

ACCOUNTABLE BEHAVIORAL HEALTH ALLIANCE

Policy No. 003 Third Party Resources and Personal Injury Lien Policy and Procedures

Original Policy Date:	October 1, 1997
Next Review Date:	December 11, 2010
Revision History (approval):	March 23, 1998 May 7, 2004 May 3, 2007 December 11, 2009
Cross References:	Policy # 015: Processing Claims From Any Source 42 USC 1396a (a)(25) and 42 CFR 433 Subpart D.

Purpose:	This policy and procedure identifies the responsibilities of ABHA with respect to recovery of Third Party Resources for Covered Services provided to ABHA Oregon Health Plan (OHP) Members.
Policy:	ABHA will employ all reasonable actions to pursue recovery of Third Party Resources for covered services
Objective:	<p>ABHA is always the payer of last resort when there is other insurance or when Medicare is in effect. Cost-avoidant approaches require that providers bill the Third Party Resource first. If ABHA is billed first, claims are pended and returned to the provider who is instructed to bill and collect from liable Third Party Resources.</p> <p>All Third Party Liability (TPL) claims and investigations will be processed according to Federal, State, and insurance guidelines, regulations, and laws as well as specific provisions by individual plans as written</p>
Scope:	ABHA shall follow this policy as it applies to the OHP mental health (MH) services governed by the MHO Agreement.

<p>Definitions</p>	<p><i>Certain key terms used in this policy are defined below. For any term not listed below, the definition in Exhibit O of the most current MHO Agreement shall apply.</i></p> <ol style="list-style-type: none"> 1. MEMBER: An individual found eligible by a program of the Oregon Department of Human Services (DHS) to receive health care services under the Oregon Health Plan (OHP) Medicaid Demonstration Project or State Children’s Health Insurance Program (SCHIP) and who, for purposes of this policy, is assigned to ABHA for MH services. 2. MEMBER REPRESENTATIVE: A person who can make OHP related decisions for a Member who is not able to make such decisions him/herself. Member Representative may be, in the following order of priority, a person who is designated as Member’s health care representative, a court-appointed guardian, a spouse, or other family member as designated by Member, the Individual Service Plan Team (for OHP Members with developmental disabilities), a DHS case manager, or other DHS designee. For Members in the care or custody of DHS’s Children, Adults and Families division or the Oregon Youth Authority (OYA), Member Representative is DHS or OYA. For Members placed by DHS through a Voluntary Placement Agreement (CF Form 499), Member shall be represented by his or her parent or legal guardian. 3. PAY AND CHASE: A method of TPR recovery where ABHA pays a claim and then attempts recovery from liable Third Party Resources. 4. THIRD PARTY RESOURCE: Any payments, benefits or other resources available from a Third Party, including but not limited to: <ol style="list-style-type: none"> a) Private health insurance or group health plan; b) Employment-related health insurance; c) Medical support from absent parents; d) Workers’ compensation; e) Medicare; f) Automobile liability insurance; g) Other federal programs such as Armed Forces Retirees and Dependent Act (CHAMPVA), Armed Forces Active Duty and Dependents Military Medical Benefits Act (CHAMPUS), and Medicare Parts A and B, unless excluded by statute as for example: <ol style="list-style-type: none"> i. Services provided to OHP Members pursuant to 42 CFR 36.61 Indian Health Service (IHS) is the payer of last resort and is not considered a Third Party Resource; or ii. Services provided to OHP Members at a tribal facility operated under a “638” agreement pursuant to the Memorandum of Agreement between IHS and CMS is a payer of last resort and is not considered a Third Party Resource. h) Claims, judgments, settlements or compromises in relation to personal injuries where the Covered Services paid by ABHA constitute assistance, as these terms are defined in ORS 416.510; i) Another state’s Title XIX, Title XXI, or state-funded Medical Assistance Program; and j) Personal estates. 5. PROVIDER: An organization, agency or individual licensed, certified and/or authorized by law to render professional health services to OHP Members.
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<p>Procedure:</p>	<ol style="list-style-type: none">1. ABHA shall employ all reasonable actions to pursue recovery of Third Party Resources for Covered Services.2. At AMH discretion or at the request of ABHA, AMH may retroactively disenroll an OHP Member to the time of the OHP Member acquired Third Party Resource insurance, pursuant to OAR 410-141-0080(2)(b)(D) or 410-141-0080(3)(a)A). When an OHP Member is retroactively disenrolled, AMH shall recoup all Capitation Payments to ABHA after the effective ate of the disenrollment.3. ABHA and its Subcontractors may not seek to collect from the OHP Member (or any financially responsible representative of the OHP Member) or any Third Party Resource, any amounts paid for any covered services provided on or after the date of disenrollment from the managed care plan.<ol style="list-style-type: none">a) When a member is disenrolled from ABHA and are still on OHP (Open Card), Subcontractor may bill the State for services which are covered for OHP members who are Open Card.b) If a person was not a member of the Oregon Health Plan at the time of service, collection of payment for services will be governed by the payment agreement that was in place between the client and the Subcontractor at the time of service.4. Identifying TPR<ol style="list-style-type: none">a) ABHA shall notify the Health Insurance Group, P.O. Box 14023, Salem, Oregon 97309 within 30 days of learning that Member might have other health insurance.b) ABHA shall immediately report to Member’s DHS caseworker and the DHS Personal Injury Liens Unit when Member has a potential third party claim for personal injuries, or has made a claim or began an action to enforce such claim.5. Determining third party liability (TPL)<ol style="list-style-type: none">a) ABHA shall request Member’s cooperation in securing payment from Third Party Resources, except when Member asserts good cause as defined in OAR 461-120-0350.b) If ABHA is unable to gain the cooperation of Member or Member Representative in pursuing TPR or if Member asserts good cause, then ABHA shall notify the DHS Medical Payment Recovery Unit and shall provide such records and documentation as may be requested from the Medical Payment Recovery Unit.c) When medical expenses arise from the negligent or intentional act of some third party, and Member is pursuing a claim for Member’s injuries, ABHA asserts that the primary responsibility for payment lies with the third party that caused the expenses to be incurred and shall actively assert its right of subrogation.<ol style="list-style-type: none">i. ABHA shall not request an assignment of right to recovery or assignment of a lien from Member or Member Representative.ii. When a third party may be liable for a personal injury, ABHA may pay the claims and place a lien against a judgment, settlement or compromise. Once ABHA has made the payment for Covered Services and a lien has been sought, ABHA shall not engage in balance billing to the third party or Member.6. Claims processing and TPL<ol style="list-style-type: none">a) Cost avoidance. Upon receipt of a claim from Provider, if based on OMAP eligibility data on the date/s of service or ABHA claims payment history for the 6 months preceding the date/s of service, it is known or likely that Member has
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a Third Party Resource and there is no indication that Provider attempted to bill a third party, then the claim shall be denied and returned to Provider with instruction to attempt collection from the liable third party.

