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NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

Model Act Regarding Medicaid Interception of Insurance Payments

****Model adopted by the NCOIL Executive Committee on November 23, 2014, and amended on March 1, 2015. Sponsored by Rep. Brian Kennedy, RI; Readopted by the Property & Casualty Insurance Committee on September 24, 2020 and the Executive Committee on September 26, 2020.***

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Section 1 Short Title

This Act may be called the *Model Act Regarding Medicaid Interception of Insurance Payments*.

Section 2 Purpose

In accordance with state law and applicable administrative rules, when applying for Medicaid, an applicant (beneficiary) automatically assigns his or her rights to the (NAME OF STATE AGENCY) to any payments under applicable insurance coverage. The purpose of this Act is to regulate the recovery of monies paid by (NAME OF STATE AGENCY).

Section 3 Scope

This Act applies to no-fault, personal injury protection, medical payments coverage and third party payments for bodily injury from insurers and self-funded primary plans (plan). Claims excluded from interception include liability policies that do not pay for bodily

injury, claims for property damage or loss of use of property, claims made against accident and health policies whether expense incurred or indemnity and all workers' compensation claims.

Section 4 Application

A. Nothing in these sections shall limit the (NAME OF STATE AGENCY) from recovery of any other monies allowed, to the extent of the distribution, in accordance with all state and federal laws.

B. Any action to pursue any recovery of monies paid by (NAME OF STATE AGENCY) shall be commenced within two years after the date of the accident or event causing the injury asserted by the beneficiary. Nothing herein shall lengthen any time limitations set forth in any plan or insurance policy.

Section 5 Definitions

A. Claimant--either an insured under a policy of insurance or a third party to an insurance policy requesting benefits orally or in writing in excess of two thousand dollars, \$2,000.00, for injuries received as a result of an accident or loss. Claimant includes a person's legal representative, family members or any other individual acting on their behalf.

B. Insurer--any insurance company licensed to do business in (Name of State), excluding those that do not issue coverages within the scope of the act in section 3.

C. Medicaid Beneficiary--an individual who has received (Name of State) Medicaid Medical Benefits in excess of two thousand dollars, \$2,000.00, as a result of an accident or loss.

D. Plan--any entity that is self insured for its legal responsibility without the benefit of primary insurance, through the use of a self-insured retention. This includes but is not limited to any entity that is directing the handling of its claims through a third party or as a result of a policy buy back, cost sharing agreement or coverage in place agreement.

Section 6 Match Process

A. For the purposes of this section, the matching process is limited to a beneficiary or estate making a bodily injury or wrongful death claim against a plan or under an insurance policy.

B. Claims excluded from interception include liability policies that do not pay for bodily injury, claims for property damage or loss of use of property, claims made against accident and health policies whether expense incurred or indemnity and all workers compensation claims. A payment made to fund a structured settlement annuity and payments pursuant to a structured settlement annuity are excluded from interception if established after twenty-four (24) months from date of loss.

C. At any time prior to making a total payment of two thousand dollars (\$2000.00) or more on behalf of or to a claimant, on a claim under a plan or contract of insurance, every plan or insurer issuing automobile or policies of liability insurance, shall exchange information with the (NAME OF STATE AGENCY) by the means set forth in this Act.

D. In order to facilitate compliance with this Act, (NAME OF STATE AGENCY) shall develop and operate a data match system after consultation with one or more insurers and plans, using automated data exchanges to the maximum extent feasible, to compare claimant information held by insurers and plans with the (NAME OF STATE AGENCY) database of beneficiaries.

E. In order to comply with the requirements of this section, an insurer or plan shall provide the (NAME OF STATE AGENCY) with the following information about the individual or estate determined by the (NAME OF STATE AGENCY) to be a beneficiary:

- a. Name,
- b. Address

They may provide the following optional data:

- d. Date of Birth
- e. Last Four Digits of a Social Security Number

F. An insurer or plan may provide such information by:

a. Authorizing an insurance claim data collection organization, to which the insurer or plan subscribes and to which the insurer or plan submits the required claim data on at least a weekly basis, to:

1. Receive or access a data file from the (NAME OF STATE AGENCY) and conduct a data match of all individuals who have a claim with the insurer or plan and who are Medicaid Beneficiaries and submit the required data for each such resulting data match to (NAME OF STATE AGENCY AND/OR THEIR AUTHORIZED VENDOR); or

