

**NEW YORK STATE DEPARTMENT OF HEALTH
MANAGEMENT CONTRACT GUIDELINES for MCOs AND IPAs**

I. Indications for Management Contracts

- A. An applicant shall submit for DOH approval of all contracts (and amendments to such contracts) related to the provision of management services. This includes contracts between a managed care organization (MCO) and a management contractor and an MCO and an independent practice association (IPA), where the IPA will perform management functions on behalf of the MCO. Such contracts and amendments must comply with the requirements of these Guidelines, 10 NYCRR Subpart 98-1.11, and all other applicable statutes and regulations.
- B. A contract or amendment subject to these Guidelines should be for management services only. Arrangements for the provision of medical services should be addressed in a separate agreement. Therefore, these Guidelines DO NOT apply to contracts:
1. Between an MCO and a provider; or
 2. Between an MCO and IPA, where the IPA is arranging for the delivery of medical services (see Section I.C below).
 3. Contracts between a workers' compensation preferred provider organization (PPO) and an IPA must also be submitted for Department approval.
- C. Delegation of Management Functions to an IPA. When an IPA agrees to make the services of a network of providers available to an MCO's enrollees, the MCO and the IPA enter into an agreement (IPA medical services contract). If the MCO also wishes to delegate management functions to the IPA, the MCO and the IPA must enter into a management contract separate from their IPA medical services contract. These Guidelines set forth requirements applicable to management services contracts (the requirements for the arrangement for the delivery of medical services by an IPA and MCO are dealt with in the Provider Contract Guidelines for MCOs and IPAs).
1. As indicated in the previous paragraph, an IPA medical services contract with an MCO must not address management functions (as defined in Section VII. D). An IPA medical services contract may address related technical and administrative services (as defined in Section VII. E) that the IPA will be furnishing to the MCO, as long as those technical and administrative services are not related to delegated management functions, such as provider credentialing.
 2. Claims adjudication/payment is defined as a management function in 10 NYCRR § 98-1.11(j). Therefore, if claims adjudication/payment is to be delegated to the IPA, it must be addressed in the management contract, and not in the IPA medical services contract.
 3. Where the MCO has delegated claims payment to a management contractor, including an IPA, the management contractor shall compensate contracted providers in a timely manner consistent with applicable provisions of Sections 3224-a, 3224-b and 3224-c of the Insurance Law, provided, however, that nothing herein shall limit the liability of an MCO pursuant to such law for any failure to pay providers in accordance with the provisions of such law. The MCO may, in its contract with the management contractor, require the management contractor to indemnify the MCO for all claims and payments made by the MCO as a result of the management contractor's failure to make timely payments to providers in a manner consistent with applicable provisions of Sections 3224-a, 3224-b and 3224-c of the Insurance Law.

- D. Under no circumstance may the applicant implement a contract or amendment if DOH, by written notice, has expressly withheld permission for the parties to proceed pending further review of the contract, or DOH has issued a written disapproval of the contract or amendment.

II. General Contracting Requirements and Prohibitions

- A. An MCO may contract with the parent of the manager if the parent has the authority to do business in New York State and meets all necessary requirements for performance as a manager for the particular delegated function (e.g. registered as a utilization review agent).

The arrangement for payment of management services is between the management services organization (MSO) and the MCOs. In arrangements where there is a manager and an IPA, the payment for provider services may come directly from the plan to the IPA. However, the payment for the management functions must be paid directly from the MCO to the manager, even if the manager and the IPA are related entities. By way of illustration, plan contracts with IPA for a discrete service. Plan also contracts with MSO for the utilization review of services performed by IPA and adjudication of claims made to IPA's providers. Plan, based on MSO's UR and adjudication, provides payment to IPA for claims. Plan pays MSO for UR and adjudication activities.

