Department of Health and Human Services
Health Care Financing Administration
Operational Policy Letter #77 REVISED
OPL2000.077

Note on OPL #77 — Revision posted July 14, 2000.

The June 8 version of the OPL posted on the HCFA web site has been changed effective July 14, 2000. The changes are as follows:

- On page 3 of OPL #77, HCFA lists five requirements that must be included in M+C organizations' contracts with providers. The first element has been changed to read, "Contracting providers agree to safeguard beneficiary privacy and confidentiality and to assure accuracy of beneficiary health records." Earlier language that read, "...and neither to deny, limit, nor condition any coverage of benefits." has been removed from this provision.

- On page 1 of the OPL #77 Excel chart, "audit and record maintenance provisions" must be included in provider contracts. On page 5 of the chart, "reporting requirements must be included in provider contracts."

Date:	**June 8, 2000**	
To:	**Current M+C Organizations**	**X**
	CHPP Demonstrations:	
	-- Evercare	**____**
	-- DoD (TriCare)	**X**
	-- SHMO I & II	**X**
	-- PACE	**____**
	-- Medicare Choices	**X**
	OFM Demonstrations:	**____**
	-- MSHO	**X**
	-- W.P.S.	**X**
	HCPPs	**____**

Federally Qualified HMOs ____

Section 1876 Cost Plans ____

Effective Date: **Upon Issuance**

QUESTION:
What are the Health Care Financing Administration's (HCFA) revised guidelines for M+C applicants and Medicare+Choice organizations (M+CO) regarding provider and administrative service organization written arrangements for the provision of health care services and administrative services?

ANSWER:
The following information provides M+C applicants and organizations with guidelines so that these organizations can comply with the Medicare+Choice contracting requirements for providers and administrative service entities.

Background

Operational Policy Letter #77 (OPL98.077; December 8, 1998) provided guidelines for M+COs and M+C applicant organizations regarding provider and administrative service organization written arrangements for the provision of health care services and administrative services. OPL98.077 identified the discrete requirements imposed on M+COs by statute and regulations, and specified whether each requirement should be included in contracts with providers of services (whether "first tier" or "downstream" entities), or in the policies, procedures, and manuals of the organization. The OPL identified 24 general requirements, dealing with records and facilities, benefits and coverage, marketing, beneficiary protection, payment and federal funds, reporting and disclosure, QA/QI, and compliance for specific inclusion in contracts with providers.

Section 502(h)(2)(i) of the Medicare regulations requires that "notwithstanding any relationship(s) that the M+C organization may have with related entities, contractors, or subcontractors, the M+C organization maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with HCFA."

Issues

M+COs, representatives of managed care organizations, providers, and other regulators have expressed several concerns about OPL98.077. One concern is simply that our requirements are too complicated, which often causes confusion within the managed care industry. This confusion in turn may often lead to an unintentional lack of compliance by the managed care industry.

Another concern has been that the M+C provider contract requirements are too burdensome, and that mandating the inclusion of so many requirements expressly in

contractual language leads to an onerous process of reopening settled agreements among parties to the contract.

It also has been suggested that it is unnecessary to designate so many requirements for specific inclusion in M+CO contracts with providers, either because many requirements are separately imposed by state laws and regulations, or because they can be imposed by general contractual provisions that bind the provider to the organization's policies and procedures or to Medicare and other Federal laws, requirements, and policies. We have identified several OPL98.077 contract requirements that are already mandated under other M+C provisions, such as QISMC.

PROVIDER CONTRACTING REQUIREMENTS

In response to these questions and as a result of HCFA consultation with several provider contracting experts, we have revised our M+C provider contracting requirements in this OPL. These new requirements are effective immediately.

Although the M+CO contract with HCFA specifies that M+COs mus satisfy all HCFA requirements, we have identified 5 requirements that must be included in M+CO contracts with providers. Several of these items are already "first tier" and "downstream" requirements in OPL98.077 as they are identified below. Others are combinations of current requirements in OPL98.077. In identifying these requirements we considered their intrinsic importance, as well as whether they were also mandated elsewhere in other M+C requirements. In one case (number 2), the statute specifically requires inclusion of the requirement in M+CO contracts with providers. The M+C contracting requirements are:

1. Contracting providers agree to safeguard beneficiary privacy and confidentiality and assure accuracy of beneficiary health records.
2. Contracts must specify a M+CO prompt payment requirement.
3. Contracts must hold Medicare members harmless for payment of fees that are the legal obligation of the M+CO. Such provision will apply but not be limited to insolvency of the M+CO, contract breach, and provider billing, whereby no legal cause of action will be asserted against a beneficiary.
4. Contracts must contain accountability provisions specifying:
    - that first tier and downstream entities must comply with Medicare laws, regulations, and HCFA instructions (422.502(i)(4)(v)), and agree to audits and inspection by HCFA and/or its designees and to cooperate, assist, and provide information as requested, and mainatin records a minimum of 6 years;
    - that the M+CO oversees and is accountable to HCFA for any functions and responsibilities described in the M+C regulations (422.502(i)(3)(ii)(A)); and
    - that M+COs that choose to delegate functions must adhere to the delegation requirements in the M+C regulations (422.502(i)(3)(iii); 422.502(i)(4)).

