Key Considerations for Public Health Contracting

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Preliminary Considerations

• We think it is a false statement that these provider agreements have been approved by the State and cannot be further revised
  – The templates were submitted in response to the RFPs
  – Last we heard, however, the State said they had no specifically approved the provider agreement forms
Universal Issues

• Payment Rates
  – Be very careful
  – Understand how you are reimbursed and ensure that the payment appendix outlines your expectation of reimbursement 1/1/16
    • Suppose to be the current rates from 1/1/16 through 6/30/16
    • What about after 6/30/16
    • Request contract language specify no less than the current Medicaid rates
      • What are the current Medicaid rates they are using?
  – We recommend providers not sign until this is fleshed out
Preliminary Considerations

• Typically one sided
• Require compliance with all provider manuals, policies, procedures and protocols
  – Typically can change at any time
• May apply to other payment programs
  – Check the applicability (Medicare Advantage, Private third party payers)
  – Who decides (can they unilaterally add?)
Preliminary Considerations

• RFP required provisions:
  – Claims submitted within 90 days if they do not involve another third party payer
  – Require provider to agree to all applicable terms/conditions in the RFP, State Contract, any incorporated documents and all applicable state and federal laws
  – Suspension of payments to providers after State determines credible allegation of fraud for which an investigation is pending
  – Notify of ownership changes
Preliminary Considerations

• RFP Required Provisions
  – HCBS Providers
    • 30 days advance notice if no longer willing or able to provide services to a member and to cooperate with the member’s care coordinate to facility seamless transition
    • Transferring HCBS provider continues to provide care for 30 days from date of notice of transfer
    • Require HCBS provider to immediately report any deviations from a member’s service schedule to the member’s care coordinator
    • Critical incident reporting requirements
    • Child/Dependent adult abuse reporting
Universal Issues

• Applicability
  – Check who it is applicable to
  – Require the MCO to get your specific written approval before adding plans/products
Universal Issues

• Provider Manuals/Policies/Protocols
  – Request to see prior to signing the agreement
  – What if they are not yet done?
    • Ask to see the provider manuals/policies/protocols they utilize for other States
    • Make sure you have the ability to get out at any time without cause
Universal Issues

• Claims submission
  – 90 days from date of service required by IME in the RFP
    • Watch out for shortened time period- ensure the contract is at least 90 days (don’t contractually agree to a shortened period)
  – Be sure you understand the software necessary to submit claims electronically to the MCOs
Universal Issues

• Subcontractor Requirements
  – You are representing your subcontractors will comply with the agreement’s terms.
  – If you have subcontractors who provide a service through you, ensure your contracts with them incorporate a requirement to comply with all payer/MCO agreements you execute.
Universal Issues

• Referral Patterns
  – Agreements require you to refer only to participating providers unless medically contraindicated
  – Ensure those providers to whom you refer are participating providers
Universal Issues

• Term
  – We recommend the initial term go through 6/30/16 to coincide with when rates are negotiated
  – We also recommend a without cause termination provision that can be used at any time not just at renewal of the term
Universal Issues

• Termination Provisions
  – If you are one of the following providers, get language that you cannot be terminated during the first two years of the Agreement without the prior written consent of the State of Iowa:
    • Community Mental Health Center
    • 1915(i) HCBS Habilitation Services
    • Nursing Facility
    • ICF/ID
    • Health Home
    • 1915© HCBS Waiver Provider (other than case manager/care coordination
    • Substance Abuse disorder treatment program
Universal Issues

• Termination Provisions
  – We recommend you include a without cause provision that can be triggered at any time with the requisite amount of notice
    • Most have but can’t be triggered until renewal
  – Remove vague for cause termination provisions
  – Allow provider to terminate in the event the MCO or payer is insolvent or files a petition for bankruptcy or rehabilitation
Universal Issues

• Termination Provisions
  – Typically a requirement that you continue to provide care for a period of time post termination
  • State RFP requires
Universal Issues

• Non-Solicitation/Non-Disparagement
  – These clauses prohibit you from advising a patient against signing up with the payer or advocating a different payer
  – Ensure the language doesn’t prohibit you from responding to questions/allow you to counsel patients regarding coverage/benefits
  – Make sure your staff understands your contractual obligations
Universal Issues

- Record Retention Requirements
  - Ensure your record retention policies are updated to reflect the contractual requirements
Universal Issues

• Non-Discrimination/Requirement to Accept all of the MCO’s members/beneficiaries
  – We don’t believe this provision is legally required to be in the agreement
  – You want to make sure you have the ability to refuse to accept a patient or can terminate a patient relationship for legitimate reasons
    • The impact of this provision really depends on the type of provider you are and whether there are situations when you would not want to take or care for a Medicaid patient.
Universal Issues

• Audit Rights
  – Limit to normal business hours
  – Require reasonable notice
  – Do not contractually give payer/government broader access rights than they have under law
    • Limit it to as required by law
Universal Issues

• Amendments
  – Try for requiring all amendments be mutually agreed to in writing by both parties and limit unilateral amendments to those required by law/regulations/IME
  – At a minimum, want ample notice of any unilateral amendments so you can trigger without cause
  – Don’t allow payment terms to be amended unilaterally
Universal Issues

• If you are required to comply with the State Contract, require the MCO to provide you with a copy of the State Contract or the provisions applicable to you for which you must comply.
Universal Issues

• Binding arbitration
  – Review to ensure you’re comfortable with
  – Ask for venue in Iowa
Universal Issues

• Federal contractor status
  – Being a participating provider alone should not make you a federal contractor subject to certain additional requirements, such as affirmative action
  – Be sure any language certifying you’ll comply with federal contractor requirements is premised with “only to the extent applicable” or ask that this language be removed
Additional Issues by Payer

• Amerihealth
  – Its excluded provider provision requires the provider to run excluded provider checks on employees/subcontractors monthly
Additional Issues by Payer

• Amerigroup
  – Provision at the end of its indemnification clause that states if a claim is brought by a governmental entity against the Plan and Plan seeks indemnification from Provider, Provider cannot have any direct communication with the governmental entity without the Plan’s request
    • This seems overreaching and we’d recommend it be removed
Additional Issues by Payer

• Amerigroup
  – Requires the Provider to forward to Plan for prior approval all flyers, brochures, etc concerning its payer affiliations that it intends to distribute to Medicaid population
  • This also seems overreaching and should be deleted
Additional Issues by Payer

• **UHC**
  - Requires UHC approval prior to a change in ownership
    - This needs to be removed; can require UHC authorization prior to assigning agreement
  - CHIP Appendix requires you to indemnify UHC and the State in certain circumstances.
    - We don’t see this requirement in the RFP or other regulations
    - Recommend it be removed
  - CHIP Appendix requires to you list the State of Iowa and UHC as an additional insured or loss payee on insurance.
    - Not required/should be removed
Additional Issues by Payer

• WellCare
  – Has a provision included in the fraud/abuse language which has the provider waiving the applicable statute of limitations for fraud claims
    • This should be removed
QUESTIONS?

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