- i. Third party payment is considered primary to any payment obligation of ABHA and must be billed prior to billing ABHA Providers billing ABHA must submit written documentation of their efforts to collect TPL.
 - ii. ABHA shall not delay payment to Provider after Provider notifies ABHA that it cannot obtain recovery from a Third Party Resource after making reasonable efforts, or cannot obtain information or cooperation needed from Member or Member Representative. Upon such notification, ABHA shall process the claim as a valid claim; however, ABHA may pursue alternative remedies for recovery as provided in Section 4(a-b) of this policy.
- b) Pay and Chase. ABHA may opt to pay claims with possible or undetermined TPL. Such claims are processed on a “Pay and Chase” basis. In these circumstances, claims shall be paid while the investigation is being pursued. Once TPL has been determined ABHA shall request refunds or utilize its right of subrogation from the primary carrier. Specific reasons for high likelihood of TPL include:
- i. MVA referenced on claim
 - ii. Work Injury referenced on claim
 - iii. E-code billed in any diagnosis field
 - iv. Box 32 on UB92 (CMS 1450) claim has 1, 2, 3 or 4
 - v. Box 50 on UB92 (CMS 1450) has non-medical payer
 - vi. Box 9 on CMS 1500 claim contains non-medical payer
 - vii. Box 10 on CMS 1500 shows “Yes” in any field
 - viii. Information forwarded by medical management, customer service, or any other means indicating probable TPL
- c) ABHA shall not refuse payment for Covered Services based solely on a diagnosis code if there is no documentation of a potential Third Party Resource.
- d) All claims on Members who are identified as having TPL are flagged for special handling to assure that claims are paid or denied correctly.
- e) ABHA shall request refund and/or reimbursement from Providers and facilities on all related claims paid in error or prior to ABHA’s knowledge of TPL.
7. Maintenance of records:
- a) ABHA shall maintain records of its actions related to TPR and personal injury recovery actions, whether successful or unsuccessful, and make those records available for review as required by the MHO Agreement.
 - b) ABHA will report all Third Party Resource payment to AMH using Report G2, Current OHP members with Third Party Resources (Quarterly Report), on a quarterly basis within 60 calendar days after the end of each calendar quarter.
 - c) Actions that do not result in recovery, including ABHA’s written policy establishing the threshold for action.
 - d) ABHA will provide documentation about personal injury recovery actions. Documentation regarding personal injury liens submitted to the DHS Personal Injury Liens Unit will be consistent with OAR 461-195-0301 to 461-195-0350.
8. Recovery of benefits:
- a) When engaging in Third Party Resource recovery actions, ABHA shall comply with federal and State confidentiality requirements pursuant to Part II,

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	<p>Section XXII, of the MHO Agreement, including without limitation, the federal (42 CFR Part 2) and State (ORS 426.460 and ORS 179.505) confidentiality laws and regulations governing the identity and client records of OHP Members. AMH considers the disclosure of AMH Member claims information in connection with ABHA’s Third Party Resource recovery actions a purpose that is directly connected with the administration of the Medicaid program.</p> <ul style="list-style-type: none">b) ABHA will comply with 42 USC 21395y(b), which gives Medicare the right to recovery its benefits from employers and workers’ compensation carriers, liability insurers, automobile or no fault insurers, and employer group health plans before any other entity including ABHA or its subcontractors.c) Where Medicare and ABHA have paid for services, and the amount available from the Third Party Resource is not sufficient to satisfy the claims of both programs to reimbursement, the Third Party Resource must reimburse Medicare the full amount of its claim before any other entity, including ABHA or its subcontractor, may be paid.d) If the Third Party Resource has reimbursed ABHA or its subcontractor, or if an OHP Member, after receiving payment from the Third Party Resource, has reimbursed ABHA or its subcontractor, ABHA or its subcontractor must reimburse Medicare up to the full amount ABHA/subcontractor received, if Medicare is unable to recover its payment from the remainder of the Third Party Resource payment.e) Any such Medicare reimbursement described in this section are ABHA’s responsibility on presentation of appropriate request for supporting documentation from the Medicare carrier. ABHA will document such Medicare reimbursements in its report to AMH described in paragraph B(6)a, of this section.
Enforcement:	

December 11, 2009
Date Approved by the Governing Board