Legal Issues in Contracting for Health Homes and MCOs

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Road Map

- 1. Overview
- 2. Health Home Contracts
  - Key Terms
  - Compensation
  - Regulatory Provisions
  - Regulatory Review Process
- 3. Other Things to Consider
Overview

- **Types of Insurance**
  - A Managed Care Organization (“MCO”) is organized to provide and arrange for the provision of comprehensive health services to members enrolled in the MCO.
  - Certified pursuant to Article 44 of the Public Health Law
  - Examples: HMO, PHSP, MLTC
  - An MCO ensures quality care, controls costs, aligns provider incentives to avoid overutilization of services and promotes a performance-based health care delivery system.
Overview (cont.)

- **Types of Insurance**
  - Insurance Companies are licensed under Articles 42 or 43 of the Insurance Law and not bound by the same regulatory, statutory and contractual requirements imposed on MCOs (i.e., network adequacy).

- **Health Homes only apply to Medicaid MCOs**
Overview (cont.)

- Types of Agreements
  - Provider Contracts
  - Management Contracts
  - Administrative Contracts (Health Home Contracts)
Overview (cont.)

- **Provider Contract**
  - A Provider Contract is an agreement related to the provision of health care services between a provider or IPA and an MCO, which is subject to NYS Department of Health (“DOH”) regulations and guidelines.

  - **Services included under a Provider Contract:**
    - Mental Health and Substance Abuse Services
    - Home Care
    - Hospital and Physician services
Overview (cont.)

- **Management Contract**
  - A management contract is an agreement between an MCO and a Management Service Organization ("MSO")
  - For the delegation of management functions (defined in 10 NYCRR 98-1.11)
  - Management functions are elements of an MCO governing body’s management authority.
  - Some management functions *must not* be delegated by an MCO to another person or entity.
  - Other management functions *may* be delegated to another person or entity, but only pursuant to a management contract approved by DOH.
Overview (cont.)

- **Examples of Management Functions:**
  - Claims Payment
  - Utilization Review
  - Quality Assurance
  - Care Coordination (specifically for MLTC MCOs)
Overview (cont.)

- **Administrative Contract**
  - Any functions (other than medical services) that an MCO is not prohibited from delegating by 10 NYCRR § 98-1.11(i), and that are not functions listed in 10 NYCRR § 98-1.11(j) requiring DOH approval of a management contract.
  - An Administrative Contract includes administrative expenses provided through the contract that the MCO would otherwise have reported on the MCO’s own cost report.
Overview (cont.)

- **A Health Home Contract**
  - It is Not a Provider Contract
  - It is Not a Management Contract

- **What is it?**
  - It is similar to an Administrative Contract subject to limited regulatory review
Overview (cont.)

- **NYS Regulators Of Medicaid MCOs**
  - Department of Health
  - Office of the Medicaid Inspector General
  - Attorney General
Overview (cont.)

- The Laws, Regulations and Guidelines Imposed on MCOs:
  - Laws - Public Health Law Articles 44 and 49
  - Regulations - Part 98 of Title 10 of the New York Code of Rules and Regulations

- Guidelines -
  - DOH Provider Contract Guidelines for MCOs and IPAs
  - DOH Management Contract Guidelines for MCOs and IPAs
Overview (cont.)

- Medicaid and Family Health Plus Managed Care Model Contract
General Health Home Information

- Established by 42 U.S.C § 1396w-4
- A Health Home provides coordinated care for individuals with chronic conditions.
- A Health Home is a designated provider selected by an eligible individual with chronic conditions to provide health home services.
General Health Home Information

- **Health Home Services include:**
  - Comprehensive care management;
  - Care coordination and health promotion;
  - Comprehensive transitional care;
  - Patient and family support;
  - Referral to community and social support services;
  - Use of Health Information Technology (HIT).
Health Home Contract Between A Health Home and MCO

- Key Terms
- Regulatory Provisions
- Contractual Obligations Imposed on Medicaid MCOs
- Compensation
- Regulatory Review Process
- Downstream Contracts between Health Home and Health Home Services Providers
Health Home Contract
Key Terms

- Definitions
- Scope of Services
- Protocols
- Representations and Warranties
- Payment
- Assignment / Termination of Health Home Services
- Monitoring and Auditing
- Quality, Data and Reporting
- Maintenance of Records
- Term and Termination
- Indemnification
- Adjustments
- Non-Discrimination
- Confidentiality
Key Terms (cont.)

