Process for Subrogation and other recoveries

The Contractor shall implement a process to govern all recoveries to the Public Sector Plans (Plans), including but not limited to Subrogation recoveries, and report recovery activities to Benefits Administration (BA) on behalf of the State of Tennessee State Insurance Committee, Local Education Insurance Committee, and the Local Government Insurance Committee (State) in the manner directed by BA.

The Contractor's process shall incorporate all procedural steps listed below and must be approved by the State no later than thirty (30) calendar days prior to Go-Live. The approved process shall remain the same for the duration of the contract unless there is a change in state law that impacts the process, in which case the parties will review and approve the required revisions.

The Contractor's process shall include provisions for the recovery of claim payments for medical, pharmacy and behavioral health expenses, where applicable; and expenses for treatment of work-related illnesses or injuries and illnesses or injuries resulting from actions of non-employer third parties.

The following procedural steps must be included in the agreement. Processes and procedures specific to the Contractor may be employed to the extent that they do not conflict with the following and support the objectives and controls outlined herein:

1. Procedural steps for identification and resolution of Subrogation claims; or the systematic and timely identification of Subrogation claims through automated and manual techniques, and resolution of those claims.
    - The Contractor shall implement a process to actively identify claim payments with Subrogation potential within 30 calendar days of payment. Upon identification of claim payments with Subrogation potential, the Contractor shall contact the member that incurred the identified claim payments to collect information necessary to pursue Subrogation, if appropriate. The attached Initial Member Outreach template (ATTACHMENT A) or the Contractor's template, as approved by the State, shall be used for initial communications.
    - The State, at its discretion, may refer any identified Subrogation interests or reimbursement claim payments to the Tennessee Office of Attorney General and Reporter (Attorney General) for recovery and collection. If a matter is referred to the Attorney General for recovery and collection, the Contractor will be limited to a 5% administrative fee incurred for the identification of claim

payments and collection of required information from the member. The decision to refer a matter to the Attorney General for handling will be communicated to the Contractor as soon as is practicable after discovery of facts which gave rise to the referral.

- The Contractor shall pursue Subrogation recovery or reimbursement of all sums paid for member claims that are subject to Subrogation or reimbursement provisions in the Plans, unless BA has notified the Contractor that the State will exercise its discretion to refer claim payments to the Attorney General for recovery. Neither the Contractor nor its subcontracted and/or outside attorneys shall enter an appearance into a litigation or administrative proceeding to represent the interests of the Plans unless it has received the express approval of the State.
- The Contractor shall negotiate settlement amounts and resolve cases with medical, pharmacy, and/or behavioral health claim payments totaling less than or equal to Ten Thousand Dollars ($10,000) without obtaining approval from the State, except as noted below with regard to workers' compensation Subrogation interests.
- Prior to settling a Subrogation interest for cases with total medical, pharmacy, and/or behavioral health claim payments exceeding $10,000, the Contractor shall complete a Reduction Approval Form for Cases Exceeding $10,000 (Reduction Approval Form) (ATTACHMENT B) and submit the Form to BA via a designated email address for review of the Contractor's recommended settlement proposal.
- All Reduction Approval Forms with a proposed gross recovery of sixty percent (60%) or more of total medical, pharmacy, and/or behavioral health claim payments of $10,000 to Two Hundred Thousand Dollars ($200,000) paid by the Plans shall be deemed approved by the State unless the State objects to the Reduction Approval Form in writing within ten (10) business days from receipt of the Form. BA's decision to object shall be at the sole discretion of the State, and all relevant details will be communicated via an Objection Form (ATTACHMENT C).
- All Reduction Approval Forms with a proposed gross recovery of less than 60% of total medical, pharmacy, and/or behavioral health claim payments of $10,000 to $200,000 paid by the Plans must be affirmatively approved by BA in writing at the sole discretion of the State. Approval or denial shall be provided within a reasonable time.
- All Reduction Approval Forms submitted when total medical, pharmacy, and/or behavioral health claim payments exceed $200,000 must be affirmatively

approved by BA in writing at the sole discretion of the State. Approval or denial shall be provided within a reasonable time.
    - The Contractor shall not approve workers' compensation Subrogation settlements that permit future related claim payments to be paid by the Plans without written approval by BA, which shall be at the sole discretion of the State.
    - The Contractor's fees for pursuing and resolving subrogation claims (internally or via contracted entities or attorneys) are limited to the percentages stated in the Contract.

2. Procedural step for remittance, or the collection, reconciliation, and timely release of recovered funds to the Plans.
    - If payment has not been recovered within sixty (60) calendar days, after the initial demand for payment or Subrogation claim has been submitted, the Contractor shall refer the account to the State with a recommendation either requesting additional time with a specific target date range of completion or requesting that the matter be referred to the Attorney General for additional legal action. It shall be at the sole discretion of the State to close an account.

