

STATEMENTS OF POLICY

Title 55—HUMAN SERVICES

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CH. 1101]

Rescission of the Statement of Policy—Clarifying the Term “Within a Provider’s Office”

This statement of policy applies to all providers enrolled in the Medical Assistance (MA) Program.

Purpose

The purpose of this statement of policy is to delete the statement of policy in § 1101.51a (relating to clarification of the term “within a provider’s office”—statement of policy), which clarified the term “within a provider’s office” under § 1101.51(c)(3) (relating to ongoing responsibilities of providers).

Background

Section 1407(a)(2) of the Human Services Code (code) (62 P.S. § 1407(a)(2)) provides that it is unlawful to:

Solicit or receive or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the medical assistance program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the medical assistance program.

The Department of Human Services (Department) promulgated the regulation under § 1101.51(c)(3) to provide specific examples of the types of arrangements that section 1407(a)(2) of the code prohibits. Among the examples is that providers may not “lease or rent space, shelves or equipment within a provider’s office to another provider or allowing the placement of paid or unpaid staff of another provider in a provider’s office.”

As advancements in the healthcare industry continued to support integrated care, the Department determined that a narrow interpretation of § 1101.51(c)(3) is more restrictive than required to comply with the code and prevented co-locating providers who are otherwise eligible from enrolling in the MA Program. The Department published the “clarification of [the term] ‘within a provider’s office’” statement of policy at 46 Pa.B. 2683 (May 28, 2016), which was then codified at § 1101.51a.

The Department subsequently promulgated the Interrelationship of Providers final-form rulemaking, which was

published at 53 Pa.B. 376 (January 14, 2023). That final-form rulemaking deleted the language under § 1101.51(c), which previously prohibited co-located providers from enrolling in the MA Program.

Discussion

As a result of the promulgation of the Interrelationship of Providers final-form rulemaking, which deleted § 1101.51(c)(3), the Department is deleting the corresponding statement of policy under § 1101.51a.

This deletion does not invalidate other rules affecting co-locating providers if, for example, they are prohibited by licensing or certification requirements from leasing or renting space, shelves or equipment or otherwise shared space.

Providers must continue to comply with any other applicable law, including the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No. 104-191), Federal and State anti-kickback and self-referral laws, and the requirement to provide MA beneficiaries with freedom of choice.

Effective Date

This statement of policy is effective immediately upon publication in the *Pennsylvania Bulletin*.

Contact Person

Questions and comments regarding this statement of policy should be directed to the Department of Human Services, Office of Medical Assistance Programs, c/o Regulations Coordinator, P.O. Box 2675, Harrisburg, PA 17120 or RA-PWMAProgComments@pa.gov.

VALERIE A. ARKOOSH,
Secretary

(Editor’s Note: Title 55 of the Pennsylvania Code is amended by deleting the statement of policy under § 1101.51a to read as set forth in Annex A.)

Fiscal Note: 14-BUL-111. No fiscal impact; recommends adoption.

Annex A

TITLE 55. HUMAN SERVICES PART III. MEDICAL ASSISTANCE MANUAL CHAPTER 1101. GENERAL PROVISIONS RESPONSIBILITIES

§ 1101.51a. [Reserved].

[Pa.B. Doc. No. 23-929. Filed for public inspection July 14, 2023, 9:00 a.m.]