

New York State Department Of Health
Standard Clauses
For Care Management Administrative Services Contracts
Revised: October 18, 2013

Notwithstanding any other provision of this agreement, contract, or amendment (hereinafter "the Agreement " or "this Agreement ") the parties agree to be bound by the following clauses which are hereby made a part of the Agreement.

A. Definitions For Purposes Of This Agreement and Appendix

“Administrator” means any entity performing Technical and Administrative Services as defined herein for the provision of Care Management Services on behalf of an MCO.

“Care Management Services” means the delegation by the MCO of the process that assists enrollees to access necessary covered services as identified in the Care Plan. It also provides referral and coordination of other services in support of the Care Plan. Care Management Services assists Enrollees to obtain needed medical, social, educational, psychosocial, financial and other services in support of the Care Plan irrespective of whether the needed services are covered under the capitation payment to the MCO.

“Care Plan/Person Centered Service Plan” is a written description in the care management record of member-specific health care goals to be achieved and the amount, duration and scope of the covered services to be provided to an Enrollee in order to achieve such goals. The person centered individual service plan is based on assessment of the member's health care needs and developed in consultation with the member and his/her informal supports. The plan includes consideration of the current and unique psycho-social and medical needs and history of the enrollee, as well as the person’s functional level and support systems. Effectiveness of the person centered service plan is monitored through reassessment and a determination as to whether the health care goals are being met. Non-covered services which interrelate with the covered services identified on the plan and services of informal supports necessary to support the health care goals and effectiveness of the covered services should be clearly identified on the person centered service plan or elsewhere in the care management record.

“Material Amendments” include but are not limited to any changes to a required contract provision, any change to or addition of a risk sharing arrangement other than the routine trending of fees or other reimbursement amounts, the addition of an exclusivity, most favored nation, or non-compete clause, any proposed subcontracting of the statutory or regulatory responsibilities of an MCO and any proposed revocation of an approved subcontract.

“MCO” means a managed long term care plan certified or operating pursuant to PHL section 4403-f.

“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 NYDOH 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.

B. General Terms And Conditions

1. This Agreement is subject to the approval of the New York State Department of Health and if implemented prior to such approval, the parties agree to incorporate into this Agreement any and all modifications required by the Department of Health for approval or, alternatively, to terminate this Agreement if so directed by the Department of Health, effective forty five (45) days subsequent to notice.
2. Any material amendment to this Agreement is subject to the prior approval of the Department of Health, and any such amendment shall be submitted for approval at least forty five (45) days in advance of anticipated execution. Amendments required due to changes in state law or regulation or as required by the Department of Health and implemented by MCO shall be unilaterally and automatically made upon forty five (45) days notice to Administrator.
3. Assignment of this Agreement requires the prior approval of the Commissioner of Health. Administrator shall not subcontract or otherwise delegate its duties under the Agreement without the express written consent of MCO. Administrator shall require any MCO approved subcontractor to abide by and adhere to the requirements of the Agreement and will ensure the Agreement is incorporated by reference into the subcontract.
4. The Administrator agrees to comply fully and abide by the rules, reporting obligations, and policies and procedures that the MCO (a) has established or will establish to meet general or specific obligations placed on the MCO by statute, regulation, or NYDOH or DFS guidelines or policies and (b) has provided to the Administrator at least thirty (30) days in advance of implementation, including but not limited to:
 - o Quality improvement/management,
 - o Utilization management, including but not limited to precertification procedures,
 - o Referral process or protocols, reporting of clinical encounter data,
 - o Member grievances, and
 - o Care Management Protocols
5. The Administrator agrees not to discriminate against an enrollee based on color, race, creed, age, gender, sexual orientation, disability, place of origin, source of payment or type of illness or condition. The parties to this Agreement agree to comply with all applicable requirements of the Federal Americans with Disabilities Act.
6. The Administrator warrants that it possesses demonstrated expertise and experience in the coordination of long term care services and is a duly organized, validly existing organization in good standing that it is either a licensed health care provider (including, but not limited to, a health care facility licensed or certified in accordance with the provisions of article 28 or 36 of the public health law, an adult day health program

established under Part 425 of 10 NYCRR, a facility or service licensed or certified by the mental hygiene law or an entity otherwise approved by the department as capable to render the services contemplated by this agreement) or an independent practice association, as defined in 10 NYCRR 98-1.2(w), composed of such licensed and certified entities. Administrator agrees it is or its affiliated entities are, and will continue to be for the term of the CMAS Contract eligible to participate in the NYS Medicaid Program, and to comply with all applicable state and federal laws and regulations, including Medicaid Program requirements.

