

5101:3-26-05 **Managed health care programs: provider panel and subcontracting requirements.**

(A) Obligations.

- (1) Managed care plans (MCPs) must provide or arrange for the delivery of covered health care services and must assure that all the requirements of Chapter 5101:3-26 of the Administrative Code, the MCP provider agreement, and all applicable federal, state, and local regulations are met.
- (2) For the purposes of this rule the following terms are defined as follows:
 - (a) "Subcontractor" means providers and delegated entities contracted with the MCP and providers employed by the MCP.
 - (b) "Fully executed" means that the legal written agreement between an MCP and its subcontractors includes dated signatures by both parties. These signatures must be by persons legally authorized to represent those parties, including each signee's formal title.
- (3) For the direct provision of health care services, MCPs must meet the obligations specified in paragraph (A)(1) of this rule either through employment or through current fully-executed subcontracts with providers. All subcontracts must be in writing and in accordance with paragraph (D) of this rule and 42 C.F.R. 434.6 and 438.6, as applicable.
- (4) For delegated entities used to meet any program requirement, other than the direct provision of health care services, MCPs must meet the obligations specified in paragraph (A)(1) of this rule by entering into fully executed subcontracts. All subcontracts must be in writing and in accordance with paragraph (D) of this rule and 42 C.F.R. 434.6 and 438.6, as applicable. In addition, MCPs must do all of the following:
 - (a) Evaluate the entity prior to executing a subcontract to assure that the entity is capable of performing the delegated activity in accordance with all applicable program requirements and provide a copy of the evaluation summary to ODJFS upon request.
 - (b) Provide the delegated entity with all information, materials, and documentation the entity will need to meet the delegated program requirement(s).
 - (c) Require the delegated entity to submit a report to the MCP, at least

monthly, summarizing the status of the delegated activity, and including at a minimum:

- (i) A copy of any required reports or logs maintained by the delegated entity; and
 - (ii) Identification of any problems, concerns or potential compliance issues that may exist.
- (d) Monitor the entity's performance on an ongoing basis, including a review of the report referenced in paragraph (A)(4)(c) of this rule, all relevant member grievances and appeals as specified in rule 5101:3-26-08.4 of the Administrative Code, and all member complaints reported to the Ohio department of job and family services (ODJFS) and forwarded to the MCP, to identify any deficiencies or areas for improvement. Upon request, provide documentation of the MCP's monitoring efforts and its findings to ODJFS.
- (e) Submit an annual assessment of the delegated entity's performance with meeting the delegated program requirements throughout the year to ODJFS as directed by ODJFS~~within thirty calendar days of the assessment.~~
- (f) Include in the contract between the MCP and the delegated entity the sanctions that will be imposed for inadequate performance. The sanctions must specify the MCP's authority to require corrective action for any deficiencies or areas of improvement identified and provide for the revocation of the delegation if the MCP or ODJFS determines that the delegation is not in the best interest of the enrollees.
- (g) Include in the contract between the MCP and the delegated entity the sanctions that will be imposed for unauthorized uses or disclosures of protected health information (PHI).
- (h) Include in the contract between the MCP and the delegated entity that, unless otherwise specified by ODJFS, all information required to be submitted to ODJFS must be submitted directly by the MCP.
- (5) For subcontracts that the MCP believes to be short-term, one-time, or infrequent activities, the MCP may request that ODJFS exempt them from the reporting, monitoring and assessment requirements specified in paragraphs (A)(4)(c) and (A)(4)(e) of this rule.

- (6) All subcontracts must fulfill the requirements of 42 C.F.R. 434.6 and 438.6 that are appropriate to the service or activity delegated under the subcontract.
- (7) The MCP's execution of a subcontract with a provider or delegated entity does not terminate the MCP's legal responsibility to ODJFS to assure that all of the MCP's activities and obligations are performed in accordance with Chapter 5101:3-26 of the Administrative Code and the MCP provider agreement.
- (8) MCP-executed subcontracts may not include language that conflicts with the specifications identified in paragraphs (C) and (D) of this rule.
- (9) MCPs that authorize the delivery of services from a provider who does not have an executed subcontract with the MCP must ensure that they have a mutually agreed upon compensation amount for the authorized service and notify the provider of the applicable provisions of paragraph (D) of this rule. For medicaid-covered non-emergency hospital services outlined in paragraph (H)(9) of rule 5101:3-26-03 of the Administrative Code, the compensation amount is identified in paragraph (C) of rule 5101:3-26-11 of the Administrative Code.

(B) Notification.

