

**NEW YORK STATE DEPARTMENT OF HEALTH  
CARE MANAGEMENT ADMINISTRATIVE SERVICES CONTRACT GUIDELINES  
FOR MANAGED LONG TERM CARE PLANS**

**I. Requirements to Obtain Contract Approval for Care Management Administrative Services Contracts (CMAS)**

- A. This includes a CMAS Contract between a managed care organization (MCO) and an entity (an “Administrator”), where the entity will perform Care Management Services, on behalf of the MCO. Such contracts and material amendments must comply with the requirements of these Guidelines and all other applicable statutes and regulations. An MCO shall submit for DOH approval a template agreement of the Care Management Services Contracts that the MCO will use. Care management must be conducted for all services in the plans benefit package, not for a single service. Each executed CMAS must be submitted to DOH for state record.
- B. Under no circumstance may the MCO implement a contract or material 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 material amendment.
- C. A CMAS Contract or material amendment subject to these Guidelines shall be for Care Management Services, but may (although need not) also include the provision of medical services and technical and administrative services. If a contract for the provision of medical services includes Care Management Services, then the arrangement must comply with these guidelines and the New York State Department of Health Provider Contract Guidelines for MCOs. Arrangements to delegate management functions (as defined in Section VII below) must be addressed in a separate agreement. If the arrangement delegates management function(s), such as quality assurance, and the provision of Care Management Services, then the contract for such arrangement must be addressed in a separate management agreement and comply with the New York State Department of Health Management Contract Guidelines for MCOs.
- D. These Guidelines are effective September 1, 2012 and apply to new CMAS Contracts and to material amendments to existing approved contracts for Care Management Services submitted to the New York State Department of Health (DOH) for review on or after September 1, 2012. They shall not apply to previously approved contracts and approved material amendments in effect as of September 1, 2012, or contracts and amendments submitted to DOH for review and approval and received by close of business August 31, 2012.

**II. General Contracting Requirements and Prohibitions**

- A. The arrangement for payment of Care Management Services is between the Administrator and the MCO. The agreement must specify a term, and shall be no greater than 5 years.
- B. In the event that the Administrator proposes to subcontract any Care Management Services, the subcontract must be approved by DOH and the material amendment or assignment agreement between the MCO and the subcontractor must expressly provide for the subcontracting of Care Management Services to the subcontractor. The subcontract will be subject to these guidelines and all applicable laws and regulations to the same extent as the Administrator.

### **III. Mandatory Contract Provisions:**

- A. Generally, this section lists provisions that must be included or addressed in contracts between MCOs and Administrators for Care Management Services. The required provisions are included within the Standard Clauses Appendix that must be attached to and incorporated into the contract. If a required provision is addressed in the Standard Clauses Appendix, it does not need to be duplicated in the main body of the contract. No amendments or revisions to the Standard Clauses Appendix will be approved. Proposed terms of the Care Management Administrative Services Contract must include but are not limited to provisions stating that:
1. The CMAS Contract 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 the CMAS Contract any and all modifications required by the Department of Health for approval or, alternatively, to terminate the CMAS Contract if so directed by the Department of Health, effective forty five (45) days subsequent to notice.
  2. Any material amendment to the CMAS Contract is subject to the approval of the Department of Health, and any such material 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 the CMAS Contract requires the prior approval of the Commissioner of Health. Administrator shall not subcontract or otherwise delegate its duties under the CMAS Contract without the express written consent of MCO. Administrator shall require any MCO approved subcontractor to abide by and adhere to the requirements of the CMAS Contract and will ensure the CMAS Contract 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 DOH guidelines or policies, and (b) has provided to the Administrator at least thirty (30) days in advance of implementation, including by not limited to:
    - Quality improvement/management,
    - Utilization management, including but not limited to precertification procedures,
    - referral process or protocols, reporting of clinical encounter data,
    - member grievances, and
    - Assessment.
  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 the CMAS Contract agree to comply with all applicable requirements of the Federal Americans with Disabilities Act.
  6. The Administrator warrants that it is a duly organized, validly existing organization in good standing. Administrator agrees it is 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 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. 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. This provision shall survive the termination of the CMAS Contract regardless of the reason.
8. The Administrator agrees that it is and will continue for the term of the CMAS Contract to comply with the MCO's contract with the State and that the CMAS Contract incorporates the pertinent MCO obligations under such agreement with the Department of Health as if set forth fully herein, including but not limiting:
  - i. The MCO will monitor the performance of Administrator under the CMAS Contract, and will terminate the CMAS Contract and/or impose other sanctions, if the Administrator's performance does not satisfy standards set forth in the MLTC Contract;
  - ii. The Administrator agrees that the work it performs under the CMAS Contract 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;
  - iii. The Administrator agrees to be bound by the confidentiality requirements set forth in the MLTC Contract;
  - iv. The MCO shall not impose obligations and duties on the Administrator that are inconsistent with the MLTC Contract, or that impair any rights accorded to DOH, the local Department of Social Services, or the United States Department of Health and Human Services;
  - v. 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 the CMAS Contract 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 CMAS Contract exceeds \$100,000 the Administrator shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions;

- vi. 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);
  - vii. 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 the CMAS Contract if excluded;
  - viii. The Administrator agrees to disclose to MCO complete ownership, control, and relationship information; and
  - ix. 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.
9. The parties understand and acknowledge that pursuant to State 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 direct, negligent or wrongful actions of the MCO or Administrator.
10. 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.
11. The CMAS Contract, including appendices, constitutes the entire CMAS Contract 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.
12. The validity and interpretation of the CMAS Contract and the rights and obligations of the parties under the CMAS Contract shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.
13. The MCO and Administrator each agree that nothing within the CMAS Contract is intended to, or shall be deemed to, transfer liability for its own acts or omissions, by indemnification or otherwise, to the other.
14. The parties agree that the payment terms are reasonable and do not jeopardize the financial security of the MCO. The Administrator will not assume financial risk for care coordination services under the CMAS Contract.
15. Pursuant to appropriate 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. These provisions shall survive termination of the contract for any reason.