- Definitions
  - Candidates v. Participants
  - Enrollment, Activation, De-Activation, Assignment and Re-Assignment
  - Participating Provider v. Health Home Services Provider
  - Provider Network v. Health Home Service Organization
  - Other Definitions to Understand:
    - Provider Manual
    - Utilization Management
Key Terms (cont.)

- **Scope of Services:**
  - Provide outreach, contact and engagement services to Health Home Candidates
  - Obtain signed NYSDOH approved “Health Home Services Consent Form” from Health Home Candidates
  - Conduct a comprehensive assessment of each Health Home Participant, including medical, behavioral, functional and social support needs
  - Provide behavioral health expertise and leadership, as applicable, for individuals with Serious Mental Illness (SMI) and those with substance use disorders (SUD)
  - Develop an integrated care plan for physical and behavioral health disorders, as applicable
Key Terms (cont.)

- **Scope of Services:**
  - Prepare and maintain a comprehensive plan of care, including information from the providers of clinical, behavioral and social support services
  - Coordinate care by and among Health Home Services Providers and Participating Providers
  - Provide any or all Health Home Services to Participants
  - Coordinate non-health service providers and local government agencies
  - Report to MCO on activities and services in a format and within timeframes designated by MCO and/or NYSDOH
  - Provide data management to MCO in compliance with the data submission requirements of MCO and NYSDOH
Key Terms (cont.)

- Protocols
- Representations and Warranties
Key Terms (cont.)

- Monitoring, Auditing
- Reporting
- Maintenance of Records
Key Terms (cont.)

- Term and Termination
  - For Cause and Without Cause
  - Notice Provisions

- Post Termination Obligations
Key Terms (cont.)

- Indemnification
- Non-Discrimination
- Confidentiality
Key Terms (cont.)

- **Payment - Rates for Health Home Services**
  - Capitation rate for Health Home Services, Outreach and Engagement
  - Bill MCO monthly
  - MCO pays within 30 days after receive money from DOH
  - Not include claims for medical services
  - MCO is NOT responsible for payment to downstream Health Home Services Providers
  - Re-Assignment and Termination of Participants
  - Adjustments for Overpayments
Key Terms (cont.)

- Payment - Rates for Administrative Services
  - Administrative Payment (6% of Capitation Rate)
  - 3% of Administrative Payment to MCO for:
    - Assignments
    - Tracking Sheets
    - Payment Responsibilities

- Anything over and above 3% to MCO is subject to negotiation, but will be scrutinized by DOH
Other Terms to Consider

- Verification of Eligibility
- Network Directory
- Updating Information re: Health Home Services Providers
- HIPAA
- Insurance
- Lobbying Certification
- Amendment
- Assignment
- Notice to Members
- Dispute Resolution
Regulatory Provisions

- **Standard Key Terms** - must be attached to and incorporated into Health Home Contract or key terms must be embedded in the body of the Health Home Contract

Medicaid Managed Care Model Contract


- **MCOs:**
  - Must Directly provide Health Home services or subcontract with qualified providers to provide these services to eligible Enrollees.
  - The network must include a sufficient number of Health Home providers to serve all eligible Enrollees.
  - Pass fee (in whole or in part) to the Health Home provider(s) commensurate with the scope of services provided.
Regulatory Review Process

- The Health Home Contract Between the Health Home and MCO is:
  - Subject to DOH approval
  - If implemented prior to approval, the parties must agree to incorporate all modifications required by DOH or must terminate the contract 60 days after notice from DOH.
  - Template Agreements v. Negotiated Health Home Agreement
  - Changes to Health Home Agreements
Regulatory Review Process

- **DOH Health Home Contract Statement and Certification Form**
  - MCO Officer or Legal Counsel must certify compliance with all laws and regulations
  - Key provisions must be annotated and identify any modifications to the key contract provisions
  - Identify withhold, incentive payments and sanctions
  - Identify whether MCO will pass total Health Home payment from State to Health Home or if MCO will retain a percentage; if so, what percentage and, if MCO retains more than 3% of the Health Home payment, why.
Downstream Contracts with Health Home Services Providers

- Things to Consider
  - Not subject to DOH review and approval
  - Payment for actual Health Home Services
  - OMIG
  - Record Retention
  - Audit
  - Document .. Document .. Document .. Health Home Services rendered
Questions