- (1) Notwithstanding paragraph (D)(13) of this rule, an MCP must notify ODJFS of the addition or deletion of subcontractors on an ongoing basis, and must follow the time restrictions contained in paragraphs (B)(2), (B)(3), (B)(5), and (B)(6) of this rule unless the explanation of extenuating circumstances is accepted by ODJFS.
- (2) At the direction of ODJFS, ~~when any providers of the designated types are to be added to the MCP's provider panel,~~ the MCP must submit evidence of the following:
 - (a) A copy of the subcontractor's current licensure if ODJFS provides notification that it cannot verify current licensure;
 - (b) Copies of written agreements with the subcontractor, including but not limited to fully executed subcontracts, amendments and the medicaid addendum as specified in paragraph (D) of this rule; ~~A copy of the dated and fully executed medicaid addendum as specified in paragraph (D) of this rule or, for all new subcontracting hospitals, federally qualified health centers (FQHCs), and rural health clinics (RHCs), a copy of the complete subcontract, including the medicaid addendum;~~

~~and~~

(c) Notification to ODJFS of any hospital subcontract for which a date of termination is specified; and

~~(e)~~(d) The subcontractor's medicaid provider number or provider reporting number, as applicable.

- (3) When any program requirement is to be delegated as specified in paragraph (A)(4) of this rule, the MCP must submit a copy of the dated and fully executed medicaid addendum or amendment as applicable within thirty calendar days of the execution of the subcontract or subcontract amendment for prior approval of the delegation.
- (4) Upon ODJFS approval of the delegated entity, MCPs must provide the subcontractor with a copy of the fully executed subcontract and specification of the ODJFS approval date.
- (5) In the event any of the providers of the designated types are to be deleted from the MCP's provider panel due to the expiration, nonrenewal, or termination of said subcontract, the MCP must:
 - (a) If the subcontractor is a hospital or primary care provider (PCP):
 - (i) Inform ODJFS of the deletion of the subcontractor fifty-five calendar days prior to the expiration, nonrenewal, or termination of said subcontract;
 - (ii) If the MCP receives or issues less than fifty-five days notice, inform ODJFS within one working day of its awareness of this information; and
 - (iii) If the deletion is a PCP, include the number of members that will be affected by the change.
 - (b) Deletion of any other subcontractors referenced in paragraph (A)(3) of this rule must be reported to ODJFS no later than thirty calendar days prior to the expiration, nonrenewal, or termination of the subcontract. If the MCP receives or issues less than thirty-days notice, the MCP must inform ODJFS within one working day of its awareness of this information.

- (c) If the subcontractor involved is a PCP, the MCP must notify, in writing, all members who use the subcontractor as a PCP.
- (i) The form of the notice and its content must be prior-approved by ODJFS and must contain, at a minimum, all of the following information:
- (a) The PCP's name and last date the PCP is available to provide care to the MCP's members;
- (b) The name, location, telephone number, and effective date of the member's new PCP as selected by the MCP;
- (c) Information regarding how members can select a different PCP; and
- (d) An MCP telephone number members can call for further information and/or assistance.
- (ii) The MCP shall send the notice at least forty-five calendar days prior to the effective date of the deletion to members who use the subcontractor as a PCP. If the MCP receives less than forty-five days prior notice, the MCP shall issue the notice within one working day of the MCP becoming aware of the PCP's deletion. ~~The MCP shall submit a copy of this member notification to ODJFS along with the MCP's notification of provider deletion.~~
- (d) When the subcontractor is a hospital, the MCP must notify in writing all members in the service area, or in an area authorized by ODJFS, ~~in writing~~, of the impending expiration, nonrenewal, or termination of the subcontract and the last date the subcontractor will provide services to members under the MCP contract. If the subcontract is expiring or the MCP is initiating the nonrenewal or termination of the subcontract, the MCP must notify in writing all providers who have admitting privileges at the hospital of the impending expiration, nonrenewal, or termination of the subcontract and the last date the subcontractor will provide services to members under the MCP subcontract. If the subcontractor is initiating the nonrenewal or termination of the subcontract, as specified in paragraph (D)(35) of this rule, the subcontractor must notify in writing all providers who have admitting privileges at the hospital of the impending nonrenewal or termination of the subcontract and the last date the subcontractor will provide services to members under the MCP

subcontract.

