beginning October 1, 2022, capitated rates paid to the plans will include additional funds to increase Medicaid managed care rates for Florida Medicaid Managed Medical Assistance and Long-Term Care Plans for the sole purpose of raising wages of Provider's employees.

If Providers have questions regarding this new obligation, they may submit questions through the online portal. Alternatively, we are available to assist parties seeking guidance regarding adhering to the requirements under the Freedom First Budget.

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