5. Contracts must specify that providers agree to comply with the M+C organization's policies and procedures.

   The attached table shows in detail our revised M+C provider contracting requirements. We arrange the requirements by category, as follows:

   1. Access -- Records and Facilities;
   2. Access -- Benefits and Coverage;
   3. Marketing;
   4. Beneficiary Protections;
   5. Delegation;
   6. Payment and Federal Funds;
   7. Reporting and Disclosure;
   8. Quality Assurance/Quality Improvement (QA/QI);
   9. Compliance.

   You will note the chart specifies requirements that must be present in M+C provider contracts and items that may be placed in the M+CO's policies and procedures in lieu of contract language requirements. Where an 'x' appears in a column on the chart, that standard for demonstrating compliance must be met with respect to the requirement in question. If there is no 'x', that standard is optional.

   Once again, M+COs remain obligated to meet all of the requirements specified in the M+C regulations and otherwise articulated in its contract with HCFA, whether or not the requirements are mandated for specific inclusion in the organization's contracts with providers. While we are reducing the number of M+C provisions that must be placed in provider contracts, we recommend that M+COs consider incorporating all statutory and regulatory requirements into M+C provider contracts.

ADMINISTRATIVE CONTRACTING REQUIREMENTS

The M+C administrative contracting requirements remain unchanged from the original version in Operational Policy Letter #77. We again specify these requirements, which contracts for administrative services need to include as outlined below. These obligations apply both to first tier contracts and to downstream contracts in the manner specified for provider contracts, as described above. At the same time, the responsibility of the M+CO is to assure that its contractor and any downstream contractors have the information necessary to know how to comply with the requirements under the M+C program.

These requirements do not apply to administrative contracts that do not directly relate to the M+CO's core functions under its contract with HCFA. For example, a contract between the M+CO and a clerical support firm would not need to contain these provisions. Similarly, a contract between the M+C organization and a real

estate broker to identify rental properties for office space would not be required to address these areas. We would, however, view contracts for administration and management, marketing, utilization management, quality assurance, applications processing, enrollment and disenrollment functions, claims processing, adjudicating Medicare organization determinations, appeals and grievances, and credentialing to be administrative contracts subject to M+C requirements as articulated in the M+C regulation and this OPL.

The following provisions need to be addressed in the administrative services contracts:

- The person or entity must agree to comply with all applicable Medicare laws, regulations, and HCFA instructions.
- The person or entity must agree to comply with all state and Federal confidentiality requirements, including the requirements established by the M+CO and the M+C program.
- The person or entity must agree to grant HHS, the Comptroller General, or their designees the right to inspect any pertinent information related to the contract during the contract term, for up to six years from the final date of the contract period, and in certain instances described in the M+C regulation, periods in excess of six years, as appropriate.
- The contract must clearly state the responsibilities of the administrative services provider and its reporting arrangements.
- The contract must provide that the M+CO and any first tier and downstream entities has/have the right to revoke the contract if M+COs do not perform the services satisfactorily and if requisite reporting and disclosure requirements are not otherwise fully met in a timely manner.
- The contract must acknowledge that the responsibilities performed by an administrative services entity and/or any delegated administrative service entities are monitored by the M+CO on an ongoing basis and that the M+CO is ultimately responsible to HCFA for the performance of all services.
- If the written arrangement provides for credentialing activities by a first-tier or downstream entity, the first-tier or downstream entity must meet all applicable M+C credentialing requirements, including that the credentials of medical professionals are either reviewed by the M+CO or that the credentialing process will be reviewed, pre-approved, and audited by the M+CO on an ongoing basis.
- If the written arrangement provides for the selection of providers by a first-tier or downstream entity, written arrangements must state that the M+CO retains the right to approve, suspend, or terminate any such arrangement.
- Contracts between M+COs and first tier entities and first tier entities and downstream entities must contain provision specifying M+C delegation requirements specified at section 422.502(i)(3)(iii) and section 422.502(i)(4).

Of course, to the extent administrative service entities provide health care services in addition to administrative services, the requirements of the OPL germane to health care services would similarly apply.

Attachment *— Provider Subcontracting Requirements (available in Microsoft Excel and PDF)*

Contact: HCFA Regional Office Managed Care Staff

This OPL was prepared by the Center for Health Plans and Providers.