- (i) The MCP shall send the notices to the members and providers who have admitting privileges at the hospital at least forty-five calendar days prior to the effective date of the deletion. If the MCP receives/issues less than forty-five days prior notice, the MCP shall send the notices within one working day of the MCP becoming aware of the hospital's deletion.
 - (ii) The form and content of the member notice must be prior-approved by ODJFS and contain an ODJFS designated toll-free telephone number that members can call for information and assistance.
 - (iii) When issued by the MCP, the form and content of the provider notice must be prior-approved by ODJFS.
 - (iv) Notification to additional members and/or providers may also be required if the hospital's deletion adversely impacts additional members and/or providers.
 - (v) The MCP shall submit copies of the member and provider notifications to ODJFS along with the MCP's notification of the hospital deletion.
- (e) Member and/or provider notification may also be required for certain other provider deletions that may adversely impact the MCP's members.
- (f) Regardless of the member notification timeframes specified in this paragraph, the MCP must make a good faith effort to give written notice of termination of a contracted provider, within fifteen calendar days after receipt or issuance of the termination notice, to each member who received his or her primary care from, or was seen on a regular basis by, the terminated provider.
- (6) In the event of the expiration, nonrenewal, or termination of the subcontract with a delegated entity, as specified in paragraph (A)(4) of this rule, the MCP must take the following steps:
- (a) Inform ODJFS fifty-five calendar days prior to the expiration, nonrenewal, or termination of the subcontract. If the MCP receives or issues less than fifty-five days notice, the MCP must inform ODJFS within one working day of its awareness of this information.

- (b) In situations that may adversely impact members and/or providers, notify members and/or providers of the impending expiration, nonrenewal, or termination of the subcontract.
- (7) In order to assure availability of services and qualifications of providers, ODJFS may require submission of documentation in accordance with paragraph (B) of this rule regardless of whether the MCP subcontracts directly for services or does so through another entity.
- ~~(8) MCPs must submit to ODJFS within thirty calendar days of execution, any amendment to a subcontract with a hospital, FQHC or RHC.~~
- ~~(9)~~(8) In the event that an MCP's medicaid managed care program participation in a service area is terminated, the MCP must provide written notification to its affected subcontractors at least forty-five calendar days prior to the termination date, unless otherwise specified by ODJFS.

(C) Provider qualifications.

- (1) MCPs must ensure that subcontractors that have medicaid provider agreements are in good standing and must ensure that all subcontractors are not sanctioned/excluded from providing medicaid or medicare services. At a minimum, monthly, MCPs shall utilize available resources for identifying sanctioned providers, including, but not limited to, the federal office of inspector general provider exclusion list; ~~the national practitioner data bank~~; the ODJFS excluded provider web page; and the discipline pages of the applicable state boards that license providers. ODJFS will provide notification to MCPs of sanctions ODJFS imposes during the term of the provider agreement.
- (2) An MCP may not discriminate in regard to the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. If an MCP declines to include individual or groups of providers in its network, it must give the affected providers written notice of the reasons for its decision. This paragraph may not be construed to:
 - (a) Require the MCP to contract with providers beyond the number necessary to meet the needs of its members;
 - (b) Preclude the MCP from using different reimbursement amounts for different specialties or for different practitioners in the same specialty;

or

- (c) Preclude the MCP from establishing measures that are designated to maintain quality of services and control costs and are consistent with its responsibilities to members.
- (3) MCPs must have written policies and procedures for the selection and retention of providers that cannot discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment.
- (4) When initially credentialing and recredentialing providers in connection with policies, contracts, and agreements providing basic health care services, MCPs must utilize the standardized credentialing form and process as prescribed by the Ohio department of insurance under sections 3963.05 and 3963.06 of the Revised Code. Upon ODJFS's request, MCPs must demonstrate the record keeping associated with maintaining this documentation.
- (5) If any MCP delegates the credentialing/recredentialing of subcontractors to another entity, the MCP must retain the authority to approve, suspend, or terminate any subcontractors.

(D) Subcontracts.

MCP subcontracts must include a medicaid addendum that has been prior-approved by ODJFS. All addendums must contain the following elements:

- (1) An agreement by the subcontractor to comply with the applicable provisions for record keeping and auditing in accordance with Chapter 5101:3-26 of the Administrative Code.
- (2) Specification of the population and service area to be served.
- (3) Specification of the services to be provided.
- (4) Specification that the subcontract is governed by, and construed in accordance with all applicable laws, regulations, and contractual obligations of the MCP and:
 - (a) ODJFS shall notify the MCP and the MCP shall notify the subcontractor of any changes in applicable state or federal law, regulations, waiver, or contractual obligation of the MCP;