2. Submit a data file to the (NAME OF STATE AGENCY) which contains the required data for each claim being maintained by the insurer or plan for the (NAME OF STATE AGENCY) to conduct a data match;

b. Providing the required data for each claim being maintained by the insurer or plan directly to the (NAME OF STATE AGENCY) in an electronic medium; or

c. Receiving or accessing a data file from the (NAME OF STATE AGENCY) and conducting a data match of individuals who have a claim with the insurer or plan and who are Medicaid beneficiaries and submit the required data for each such resulting data match to (NAME OF STATE AGENCY);

G. Upon receiving notice of a match as set forth in this section, the (NAME OF STATE AGENCY) shall send the insurer or plan a notice of lien pursuant to (CITATION OF STATE LAW)

H. Any insurer or plan that can show that they have made a good faith effort to comply shall be deemed to have complied unless (NAME OF STATE AGENCY) proves an intentional failure to comply by demonstrating a pattern and practice of non-compliance. A single instance will not be sufficient proof.

Section 7 Payment Process

The insurer or plan shall withhold the lesser of the amount of the claim payment or the full amount as set forth in the notice of lien and shall remit that amount to the (NAME OF STATE AGENCY) as provided by (CITATION OF STATE LAW), subject to conditions as stated below.

A. The lien shall encumber the right of the claimant to payment under the policy or plan, and the insurer or plan shall disburse to the claimant only that portion of the payment, if any, after the lien has been satisfied.

B. The lien shall be inferior to any lien or claim for attorney fees.

C. Should the beneficiary and/or their representative believe that the payment of the lien exceeds the extent of the distribution, in accordance with all state and federal laws, and notifies the insurer or plan that they intend to file an administrative appeal the insurer or plan may issue a check made payable to the beneficiary, their representative and (Name of State Agency).

D. The insurer or plan, may notify the (Name of State Agency) of its intent to issue a payment as a single check made payable to; the beneficiary, any representative, any other lienholders and the (Name of State Agency).

E. If the lien is received after the insurer or plan has issued the payment the insurer or plan will notify the (Name of State Agency) of the following information: Date of Payment, Amount of Payment, Payees(s) and Address of recipient. In no case shall the insurer or plan be obligated to make any further payments.

Section 8 Data Confidentiality

A. The information obtained by the (NAME OF STATE AGENCY) pursuant to the provisions of this section shall be used only to aid in recovery of Medicaid payments.

B. An insurer or plan, and its directors, agents or employees, and any insurance claim data collection organization and its agents and employees authorized by an insurer or plan to act on its behalf, shall keep this information safe and private in accordance with applicable state law.

Section 9 Notice

(NAME OF STATE AGENCY) shall provide written notice to the claimant and his/her attorney if represented which shall include the date, name, social security number, case number, and amount of the payment being withheld to reimburse the state, reason for the payment and opportunity to request a hearing.

Section 10 Request for Hearing

Any beneficiary aggrieved by any action taken under these procedures may within thirty (30) days of the date of the notice to the claimant request a hearing from the (NAME OF STATE AGENCY). Any payments made by an insurer or plan pursuant to this chapter

shall be made to the (NAME OF STATE AGENCY), unless there is request for hearing within thirty (30) days of the notice, or within ten (10) business days of a decision after hearing and in accordance with the decision of any hearing that takes place.

Section 11 Immunity

A. An insurer or plan, and its directors, agents or employees, and any insurance claim data collection organization and its agents and employees authorized by an insurer or plan to act on its behalf, which provides or attempts to provide data under this section are immune from any civil liability under any law to any person or entity for any alleged or actual damages that occur as a result of providing or attempting to provide data under this section. This act does not create any other obligations upon insurers or plan.

B. An insurer or plan, and its directors, agents or employees, and any insurance claim data collection organization and its agents and employees authorized by an insurer or plan to act on its behalf, under this section are immune from any civil liability under any law to any person or entity for any alleged or actual damages that occur as a result of making a lien payment to a state agency as demanded by the state.

C. Any person against whom any action is brought who is found to be immune from liability under this section, shall be entitled to recover reasonable attorney's fees and costs from the person or party who brought the action. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

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