Strategy template: healthcare_390_TPLcompliance

Priority strategy title: Improve compliance with Third Party Liability (TPL) requirements

Strategy Catalogue unique identifier(s): 390
Submitting organization(s)/agency(ies): DHS
Drafting organization/agency: DHS
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1) This priority strategy addresses the following aspect of the Commission’s charge (select only the one that represents the best fit):

☐ Transform the health and human services system.
☐ Increase administrative efficiencies and improve program simplification within health and human services public programs.
☒ Identify evidence-based strategies for addressing the significant cost drivers of State spending on health and human services.
☐ Reduce waste in administrative and service spending in health and human service
☐ Advance health equity across geographies, racial and ethnic groups

2) Please describe the populations impacted by this strategy:

This strategy does not have a direct impact individuals who access health care through Medical Assistance or MinnesotaCare.

3) Problem statement

a) What is the primary problem the strategy is expected to mitigate or resolve relative to the focus area?

DHS undertakes a variety of activities to ensure Medical Assistance is the payer of last resort. In certain cases, relating to estate recovery and subrogation, DHS relies on attorneys outside the agency to enforce or pursue recovery. In estate recovery, it is up to the county based prosecutors to enforce these statutes in the various counties. While DHS provides litigation support to counties when requested, it is clear that there could be better training and education to ensure consistent, equitable and legally sound application of statutes across the many counties.

Similarly, in the area of recovery in personal injury or casualty cases, DHS relies on personal injury/trial attorneys to litigate these cases on behalf of our members. Statute requires that these attorneys notify DHS and resolve the Medicaid payments related to the accident/injury.
It is not clear that trial attorneys are aware of these requirements, nor do they adhere to all the notification requirements laid out in statute.

b) What is the secondary problem(s) the strategy is expected to mitigate or resolve relative to the focus area and/or other focus areas?

More equitable application of the Minnesota Medicaid estate recovery program and personal injury subrogation recovery efforts.

4) Priority Strategy description

a) What is the strategy?

This strategy would authorize and fund DHS to work with the county-based prosecutors, the Minnesota County Attorney Association (MCAA), the elder/estate planning bar and the trial attorney group, Minnesota Association for Justice, to create educational resources related to the Medicaid program, recovery from probate and non-probate assets, DHS’s process for seeking recovery or subrogation and DHS’s approach to resolution of these cases on behalf of the Medicaid program. This proposal will:

1. Establish a web content/resource
2. Produce and publish training materials – i.e. trust guide, Medicaid Tort Recovery materials – and provide trainings to relevant stakeholders.
3. Complete and publish litigation support materials/forms for county attorneys to utilize to defend and initiate lawsuits involving health care.
4. Complete and record trainings for attorneys to access.

The resources developed will be utilized in ongoing trainings of stakeholders.

These increased resources will assist with TPL work at the county level and improved understanding of Medicaid requirements for private attorneys resulting in more consistent enforcement/application of Medicaid laws pertaining to payer of last resort.

b) What steps are required to implement the strategy?

DHS staff will create new resources to assist stakeholders through the TPL process. These resources will be created in consultation with county attorneys and other stakeholders to ensure they address the highest areas of need. Once created, DHS staff will provide trainings to improve understanding and compliance with TPL requirements.

i. Who will need to take them?

DHS staff in partnership with county attorneys, elder/estate planning bar and personal injury attorneys.

ii. When will they need to be taken?

Once the materials are developed they will be available online, distributed to the attorneys we interact with, and our attorneys will present at CLEs and make materials available at other professional training events. We will rely on the timelines of DHS communications and web developers. It will also depend on our ability to be added to agendas for CLEs and other educational opportunities and attorney gatherings.

iii. How long will implementation take?

The development of new resources will likely take six to nine months. The longer timeline is in part to ensure adequate time to engage with stakeholders to ensure that the resources are responsive to stakeholders needs.

iv. What will be the associated resource requirements?
DHS will require some additional administrative resources to develop the training materials. These costs should be approximately $20,000 one time.

v. What will be the implementation challenges? Does the strategy create an administrative burden or additional costs for the State or for any external stakeholder(s)?

As indicated above, this will require DHS staff time and some financial resources to complete. The most significant barrier to implementation will be time and resources of the attorneys to attend or consume trainings. County attorneys, in particular, pose a geographic and resource challenge, but once they confirm that this will make their work easier and increase revenue for their county, there should be less resistance.

c) How will the strategy mitigate or resolve the primary problem it is addressing?

Implementing this strategy will result in better supervision and advice for local Medical Assistance agencies and increased and consistent enforcement of Medicaid laws. It will culminate in a higher rate of proper payment and recovery. DHS will also build a stronger partnership with trial and public attorneys and better educate them about their clients who receive public benefits.

d) What are possible unintended consequences this strategy could have?

May potentially identify weaknesses in the county recovery programs that cannot be supported by existing resources.

Attorney groups are politically powerful, and there could be some attorneys who dislike changes to the status quo.

Concerns about staffing resources for this project, but should be prioritized with other program activities.

5) Expected results and supporting evidence

a) What are the expected results, and when will their impact be experienced?

Implementing this strategy will assist counties and personal injury attorneys in complying with current TPL requirements. Increased compliance by stakeholders will ensure consistent enforcement of Medicaid laws, higher rates of proper payments, and increased cost avoidance accountability. We should begin feeling the effects within the year, as attorneys reach out to us as a resource and continue to verify information on a case by case basis. We will be able to track increases in recoveries and cases, although cases are generated based upon injury and death, which isn’t necessarily a predictor of success.

i. What is the anticipated fiscal impact to the State in the next biennium? (select one)
   - ☑ Cost savings
   - ☐ New costs
   - ☐ Budget neutral

ii. If new costs are anticipated, what is the scope of the new costs? (select one)
   - ☑ Small: $1 to $999,999
   - ☐ Medium: $1 million to $9,999,999
   - ☐ Large: Greater than $10 million

iii. Will any state investment be required?

   Yes, a small state investment will be necessary to develop the resources.

iv. What will be the programmatic and population impacts?
Implementing this strategy will result in increased compliance, recoveries, and accountability with Medicaid laws requiring Medicaid to be the payer of last resort.

v. What are the key results of the equity review?

The strategy considers equity implications by addressing opportunities for counties and personal injury attorneys to ensure a consistent practice across Medicaid programs.

Further equity considerations:
- Embed cultural awareness into training
- Establish an equity lens into the training that focus on intent vs. impact (benefit and burden).
- Embed awareness around nuances pertaining to sovereign nations who are not subject to recovery.

b) What evidence supports the strategy’s effectiveness, if any?

County based survey conducted in the estate recovery program identified an opportunity for education and more consistency, which would result in more equitable administration of the program. The Minnesota Association for Justice and attorneys in the personal injury and workers’ compensation bar have expressed an interest in and opportunity to understand Medicaid programs and benefits and the unique role DHS plays in recovering benefits from an injured recipient’s cause of action.