- B. The payment arrangement between the MCO and the management contractor must not pass through the IPA.
- C. In the event that the management contractor proposes to subcontract any management functions, the subcontractor must be a signatory to the management contract which must expressly provide for the subcontracting of management functions to the subcontractor. The subcontractor will be subject to the provisions of Part 98-1.11 to the same extent as the management contractor, including all character and competence reviews and termination provisions, provided that the subcontractor may also be terminated by the management contractor upon at least 90 days notice and with prior written approval of the Commissioner.
- D. Governing Authority shall not delegate the following elements of management authority:
1. direct independent authority to hire or terminate the chief executive officer;
 2. adoption of budgets and independent control of the books and records;
 3. authority over the disposition of assets and the authority to incur on behalf of the MCO liabilities not normally associated with the day to day operations of the MCO;
 4. independent adoption and/or enforcement of policies affecting the operation of the MCO and the delivery of health care services;
 5. oversight by the MCO of any management functions delegated to a management contractor pursuant to the provisions of this section or Section 98-1.18; and
 6. pursuant to paragraph (1) of subdivision (b) of Section 98-1.21 of this Subpart, primary responsibility for the development and implementation of the MCO's fraud and abuse prevention plan.

- E. Governing Authority **may** delegate the following elements of management authority through an approved management contract:
1. maintenance of the books and records;
 2. disposition of assets and the incurring of liabilities normally associated with the day to day operations of the MCO;
 3. implementation of policies affecting the delivery of health care services;
 4. claims payment;
 5. implementation of the MCO's budgets and provisions for annual audits;
 6. quality assurance and improvement, except that when a provider risk sharing arrangement is entered into between the MCO and a management contractor or an entity related to the management contractor, the MCO may delegate either utilization review activity or quality assurance and/or quality improvement functions, but not both, to that management contractor or to an entity related to that management contractor;
 7. assisting in the implementation of the MCO's quality assurance activities and functions is not considered a delegation. If the contractor has a decision making authority and responsibility for the implemented functions, it is considered a delegation of quality assurance. An entity related to the management contractor is defined as an entity which is under common ownership and/or control with or has control of or is controlled by the management contractor;
 8. an MCO shall not contract with a management contractor or conduct quality assurance and/or quality improvement functions on the MCOs behalf unless the management contractor utilizes the MCO's quality assurance and quality improvement standards or the management contractor's standards for quality assurance and quality improvement are substantially equivalent to those of the MCO and to those of other management contractors which have contracted with the MCO to conduct quality assurance and improvement, and such standards have been approved by the Commissioner;
 9. any utilization review activity, except that when a provider risk sharing arrangement is entered into between the MCO and a management contractor or an entity related to the management contractor, the MCO may delegate either utilization review activity or quality assurance and/or quality improvement functions, but not both, to that management contractor, or to an entity related to that management contractor as defined in paragraph (7) above. An MCO shall not contract with a management contractor to conduct utilization review activity on its behalf unless the management contractor is utilizing the MCO's clinical review standards for utilization review or the MCO has approved the management contractor's clinical review standards and they are substantially equivalent to those of the MCO and to those of other management contractors performing similar functions for the same or similar services. All utilization review processes must comply with Article 49 of the Public Health Law and must be approved by the Commissioner. Utilization review may only be delegated to a registered utilization review agent, as defined in Article 49 of the Public Health Law; and
 10. all or part of the functions of the special investigations unit, which include investigation of cases of suspected fraudulent and abusive activity, or fraud and abuse prevention and reduction activities under the MCO's prevention plan.