- (b) The subcontract shall be automatically amended to conform to such changes without the necessity for written execution; and
 - (c) The MCP shall notify the subcontractor of all applicable contractual obligations.
- (5) Specification of the terms of the subcontract including the beginning date and expiration date, or automatic renewal clause, as well as the applicable methods of extension, renegotiation, and termination.
- (6) Specification of the procedures to be employed upon the ending, nonrenewal, or termination of the subcontract, including the agreement to promptly supply all records necessary for the settlement of outstanding medical claims.
- (7) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the MCP.
- (8) An agreement not to discriminate in the delivery of services based on the member's race, color, religion, gender, sexual orientation, age, disability, national origin, veteran's status, ancestry, health status, or need for health services.
- (9) An agreement by the subcontractor to not hold liable ODJFS and members in the event that the MCP cannot or will not pay for covered services performed by the subcontractor pursuant to the subcontract with the exception that:
 - (a) FQHCS and RHCs may be reimbursed by ODJFS in the event of MCP insolvency pursuant to Section 1902(bb) of the Social Security Act.
 - (b) The subcontractor may bill the member when the MCP has denied prior authorization or referral for the services and the following conditions are met:
 - (i) The member was notified by the subcontractor of the financial liability in advance of service delivery.
 - (ii) The notification by the subcontractor was in writing, specific to the service being rendered, and clearly states that the member is financially responsible for the specific service. A general patient liability statement signed by all patients is not sufficient for this purpose.

- (iii) The notification is dated and signed by the member.
- (10) An agreement by the subcontractor that with the exception of any member co-payments the MCP has elected to implement in accordance with rule 5101:3-26-12 of the Administrative Code, the MCP's payment constitutes payment in full for any covered service and that the subcontractor will not charge the member or ODJFS any co-payment, cost sharing, down-payment, or similar charge, refundable or otherwise. This agreement does not prohibit nursing facilities (NFs) from collecting patient liability payments from members as specified in rule 5101:1-39-24 of the Administrative Code or FQHCs and RHCs from submitting claims for supplemental payments to ODJFS as specified in rules 5101:3-28-07 and 5101:3-16-05 of the Administrative Code.
- (a) MCP shall notify the subcontractor whether the MCP has elected to implement any member co-payments and if applicable under what circumstances member co-payment amounts will be imposed in accordance with rule 5101:3-26-12 of the Administrative Code; and
 - (b) Subcontractor agrees that member notifications regarding any applicable co-payment amounts must be carried out in accordance with rule 5101:3-26-12 of the Administrative Code.
- (11) A specification that the subcontractor and all employees of the subcontractor are duly registered, licensed or certified under applicable state and federal statutes and regulations to provide the health care services that are the subject of the subcontract, and that subcontractor and all employees of the subcontractor have not been excluded from participating in federally funded health care programs.
- (12) An agreement that subcontractors who are currently medicaid providers meet the qualifications specified in paragraph (C) of this rule.
- (13) A stipulation that the MCP give the subcontractor at least sixty-days prior notice for the nonrenewal or termination of the subcontract except in cases where an adverse finding by a regulatory agency or health or safety risks dictate that the subcontract be terminated sooner.
- (14) A stipulation that the subcontractor may nonrenew or terminate the subcontract if one of the following occurs:
- (a) The subcontractor gives the MCP at least sixty-days prior notice for the

nonrenewal or termination of the subcontract. The effective date for any subcontractor's nonrenewal or termination must be the last day of the month.

- (b) ODJFS has proposed action in accordance with paragraph (G) of rule 5101:3-26-10 of the Administrative Code, regardless of whether this action is appealed. The subcontractor's termination or nonrenewal notice must be received by the MCP within fifteen working days prior to the end of the month in which the subcontractor is proposing termination or nonrenewal. If the notice is not received by this date, the subcontractor must agree to extend the termination or nonrenewal date to the last day of the subsequent month.
- (15) The subcontractor's agreement to serve members through the last day the subcontract is in effect.
 - (16) The subcontractor's agreement to make the medical records for medicaid eligible individuals available for transfer to new providers at no cost to the individual.
 - (17) A specification that all laboratory testing sites providing services to members must have either a current clinical laboratory improvement amendments (CLIA) certificate of waiver, certificate of accreditation, certificate of compliance, or certificate of registration along with a CLIA identification number.
 - (18) A requirement securing cooperation with the MCP's quality assessment and performance improvement (QAPI) program in all its provider subcontracts and employment agreements for physician and nonphysician providers.
 - (19) An agreement by the subcontractor and MCP that:
 - (a) The MCP shall disseminate written policies in accordance with the requirements of 42 U.S.C. 1396a(a)(68) and section 5111.101 of the Revised Code, regarding the reporting of false claims and whistleblower protections for employees who make such a report, and including the MCP's policies and procedures for detecting and preventing fraud, waste, and abuse; and
 - (b) The subcontractor agrees to abide by the MCP's written policies related to the requirements of 42 U.S.C. 1396a(a)(68) and section 5111.101 of the Revised Code, including the MCP's policies and procedures for

detecting and preventing fraud, waste, and abuse.

