

Value-Based Contract Terms Checklist

Definitions

- ❑ All key terms, particularly those that may be ambiguous or subject to more than one interpretation, should be included and defined precisely in the Definitions section.
- ❑ Terms as defined in the Definitions section should be used consistently elsewhere in the contract.

Parties

- ❑ The contract should specify all parties to the contract, and exclude those who are not parties to the contract from any rights or benefits under the contract.
- ❑ The contract should identify the community-based organization (“CBO”) and the managed care organization (“MCO”)/value-based contracting entity (“VBCE”) as independent contractors.

Breach and Cure

- ❑ The contract should include a provision addressing breach and provide an opportunity for the breaching party to cure most breaches within a specified period of time.
- ❑ The contract should provide that a party’s waiver of a breach is a one-time occurrence and does not constitute an open-ended waiver of future breaches.

Term and Termination

- ❑ The contract should allow for immediate termination due to “emergency” and “with cause” termination by either party and with a 30-day opportunity to cure.
 - “Cause” should be clearly defined and should include the MCO/VBCE’s inability to fulfill its obligations under the contract, including financial obligations.
- ❑ Either party should be able to terminate the contract, “without cause,” on 90 days’ notice to the other party. The contract should include the CBO’s rights to notice and opportunity to be heard.
 - Preferably, for an initial contract, the term of the agreement should be limited to one year, with renewal contingent upon renegotiation and agreement on scope of services and payment terms.
- ❑ At a minimum, the contract should explicitly authorize renegotiation of payment terms before the anniversary date of the contract signing, with a deadline for decision and retroactive upward payment adjustments if the deadline is missed.

Post-Termination Responsibilities

- ❑ The contract should clearly define and limit the CBO's post-termination service obligations.
- ❑ The contract should provide for fee-for-service payment to the CBO while the CBO satisfies continuing care obligations post-termination.

Assignment

- ❑ The contract should expressly prohibit the assignment of either party's rights or obligations under the contract without the written consent of the other party.

Governing Law

- ❑ The contract should state which state's law governs the contract.
- ❑ The contract should specify which state's courts would be the venue for litigation between the parties -- preferably the state where the CBO is located. The venue for dispute resolution should be convenient for the CBO.

"Entire Agreement"

- ❑ All documents referenced in the contract, including lists, tables, charts and any other incorporated documents, should accompany the contract.
- ❑ The CBO should have a right to inspect all documents incorporated into the contract by reference and to thoroughly review all documents before the contract is executed.
- ❑ The contract should allow either party to terminate the contract relatively quickly if a section of the contract is found to be illegal, and severance of the illegal provision would adversely affect the terminating party.

Amendment

- ❑ The contract should provide that neither the contract itself, nor documents incorporated by reference in the contract, can be amended or modified without the CBO's prior approval.
 - If the contract does not contain such a prior approval provision, it should provide an opportunity for the CBO to terminate the contract prior to the effective date of the amendment if the CBO objects to the amendment.
- ❑ The contract should be explicit as to how proposed amendments will be communicated to the CBO

Does the contract include terms addressing the following topics?

- ❑ Clear timelines for payment of claims and penalties for late payment.
- ❑ A reasonable timeframe (not less than 60 days) for the CBO to submit claims/invoices to the MCO or VBCE.
- ❑ A deadline on the MCO/VBCE's payment of claims/invoices (not greater than 45 days after submission) and interest for late payment of claims/invoice. In the capitation setting, payment by the MCO/VBCE should be required early in the month that that payment covers.
- ❑ A dispute resolution process that includes graduated steps (including informal negotiation, mediation, and arbitration).

Does the contract avoid terms that would permit:

- ❑ Unilateral recoupment of overpayments by the MCO/VBCE, nor allow the MCO/VBCE to offset any overpayments against future claim payments.
- ❑ The MCO/VBCE to unilaterally change the terms of payment
- ❑ Require the CBO to be exclusive to the MCO/VBCE avoid exclusivity provisions. The CBO should seek a contract provision stating that the CBO is not precluded from contracting with other MCOs/VBCEs.