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

(A) Obligations.

(1) ~~MCPs~~ 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 ~~CFR~~ C.F.R.434.6,~~,~~ 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 ~~CFR~~ C.F.R. 434.6, 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 performance status of the delegated activity, including at a minimum:

(i) A copy of any required reports or logs maintained by the delegated entity;

(ii) The submission date for any required documentation sent by the delegated entity to ODJFS; and

(iii) Any problems, concerns or potential compliance issues ~~which~~ 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 ~~ODJFS~~ 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 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 ~~PHI~~protected health information (PHI).

(5) For subcontracts ~~which~~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 ~~CFR~~C.F.R. 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 ~~which~~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)(8) 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) When any provider of the designated provider types are to be added to the MCP's provider panel, the MCP must submit evidence of the following within thirty days of the execution of the subcontract for prior approval of the provider's addition to the panel:

(a) A copy of the subcontractor's current licensure if ODJFS provides notification that it cannot verify current licensure;

(b) A copy of the dated and fully-executed medicaid addendum as specified in paragraph (D) of this rule or, for all new subcontracting hospitals, ~~and FQHCs/RHCs~~federally qualified health centers (FQHCs), and rural health clinics (RHCs), a copy of the complete subcontract, including the medicaid addendum; and

(c) 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 provider and/or 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 ~~PCP~~primary care physician (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 ~~their~~its awareness of this information.

(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 their 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 of MCP service;

(b) The name, location, telephone number, and effective date of the member's new PCP if the member does not contact the MCP to choose a PCP by a specified date;

(c) Information regarding how members can transfer to a new PCP; and

(d) An MCP telephone number members can call for further information and/or assistance.

(ii) This notice must be sent at least forty-five calendar days prior to the effective date of the deletion to members who use the subcontractor as a PCP. A copy of this member notification must be submitted to ODJFS along with the MCP's notification of provider deletion.

(d) When the subcontractor is a hospital, the MCP must notify all members and MCP participating providers in the service area, 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. These notices must be sent to members and participating providers at least forty-five calendar days prior to the effective date of the deletion. 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. Copies of the member notification and participating provider notification must be submitted to ODJFS along with the MCP's notification of provider 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 ~~their~~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) In the event that an MCP's medicaid managed care program participation in a county is terminated, the MCP must provide written notification to ~~their~~its affected subcontractors at least forty-five calendar days prior to the termination date, unless otherwise specified by ODJFS.

(C) Provider qualifications.

(1) Those subcontractors who have medicaid provider agreements with ODJFS must be providers in good standing. Providers who do not have medicaid provider agreements with ODJFS must not have previously had a medicaid provider agreement with ODJFS that was terminated, suspended, denied, or not renewed as a result of any action in accordance with the Revised Code, the Administrative Code, ~~CMS~~centers for medicare and medicaid services (CMS), or the medicaid fraud unit of the office of the Ohio attorney general. Providers who are not in good standing are not allowed to treat or be reimbursed for treating medicaid patients. ODJFS will notify the MCP of medicaid providers who do not meet the qualifications as specified in this rule.

(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 ~~which~~that cannot discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment.

(4) MCPs must credential/recredential all providers using the standardized credentialing form and process as prescribed by the Ohio department of insurance under section ~~173.03~~ 1753.03 of the Revised Code, when initially credentialing and recredentialing providers in connection with policies, contracts, and agreements providing basic health care services. Upon ODJFS's request, MCPs must demonstrate the record keeping associated with maintaining this documentation.

(5) If any MCP delegates the credentialing/recredentialing of providers to another entity, the MCP must retain the authority to approve, suspend, or terminate any providers.

(D) Subcontracts.

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

(1) An agreement by the subcontractor to comply with the provisions for record keeping and auditing in accordance with Chapter 5101:3-26 of the Administrative Code~~;~~.

(2) Specification of the population and county to be served~~;~~.

(3) Specification of the services to be provided~~;~~.

(4) Specification that the subcontract contain the same terms that are applicable to the contracted service, be governed by, and construed in accordance with all laws, regulations, and contractual obligations of the MCP:

(a) ODJFS will 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; and

(b) The subcontract shall be automatically amended to conform to such changes without the necessity for executing written amendments~~;~~.

(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, sex, sexual orientation, age, disability, national origin, veteran's status, ancestry, health status or need for health services~~;~~.

(9) An agreement by the subcontractor to hold harmless both 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 the subcontractor may bill the member when the MCP has denied prior authorization or referral for the services and the following conditions are met:

(a) The member was notified by the subcontractor of the financial liability in advance of service delivery;

(b) 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; and

(c) 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 5101:3-26-13 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~~copayment~~, cost sharing, down-payment, or similar charge, refundable or otherwise~~;~~:

(a) MCP shall notify the subcontractor of 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 5101:3-26-13 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 5101:3-26-13 of the Administrative Code.

(11) A specification that the provider is duly licensed or certified under applicable state and federal statutes and regulations to provide the health care services that are the subject of the subcontract~~;~~.

(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 ~~quality of care concerns~~ dictate that the subcontract be terminated sooner~~;~~.

(14) A stipulation that the subcontractor may nonrenew or terminate the subcontract if:

(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; or

(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, or if a quality of care concern dictates that the subcontract be terminated sooner than sixty days. 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 member medical records available for transfer to new providers at no cost to the member~~;~~.

(17) A specification that all laboratory testing sites providing services to members must have either a current ~~CLIA~~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 ~~QAPI~~quality assessment and performance improvement (QAPI) program in all its provider subcontracts and employment agreements for physician and nonphysician providers~~;~~.

(19) 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 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 (B) of rule 5101:3-26-06 of the Administrative Code~~;~~.

(20) A specification, appearing above the signature(s), on the signature page in all PCP subcontracts stating the maximum number of MCP members ~~which~~that each PCP can serve at each practice site for that MCP~~;~~.

(21) A specification that the subcontractor must cooperate with the ODJFS external quality review identified in rule 5101:3-26-07 of the Administrative Code~~;~~.

(22) A specification that the subcontractor must be bound by the same standards of confidentiality ~~which~~that apply to ODJFS and the state of Ohio as described in rule 5101:1-1-03 of the Administrative Code, including unauthorized uses of or disclosures of PHI~~;~~.

(23) 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~~;~~.

(24) A specification that home health providers must meet the eligible provider requirements specified in rules 5101:3-12-05 and 5101:3-12-06 of the Administrative Code~~;~~.

(25) A specification that PCPs must participate in the care coordination requirements outlined in rule 5101:3-26-03.1 of the Administrative Code.

(26) A specification that the subcontractor in providing health care services to members must identify and where indicated arrange for the following at no cost to the member;

(a) Sign language services; and

(b) Oral interpretation and oral translation services.

(27) A specification that the subcontractor must mail or personally deliver notice of the member's right to request a state hearing whenever the subcontractor bills a member due to MCP's denial of payment of a non-covered service~~,~~, utilizing the procedures and forms as specified in rule 5101:6-2-35 of the Administrative Code.

(28) 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.

(29) A specification that the MCP may not prohibit, or otherwise restrict a provider 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.

(30) 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.

(31) An agreement by the subcontractor that members will not be billed for missed appointments.

(32) 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, sex, 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.

(33) An agreement by the subcontractor that it shall not in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance or services under the subcontract on account of race, color, religion, sex, sexual orientation, age, disability, national origin, veteran's status, health status, or ancestry.

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Certification

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Date

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