- (20) A specification that hospitals and other subcontractors must allow the MCP access to all member medical records for a period of not less than six-years from the date of service or until any audit initiated within the six year period is completed and allow access to all record-keeping, audits, financial records, and medical records to ODJFS or its designee or other entities as specified in paragraph (F) of rule 5101:3-26-06 of the Administrative Code.
- (21) A specification, appearing above the signature(s), on the signature page in all PCP subcontracts stating the maximum number of MCP members that each PCP can serve at each practice site for that MCP.
- (22) A specification that the subcontractor must cooperate with the ODJFS external quality review identified in rule 5101:3-26-07 of the Administrative Code.
- (23) A specification that the subcontractor must be bound by the same standards of confidentiality that apply to ODJFS and the state of Ohio as described in rule 5101:1-1-03 of the Administrative Code, including standards for unauthorized uses of or disclosures of PHI.
- (24) A specification that any third party administrator (TPA) must include the elements of paragraph (D) of this rule in its subcontracts and ensure that its subcontractors will forward information to ODJFS as requested.
- (25) A specification that home health subcontractors must meet the eligible provider requirements specified in Chapter 5101:3-12 of the Administrative Code and comply with the requirements for home care dependent adults as specified in section 121.36 of the Revised Code.
- (26) A specification that PCPs must participate in the care coordination requirements outlined in rule 5101:3-26-03.1 of the Administrative Code.
- (27) A specification that the subcontractor in providing health care services to members must identify and where indicated arrange, pursuant to the mutually agreed upon policies and procedures between the MCP and subcontractor, for the following at no cost to the member;
 - (a) Sign language services; and
 - (b) Oral interpretation and oral translation services.

- (28) A specification that the MCP agrees to fulfill the subcontractor's responsibility to mail or personally deliver notice of the member's right to request a state hearing whenever the subcontractor bills a member due to the MCP's denial of payment of a service, as specified in rule 5101:3-26-08.4 of the Administrative Code, utilizing the procedures and forms as specified in rule 5101:6-2-35 of the Administrative Code.
- (29) The subcontractor's agreement to contact the twenty-four-hour post-stabilization services phone line designated by the MCP to request authorization to provide post-stabilization services in accordance with paragraph (G) of rule 5101:3-26-03 of the Administrative Code.
- (30) A specification that the MCP may not prohibit, or otherwise restrict a subcontractor acting within the lawful scope of practice, from advising or advocating on behalf of a member who is his or her patient for the following:
 - (a) The member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;
 - (b) Any information the member needs in order to decide among all relevant treatment options;
 - (c) The risks, benefits, and consequences of treatment versus non-treatment; and
 - (d) The member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
- (31) A stipulation that the subcontractor must not identify the addressee as a medicaid consumer on the outside of the envelope when contacting members by mail.
- (32) An agreement by the subcontractor that members will not be billed for missed appointments.
- (33) An agreement by the subcontractor that in the performance of the subcontract or in the hiring of any employees for the performance of services under the subcontract, shall not by reason of race, color, religion, gender, sexual orientation, age, disability, national origin, veteran's status, health status, or ancestry, discriminate against any citizen of Ohio in the employment of a

person qualified and available to perform the services to which the subcontract relates.

- (34) An agreement by the subcontractor that it shall not in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance ~~of~~ of services under the subcontract on account of race, color, religion, gender, sexual orientation, age, disability, national origin, veteran's status, health status, or ancestry.
- (35) Notwithstanding paragraphs (D)(13) and (D)(14) of this rule, in the event of a subcontractor's proposed nonrenewal or termination of a hospital subcontract, an agreement by the hospital subcontractor to notify in writing all providers who have admitting privileges at the hospital of the impending nonrenewal or termination of the subcontract and the last date the hospital will provide services to members under the MCP contract. This notice must be sent at least forty-five calendar days prior to the effective date of the deletion. If the subcontractor issues less than forty-five days prior notice to the MCP, the provider notice must be sent within one working day of the subcontractor issuing notice of nonrenewal or termination of the subcontract.
- (36) An agreement by the subcontractor to supply, upon request, the business transaction information required under 42 C.F.R. 455.105.

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CERTIFIED ELECTRONICALLY

Certification

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