III. Mandatory Contract Provisions:

A. Proposed terms of the management contract must include but are not limited to:

1. the term and purpose of the agreement, identification of the contractor's responsibilities, and descriptions of all staffing to be provided, major equipment, computer and information systems, required reports, performing criteria, a termination provision, projected costs and any management or other fee to be charged by the management contractor [10 NYCRR 98-1.11 (l) (2)];
2. a clear description of the proposed roles of the MCO's governing authority and the elements of authority proposed to be delegated to the management contractor during the term of the proposed management contract. The description shall clearly reflect retention by the governing authority of the MCO of ongoing responsibility for statutory and regulatory compliance [10 NYCRR 98-1.11 (k) (1)];
3. a provision that clearly recognizes that the responsibilities of the governing authority of the MCO are in no way **lessened** by entering into a management contract, and that any powers not specifically delegated to the management contractor through the provisions of the contract remain with the governing authority of the MCO [10 NYCRR 98-1.11 (k) (2)];
4. a clear acknowledgment of the authority of the Commissioner to terminate the contract pursuant to subdivision (o) of this Section [10 NYCRR 98-1.11 (k) (3)];
5. a provision listing procedures and requirements which shall be established by the MCO for ongoing monitoring by the MCO of the implementation of the contract and the MCO's fiscal stability, level of services provided and quality of care rendered during the term of the contract, including requirements for periodic reporting by the manager [10 NYCRR 98-1.11 (k) (4)];
6. a provision that annual reports on the financial operations and any other operational data requested by the governing authority of the MCO, the Commissioner or Superintendent of the State Insurance Department, will be provided by the management contractor [10 NYCRR 98-1.11 (k) (5)];
7. a provision stating that the management contract approved by the Department shall be the sole agreement between the management contractor and the governing authority of the MCO for the purpose of management of the MCO and payment to the management contractor for management services, and that any amendments or revisions to the management contract shall be effective only with the prior written consent of the Commissioner [10 NYCRR 98-1.11 (k) (6)];
8. specification of payment terms that are reasonable and do not jeopardize the financial security of the MCO [10 NYCRR 98-1.11 (k) (7)];
9. a provision whereby the parties agree that any changes to the contract required by the Commissioner will be made by the parties immediately upon receipt of written notice from the Commissioner [10 NYCRR 98-1.11 (k) (8)];
10. a provision whereby the parties agree to terminate the management contract within 60 days, in accordance with subdivision (o), upon receipt of written notice from the Commissioner [10 NYCRR 98-1.11 (k) (9)];
11. the governing authority of the MCO shall be responsible for the establishment and oversight of the MCO's policies, management and overall operation, regardless of the existence of any management contract [10 NYCRR 98-1.11 (h)];

12. any termination or non-renewal of a management contract, whether initiated by the MCO or the manager, requires the prior written approval of the Commissioner following 90 days prior written notice [10 NYCRR 98-1.11 (n)];
13. the management contract shall terminate and be deemed cancelled, without financial penalty to the governing authority of the MCO or the MCO itself, not more than 60 days after notification by the governing authority of the MCO and the management contractor by the Department of a determination that the MCO is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees [10 NYCRR 98-1.11 (o)];
14. the contract must include a provision whereby the parties agree to be bound by the Standard Clauses attached to and incorporated into the agreement. The parties must further agree that to the extent there are any inconsistencies between the other provisions of the agreement and the Standard Clauses, the Standard Clauses shall control, except to the extent applicable law requires otherwise and/or to the extent the parties to the contract have voluntarily agreed to provisions that exceed the minimum requirements of the Standard Clauses. The following is a sample of an incorporation by reference provision:

The "New York State Department of Health Standard Clauses for the Management Contract Agreement", attached to this Agreement as Appendix _____, are expressly incorporated into this Agreement and are binding upon the parties to the Agreement. In the event of any inconsistent or contrary language between the Standard Clauses and any other part of this Agreement, including but not limited to appendices, amendments and exhibits, the parties agree that the provisions of the Standard Clauses shall prevail, except to the extent applicable law requires otherwise and/or to the extent a provision of this Agreement exceeds the minimum requirements of the Standard Clauses.

IV. Contract Review Process

- A. A proposed management contract must be submitted to the Department for its prior approval at least 90 days prior to the management contract's proposed effective date. Management contracts shall be effective only with the prior written consent of the Commissioner.
- B. Submission Requirements. DOH review will commence upon receipt of **ALL** of the following:
 1. One (1) electronic copy of each contract or material amendment submitted for approval, in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions, or transmitted as a PDF file attached to an e-mail, that meets the following requirements:
 - the Standard Clauses Appendix, without modification, must be attached to the contract (not required for amendments) and the provisions of such Appendix must be expressly incorporated by reference into the contract;
 - each contract or contract amendment must be for management services and administrative services only (see Section I.B. above);