7. The MCO shall monitor the performance of the Administrator's obligations under the CMAS Contract, by reasonable and appropriate financial, programmatic and oversight tools and measures previously disclosed in writing to the Administrator. MCO and any government officials with oversight authority over the MCO, including but not limited to the Department of Health and Human Services, shall have the right, during normal business hours and upon advance written notice, to monitor, evaluate and verify, through inspection or other means, the Administrator's performance under the CMAS Contract and that such performance complies with the terms and standards of the CMAS Contract, the MCO and any Department of Health standards, including but not limited to access to Administrator records in the possession of the Administrator. MCO shall provide to Administrator its audit process, and audit the administrator on an ongoing basis to ensure compliance with MCO's Care Management Protocols. This provision shall survive the termination of the CMAS Contract regardless of the reason but shall be coterminous with the retention periods provided for in Standard Clause D.4.
8. The Administrator agrees that it is and will continue for the term of the Agreement to comply with the MCO's contract with the State and that this Agreement incorporates the pertinent MCO obligations under such contract as if set forth fully herein, including but not limiting:
 - a. the MCO will monitor the performance of Administrator under the Agreement, and will terminate the Agreement and/or impose other sanctions, if the Administrator's performance does not satisfy standards set forth in the MLTC Contract;
 - b. the Administrator agrees that the work it performs under the Agreement will conform to the terms of the MLTC Contract, and that it will take corrective action if the MCO identifies deficiencies or areas of needed improvement in the Administrator's performance;
 - c. The Administrator agrees to be bound by the confidentiality requirements set forth in the MLTC Contract;
 - d. The MCO shall not impose obligations and duties on the Administrator unless it has provided advance written notice to the Administrator or that impair any rights accorded to DOH, the local Department of Social Services, or the United States Department of Health and Human Services;
 - e. The Administrator agrees, pursuant to 31 U.S.C.§1352 and CFR Part 93, that no Federally appropriated funds have been paid or will be paid to any person by or on behalf of the Administrator for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer

or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. The Administrator agrees to complete and submit the "Certification Regarding Lobbying", Appendix _____ attached hereto and incorporated herein, if this Agreement exceeds \$100,000. If any funds other than Federally appropriated funds have been paid or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a member of Congress, in connection with the award of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement, and the Agreement exceeds \$100,000 the Administrator shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions;

- f. The Administrator agrees to disclose to MCO on an ongoing basis, any managing employee that has been convicted of a misdemeanor or felony related to the person's involvement in any program under Medicare, Medicaid or a Title XX services program (Block grant programs);
 - g. The Administrator agrees to monitor every thirty (30) days its employees and staff against the List of Excluded Individuals and Entities (LEIE) and excluded individuals posted by the OMIG on its Website and preclude them from participating in this Agreement if excluded; and
 - h. The Administrator agrees to disclose to MCO complete ownership, control, and relationship information.
 - i. The Administrator agrees to obtain for MCO ownership information from any subcontractor with whom the Administrator has had a business transaction totaling more than \$25,000 during the 12 month period ending on the date of the request made by DOH, OMIG or DHHS. The information requested shall be provided to MCO within 35 days of such request.
8. The parties understand and acknowledge that pursuant to State and Federal law, the Office of the Medicaid Inspector General (OMIG) and/or the Office of the Inspector General (OIG) may review and audit all contracts, claims, bills and other expenditures of medical assistance program funds to determine compliance. Each party agrees to indemnify and hold the other party harmless from any and all liability arising out of any suit, investigation, administrative action, fine, penalty or sanction by or relating to OMIG and/or OIG against the other party relating to the indemnifying party's negligent or wrongful actions that are the direct cause of any such liability.
9. The parties to the CMAS Contract agree to comply with all applicable requirements of the: Health Insurance Portability and Accessibility Act of 1996, 42 USC 1320 (d); the Health Information Technology for Economic and Clinical Health Act ("HITECH") (Pub L 111-5, 123 Stat 115) Public Health Law Article 27-F; and Mental Hygiene Law § 33.13.

10. Entire Agreement. This Agreement, including appendices, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.
11. The validity and interpretation of this Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.
12. The MCO and Administrator each agree that nothing within this Agreement is intended to, or shall be deemed to, transfer liability for its own acts or omissions, by indemnification or otherwise, to the other.

C. Payment; Risk Arrangements

1. The parties agree that the payment terms are reasonable and do not jeopardize the financial security of the MCO. The Administrator can not assume financial risk for Care Management Services under this Agreement.