16. 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.
17. 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 the CMAS Contract regardless of the reason.
18. The parties agree that medical records 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.
19. Annual reports on the financial operations will be provided to the MCO, and any other operational data 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.
20. Termination or non-renewal of the CMAS Contract 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 demonstrates that circumstances exist which threaten imminent harm to enrollees or which result in Administrator being legally unable to deliver the covered services and, therefore, justify or require immediate termination.
21. 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 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.
22. In the event of termination of the CMAS Contract, the Administrator agrees to assist in the orderly transfer of enrollees to another Administrator.

23. Notwithstanding any other provision herein, the MCO retains the option to immediately terminate the CMAS Contract when the Administrator has been terminated or suspended from the Medicaid Program.
24. Following termination of the CMAS Contract, Administrator shall stop using and return and/or destroy all proprietary information of the MCO. This provision shall survive the termination of the CMAS Contract regardless of the reason.
25. 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 the CMAS Contract.
26. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in the CMAS Contract, the parties to the CMAS Contract 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.

#### **IV. Contract Review Process**

A. A proposed CMAS contract or material amendment must be submitted to the Department for its approval at least 45 days prior to the contract's or amendment's proposed effective date for MCOS with valid certificate of authority.

B. Submission Requirements. DOH review will commence upon receipt of **ALL** of the following (incomplete submissions will not be accepted):

1. One (1) electronic copy of each contract or material amendment submitted for approval, in a standard searchable PDF format, 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 material amendments) and the provisions of such Appendix must be expressly incorporated by reference into the contract;
  - each contract or material 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 material amendment is modified;
  - each contract or contract material amendment must be dated and all material 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 a material amendment to an expired contract resurrect the terms of the agreement. A new CMAS Contract must be submitted according to these guidelines in both instances.

C. A completed DOH 9999 "CMAS Contract Statement and Certification" for each contract or material amendment, bearing the same MCO assigned unique identifier as the submitted contract or material

amendment. In all cases, the certification must be signed by an officer of the MCO or the MCO's legal counsel. If at any time during the review process, modifications are made to the submitted contract or material amendment that render inaccurate any statements made in the "CMAS Statement and Certification" (DOH-9999), the MCO must submit a new, corrected, and signed DOH-9999.

**D. 45 Day Review:**

Contracts and material amendments will be reviewed within 45 days of receipt of a complete submission if:

1. the DOH certification is signed, dated and notarized; and
2. the contract expressly provides that the parties agree to incorporate all modifications required by DOH for approval, or to terminate the contract if so directed by DOH.

E.      Send to:        New York State Department of Health  
                              Bureau of Managed Long Term Care  
                              ESP - Corning Tower Building  
                              19th Floor – Room 1911  
                              Albany, New York 12237

F.      After DOH approval is received, the MCO must submit an electronic copy of any executed contract or material amendment in a standard searchable PDF format, with copy/read permissions. The signature page demonstrating execution of the contract or material amendment may be a scanned electronic image included in the electronic submission, submitted as a hard copy with the CD-ROM or as a PDF file attached to an e-mail.

**V.      Date of Contract Implementation**

**A. Any contract or material amendment that does not satisfy the requirements of Section IV above may not be implemented without the prior written approval of DOH.**

B. The parties may implement a contract or a material amendment when 45 days have elapsed after receipt by DOH of an application that meets the requirements of Section IV above, including but not limited to: expressly incorporating by reference in the agreement the terms of the Standard Clauses Appendix; and submitting a signed contract statement and certification form. Such implementation is subject to DOH final approval and to making any modifications required by DOH.

A contract or material amendment that is implemented after 45 days, but prior to final approval by DOH, shall contain express provisions whereby the parties agree that the contract or material amendment is subject to final DOH approval, that the parties will make any modifications to the contract or material amendment required by DOH, and that the parties will terminate the contract or material amendment if so directed by DOH.

C. Contracts and material amendments cannot be implemented prior to the 45th day, unless DOH has completed its review and issued written approval.

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

- E. Notwithstanding the issuance by DOH of a final written approval of a contract or material 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 CMAS Contract Statement and Certification, 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.

## **VI. Renewals, Material Amendments or Termination of Care Management Administrative Services Contracts**

- A. The request to renew a CMAS Contract must be submitted at least 45 days prior to the expiration of the existing contract.
- B. Any termination or non-renewal of a CMAS Contract, whether initiated by the MCO or the Administrator, requires notice to the Commissioner. 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 that the MCO determines that circumstances exist which threaten imminent harm to enrollees or which result in Administrator being legally unable to deliver the covered services and, therefore, justify or require immediate termination.
- C. Material Amendments to a Care Management Administrative Services Contract:
1. Any material amendment to a CMAS Contract must be submitted at least 45 days prior to implementation.

## **VII. Definitions**

As used in these Guidelines:

“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 in a managed long term care plan 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” means the written description in the care management record of enrollee-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 care plan is based on assessment of the enrollee's health care needs and developed in consultation with the enrollee and his/her informal supports. Effectiveness of the care 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 care 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 care 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. They do not include administrative expenses incurred by provider in the course of performing the provider’s business.

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