- each contract or contract amendment must have an MCO assigned unique identifier made up of any combination of letters and numbers; a new unique identifier must be assigned whenever the contract or amendment is modified;
 - each contract or contract amendment must be dated and all amendments must reference the date of the originally approved contract;
 - all new and amended language shall be underlined and all deleted language bracketed, or otherwise highlighted (e.g. a redlined version) for ease of review;
 - expired contracts will not be considered for renewal nor will an amendment to an expired contract resurrect the terms of the agreement. A new MSA must be submitted according to the management contract guidelines in both instances.
2. A completed DOH XXXX “Contract Statement and Certification” for each contract or amendment, bearing the same MCO assigned unique identifier as the submitted contract or amendment. In all cases, the certification must be signed by an officer of the MCO or the MCO’s legal counsel.
 3. All required supporting documentation as described in these Guidelines and on the DOH XXXX form.
 4. Documentation indicating that the proposed management contractor holds all necessary approvals to do business in New York State including, as appropriate, an application for authority to do business in New York State filed with the Secretary of State.
 5. Evidence of the management contractor’s financial stability as demonstrated by the most recent audited financial statements of the contractor when multiple management functions are delegated, or the management contract is for more than one medical service.
 6. Except for PCPCPs, the MCO must demonstrate evidence of financial feasibility. The MCO shall submit projected operating and capital budgets for the first three years of the contract. Such budgets shall be consistent with any previously submitted, certified financial statements and be subject to future audits. However, no review of financial feasibility shall be required where:
 - (i.) the agreement delegates management activities for specialty services such as dental, vision, behavioral health and chiropractic services, and the management fee is equal to no more than 25% of the MCO’s total administrative costs; or
 - (ii.) the agreement delegates a limited scope of management activities, such as utilization review, for some, most or all medical services and the management fee is equal to no more than 25% of the MCO’s total administrative cost.

7. Attach completed DOH XXX form to determine the character and competence of the proposed management contractor, its controlling persons, officers and directors, owners, members or managers of a limited liability company and any medical director proposed by the management contractor for the general or medical management of the MCO and/or for utilization review activities, including evidence that all MCOs and health care facilities managed or operated by the management contractor, in or out of New York State, having provided a substantially consistent high level of care during the term of their management contract. If the member of an LLC is not a natural person, provide character and competency forms for its board of directors, officers or members.

The Department may conduct a limited review of character and competence where the agreement delegates management activities involving only a single medical service such as dental, vision or chiropractic services, or delegates limited management responsibility such as utilization review. The limited review shall consist of a review of the proposed management contractor's past performance as a management contractor or in any other capacity performing any of the functions set forth in 10 NYCRR § 98-1.11(j), as well as the character and competence of the officers and directors, members or managers of a limited liability company and partners of the contractor, and, if the proposed delegated management activity is either medical management or utilization review, the medical director of the proposed management contractor.

With a change in control or contracts with management entities, a character and competence review meeting the guidelines of this section must be completed for each applicant or contractor. However, the review process may build upon reviews that were conducted in the previous ten (10) year period. Applicants and contractors must update the prior review to reflect changes in the governing authority, any new regulatory compliance issues and any new health care operations owned or managed by the applicant/contractor. If changes are reflected in any of these areas, a review must be completed on the new items. Updates must be made according to the following schedule:

- If the Character and Competence (C+C) review was conducted within one (1) year and no changes are indicated by the contractor and/or plan, no additional information would be needed.
- If the most recent C+C review was conducted thirteen (13) months through ten (10) years and the contractor and/or plan indicate that all the information has not changed, submission of an affidavit attesting that no changes have occurred since previous submission would be sufficient.
- If the C+C review was conducted within ten (10) years and changes have occurred the information must be updated.

C. Submission of Materials:

1. Incomplete submissions will not be accepted for review.

2. Managed Long Term Care or Medicaid Advantage plans only send to:

New York State Department of Health
Bureau of Continuing Care Initiatives
ESP - Corning Tower Building
20th Floor – Room 1911
Albany, New York 12237

3. All other MCOs send to:

New York State Department of Health
Bureau of Managed Care Certification and Surveillance
ESP - Corning Tower Building
19th Floor – Room 2019
Albany, New York 12237

4. If at any time during the review process, modifications are made to the submitted contract or contract amendment that render inaccurate any statements made in the “Management Contract Statement and Certification” (DOH-XXXX), the MCO must submit a new, corrected, and signed DOH-XXXX.
5. Any change made to the contract based upon DOH review will require that the revised agreement be resubmitted with a new contract statement and certification. A new contract identification number must be assigned to the revised contract.
6. After DOH approval is received, the MCO must submit an electronic copy of any executed contract or contract amendment in a standard searchable PDF format on a closed session CD-R (not CD-RW), with copy/read permissions. The signature page demonstrating execution of the contract or contract amendment may be a scanned electronic image included in the electronic submission, submitted as a hard copy with the CD-R or as a PDF file attached to an e-mail. If an amendment is made to a contract that permits amendment by notice to a manager, then an electronic copy of the notice sent to the manager to implement the amendment must be sent to DOH to fulfill this requirement. The MCO must submit a copy of the executed contract or amendment within 30 days of execution.