3. Procedural step for reporting and analytics, or the ongoing measurement of performance metrics to assess effectiveness, identify systemic improvement opportunities, and inform adjustments to identification, recovery and governance practices.
    - The Contractor shall submit to the State monthly reports of all recoveries including, but not limited to, Subrogation recoveries, in a format prior approved by the State. These reports should include the following, unless otherwise agreed to by the State in writing: Administrative fee, including subcontracted and/or outside attorney fees; case information (including cases opened, pending and closed); a year-to-date summary of recoveries; monthly non-response information; quarterly cases closed by the Contractor; quarterly Made-Whole closures; and any other information deemed necessary by the State, to be submitted to the State monthly.

ATTACHMENT A: Initial Member Outreach template
ATTACHMENT B: Reduction Approval Form for Cases Exceeding $10,000
ATTACHMENT C: Objection Form

ATTACHMENT A: Initial Member Outreach template

[Date of letter]

[Recipient full name]
[Recipient address]

Member name: [insert]
[Other reference information, as appropriate]
Date of service: [insert]

Dear [recipient]:

Our records indicate that the [name of Plan] Plan paid claims related to services received on or around [date of service]. In certain circumstances, when an illness or injury may have been caused by a third party (e.g., automobile accident, premises incident, workers' compensation injury), the Plan has the right to seek reimbursement from the responsible party.

At this time, we are gathering information to determine whether the claims may involve a third party. To assist us, please complete the attached questionnaire and return it within [insert] business days using one of the following methods:

- [method]
- [method]
- [method]
- [method]

Please also provide the following information, where applicable:

- Accident or incident reports
- Insurance information for any other involved party
- Attorney information if you have retained counsel
- Automobile, homeowner, or workers' compensation insurance details, including your own coverage

Importantly, this request does not affect your current health plan coverage. Rather, the Plan is required to recover funds when another party may be responsible. Your cooperation helps maintain affordability of benefits for all members. Your health plan requires you to

notify us no later than seven days after you have retained an attorney in connection with the incident giving rise to the illness or injury. If you do not notify the Plan and it is determined that your illness or injury was caused by a third party, the Plan may seek reimbursement of claim amounts from you directly.

If you have questions, contact our Subrogation unit at [insert], Monday – Friday, [hours]. We appreciate your prompt attention to this matter and wish you continued recovery.

Sincerely,
[Contractor]
On behalf of the [name of Plan] Plan

ATTACHMENT: Subrogation Questionnaire

ATTACHMENT: Subrogation Questionnaire

[To be provided by Contractor upon approval by the State]

ATTACHMENT B: Reduction Approval Form for Cases Exceeding $10,000[1]

Date:
Analyst name:

Case overview
Reference number:
Member name and Edison[2] identification number:
Head of contract name, if different, and Edison[2] identification number:
Type of incident:
Date of incident:
Jurisdiction / applicable law:

Financial summary

Total medical, pharmacy, and/or behavioral health claims paid by Plans:	$[insert]
Proposed gross recovery[3] amount:	$[insert]
Administrative fee to Contractor if no outside attorney or contractor is used (capped at 5%):	$[insert]
Subcontracted and/or outside attorney fees, if applicable (capped at 20%):	$[insert]
Net recovery[4] to the Plans:	**$[insert]**

Net recovery[4] as percentage to total claims paid by Plans: **[insert]%**

Other considerations
Applicable doctrines considered (e.g., Made-Whole, Common Fund):

Contractor settlement recommendation
Recommended settlement action:
Rationale for recommendation:
Risk of non-recovery if declined:
Estimated additional time to resolution, if continued:

State decision
☐ Approved as recommended
☐ Approved with modifications
☐ Declined, continue pursuit
☐ Declined, close case

Authorized by:
Title:
Date:

(1) The Contractor shall negotiate settlement amounts and resolve cases with medical, pharmacy, and/or behavioral health claim payments totaling less than or equal to $10,000 without obtaining approval from the State, except for workers' compensation Subrogation settlements that permit future related claim payments to be paid by the Plans without written approval by the State.

(2) State's enterprise resource planning system, which supports human resources, payroll, insurance, contracting, procurement and other agency functions.

(3) Total amount of Subrogation recovery due to the State after deducting litigation expenses and/or attorney fees that the Member's attorney is legally entitled to receive, if any.

(4) Total amount of Subrogation recovery due to the State after deducting administrative fee or subcontracted and/or outside attorney fees, if applicable.

ATTACHMENT C: Objection Form

[Date of letter]

Subject: Objection to Reduction Approval Form – [reference number] / [member name]

Dear [recipient]:

Thank you for your submission, dated [insert], recommending acceptance of a net recovery[1] to the Public Sector Plans of $[insert]. After review, Benefits Administration (BA), on behalf of the State of Tennessee State Insurance Committee, Local Education Insurance Committee, and the Local Government Insurance Committee (State), does not approve the recommended settlement.

Based on the information provided, BA has concerns regarding:

- [insert]

At this time, BA requests the following before reconsidering the recommendation:

- [insert]

Please respond within [insert] business days with an updated analysis and recommendation.

Sincerely,
[name]
[title]

[1] Total amount of Subrogation recovery due to the State after deducting administrative fee or subcontracted and/or outside attorney fees, if applicable.