D. Records; Access

1. Pursuant to consent/authorization by the enrollee, the Administrator will make the enrollee's medical records and other personally identifiable information (including encounter data for government-sponsored programs) available to the MCO for purposes including preauthorization, concurrent review, quality assurance, (including Quality Assurance Reporting Requirements (QARR)), payment processing, and qualification for government programs, including but not limited to newborn eligibility for Supplemental Security Income (SSI) and for MCO/Administrator analysis and recovery of overpayments due to fraud and abuse. The Administrator will also make enrollee medical records available to the State for management audits, financial audits, program monitoring and evaluation, licensure or certification of facilities or individuals, and as otherwise required by state law. The Administrator shall provide copies of such records to NYDOH at no cost. The Administrator expressly acknowledges that he/she/it shall also provide to the MCO and the State (at no expense to the State), on request, all financial data and reports, and information concerning the appropriateness and quality of services provided, as required by law. This provision shall survive termination of the contract for any reason.
2. The MCO agrees to make available to the Administrator all medical records, personally identifiable information and other relevant documents and information necessary to satisfactorily allow the Administrator to fulfill its obligations pursuant to this Contract as well as state and federal law, and consistent with the provisions of the federal Health Information Portability and Accountability Act, the regulations promulgated pursuant to such Act and the Business Associate Agreement entered into between the MCO and the Administrator.
3. The MCO and the Administrator agree that the MCO will obtain consent directly from enrollees at the time of enrollment or at the earliest opportunity, or that Administrator

will obtain consent from enrollees at the time service is rendered or at the earliest opportunity, for disclosure of medical records to the MCO or to third parties for Care Management Services.

4. The Administrator agrees to disclose the nature and extent of services provided and to furnish records to DOH and/or the United States Department of Health and Human Services, the County Department of Social Services, the Comptroller of the State of New York, the Office of the Medicaid Inspector General, the New York State Attorney General, and the Comptroller General of the United States and their authorized representatives upon request. This provision shall survive the termination of this Agreement regardless of the reason.
5. The parties agree that medical records and all other records relating to the Administrator's performance under this Contract shall be retained for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after majority or six (6) years after the date of service, whichever is later, or for such longer period as specified elsewhere within the CMAS Contract. This provision shall survive the termination of the CMAS Contract regardless of the reason.
6. Annual certified financial statements of the Administrator, if available or, if not, reports on the financial operations, will be provided to the MCO, and any other operational data reasonable and relevant to the services provided under this Contract when requested by the governing authority of the MCO, the Commissioner or Superintendent of the Department of Financial Services, will be provided by the Administrator.

E. TERMINATION AND RENEWAL

1. Termination or non-renewal of this Agreement requires notice to the Commissioner of Health. The effective date of termination shall not be less than 45 days after receipt of notice by either party, provided, however, that termination, by the MCO may be effected on less than 45 days notice provided the MCO determines that circumstances exist which threaten imminent harm to enrollees or which result in Administrator being legally unable to deliver the Care Management Services and, therefore, justify or require immediate termination.
2. In the event either party gives notice of termination of the CMAS Contract,, the parties agree that the Administrator shall continue to provide Administrative and Technical Services to the MCO's enrollees pursuant to the terms of the CMAS Contract, including all payment obligations of the MCO, for 180 days following the effective date of termination, or until such time as the MCO makes other arrangements, whichever first occurs. This provision shall survive termination of the CMAS Contract regardless of the reason for the termination.
3. In the event of termination of this Agreement, the Administrator agrees to assist in the orderly transfer of enrollees to another Administrator. Including all records, POCs, coverage of services of subcontractors.

4. Notwithstanding any other provision herein, the MCO retains the option to immediately terminate the Agreement when the Administrator has been terminated or suspended from the Medicaid Program.
5. Following termination of the Agreement, Administrator shall stop using and return and/or destroy all proprietary information of the MCO. This provision shall survive the termination of this Agreement regardless of the reason.

F. BUSINESS ASSOCIATE

1. The parties acknowledge that Administrator is a business associate of MCO and agree to enter into a Business Associate Agreement, which shall be binding upon the parties to this Agreement.

G. ARBITRATION

1. Each party shall appoint a person responsible for coordination, communication, dispute resolution and other related activities and shall notify the other of the person's contact information. In the event the contact person is changed, the party making such change shall immediately notify the other and provide such contact information.
2. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in this Agreement, the parties to this Agreement acknowledge that the Commissioner is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and the Commissioner will be given notice of all issues going to arbitration or mediation, and copies of all decisions.