V. Renewals, Amendments or Termination of Management Services Agreements

- A. The term of a management contract shall be limited to five years and may be renewed only when authorized by the Commissioner.
- B. Submission of new contracts must be submitted at least 90 days prior to implementation.
- C. The request to renew a management contract must be submitted at least 90 days prior to the expiration of the existing contract and must provide compliance with 10 NYCRR 98-1.11 and demonstrate the following:
 1. that the goals and objectives of the contract have been met within specified timeframes;
 2. that the quality of care provided by the MCO during the term of the contract has been maintained or has improved; and
 3. that any reporting requirements contained in the management contract have been met.
- D. Any termination or non-renewal of a management contract, whether initiated by the MCO or the manager, requires the prior written approval of the Commissioner following 90 days prior written notice.
 1. The governing authority of the MCO shall provide a plan for the management of the MCO subsequent to the discharge. The plan must submit 90 days prior notification to the Department of the MCO’s decision to discharge the management contractor. The notice must include a plan for how the management functions will be performed after termination of the management contract.
 2. Termination may be upon less than 90 days notice provided it is demonstrated to the satisfaction of the Commissioner prior to termination that circumstances exist which justify more immediate termination. The notice must include a plan for how the management functions will be performed after termination of the management contract.
- E. Amendments to a management contract:
 1. **all** management contract amendments must be submitted at least 90 days prior to implementation and must include the information required under paragraph C of this section;

2. amendments received after expiration of the management contract will not be accepted for review. A new management contract must be submitted for review and approval.

VI. Department of Health Monitoring

DOH will routinely select a sample of approved contracts and contract amendments submitted from all MCOs for full verification of consistency with applicable laws, regulations, guidelines, and the submitted "Management Contract Statement and Certification" (DOH-XXXX).

Notwithstanding the issuance by DOH of a final written approval of a contract or amendment, DOH may require the parties to make modifications to the contract or take other corrective action if DOH subsequently discovers, through verification review or by any other means, that, contrary to representations made by the MCO, including the Management Contract Statement and Certification (DOH-XXXX), the contract contains provisions which are inconsistent with such representations and/or which are not in conformance with applicable laws, regulations, or Guideline provisions. An MCO's failure to make required modifications to the contract or to take other corrective action, as directed by DOH, may result in enforcement action in appropriate circumstances.

VII. Definitions

As used in these Guidelines:

- A. "MCO" includes:
 1. traditional health maintenance organizations certified pursuant to Public Health Law (PHL) § 4403;
 2. special purpose MCOs, also known as prepaid health services plans (PHSPs), certified pursuant to PHL § 4403-a;
 3. HIV Special Needs Plans (HIV SNPs) certified pursuant to PHL § 4403-e; and
 4. managed long term care plans certified or operating pursuant to PHL § 4403-f.
- B. "Management Contractor" means any person, other than staff employed by the MCO, entering into an agreement with the governing authority of an MCO for the purpose of managing day-to-day operations of the MCO.
- C. "IPA" includes, in addition to independent practice associations, a pharmacy or laboratory with the legal authority to contract with other pharmacies or laboratories to arrange for or provide services to enrollees of a New York State MCO.
- D. "Management functions" are elements of an MCO governing body's management authority. Some management functions, listed in 10 NYCRR § 98-1.11(i), **must not** be delegated by an MCO to another person or entity. Other management functions, listed in 10 NYCRR § 98-1.11(j), **may** be delegated to another person or entity, but only pursuant to a management contract approved by DOH.
- E. "Technical and administrative services" refers to any functions (other than medical services) that an MCO is not prohibited from delegating by 10 NYCRR § 98-1.11(i), and that are not functions listed in 10 NYCRR § 98-1.11(j) requiring DOH approval of a management contract. Administrative services include administrative expenses provided through the contract that the MCO would otherwise have reported on the MCO's own cost report. They do not include administrative expenses incurred by an IPA or provider in the course of performing the IPA or provider's business.
- F. "Claims Payment" is defined as making an independent determination to pay, deny or pend claims for payment. This is different from the ministerial task of writing a check for payment based upon the decision to act on a claim made by a different entity.