VBP CONTRACTING WEBINAR SERIES

Webinar 3
Key Terms in Participation Agreements

Adam J. Falcone, Esq.

June 27, 2018

Care Transitions Network
for People with Serious Mental Illness

Presenter: Adam J. Falcone, J.D., M.P.H.

- Partner in FTLF's national health law practice.
- Counsels health centers, behavioral health agencies, and provider networks on a wide range of health law issues, including fraud and abuse, reimbursement and payment, and antitrust and competition matters.
- Served as Policy Counsel for the Alliance of Community Health Plans, representing non-profit and provider-sponsored managed care organizations before Congress and the Executive Branch.
- Began his legal career in Washington, D.C. as a trial attorney in the Antitrust Division's Health Care Task Force at the U.S. Department of Justice.
- Received a B.A from Brandeis University, an M.P.H. from Boston University School of Public Health, and a J.D., cum laude, from Boston University School of Law.
- Contact information: afalcone@ftlf.com or 202.466.8960

Care Transitions Network
for People with Serious Mental Illness

Disclaimer: Educational Purposes Only

This session is provided for general informational and educational purposes only and does not constitute the rendering of legal advice or opinions.

- The information is not intended to create, and the receipt does not constitute, an attorney-client relationship between presenter and participant.
- For legal advice, you should consult a qualified attorney.

Care Transitions Network
for People with Serious Mental Illness

Agenda

- Rules of the Road
- Contract Terms and Protections
- Questions, Comments & More!

Care Transitions Network
for People with Serious Mental Illness

Rules of the Road

State Insurance Laws and Regulations (e.g., prompt payment rules, network adequacy)

Medicaid Model Contract

- Revisions to the Medicaid Managed Care Model Contract related to the behavioral health transition are now reflected in the version currently posted on the DOH website. See https://www.omh.ny.gov/omhweb/bho/policy-guidance.html
- Changes to the Medicaid Model Contract per OMH/OASAS Guidance:
  - http://www.nyaprs.org/e-news-bulletins/2015/documents/OMHMMCGuidance9-10-15.pdf
  - https://www.oasas.ny.gov/ManCare/documents/OASASMMCGuidance.pdf

Care Transitions Network
for People with Serious Mental Illness

Medicaid Model Contract

Providers should incorporate terms of the Medicaid Model Contract in the Participation Agreement and ensure that such provisions trump anything to the contrary.

Sample Language

- *The New York State Medicaid Managed Care Model Contract and corresponding guidelines are expressly incorporated into this Agreement and are binding upon the parties to this Agreement. In the event of any inconsistent or contrary language between this Agreement, the parties agree that the provisions of the Medicaid Managed Care Model Contract and guidelines shall prevail with respect to Medicaid Managed Care enrollees, except to the extent applicable law requires otherwise and/or to the extent a provision of this Agreement exceeds the minimum requirements of the Medicaid Managed Care Model Contract.*

Care Transitions Network
for People with Serious Mental Illness

Network Adequacy Standards

State-specific network adequacy standards typically establish certain time and distance standards for the inclusion of behavioral health contractors in each MCO's provider networks.

- Within those standards, MCOs are generally free to selectively contract with providers, establishing a network of providers that each MCO believes will favorably impact its bottom line.
- Upon demonstrating capacity to serve their expected enrollee population by meeting those network adequacy standards, an MCO may refuse thereafter to contract with additional behavioral health providers.

Care Transitions Network
for People with Serious Mental Illness

Right to Network Participation

NYS MEDICAID MODEL CONTRACT

Provider/Service Type	Contracting Requirement	Citation
OMH or OASAS licensed or certified providers	• Upon Behavioral Health Benefit Inclusion in a geographic service area, Plans must establish contracts with any providers operated, licensed or certified by OMH or OASAS with five or more active Plan members in treatment, as determined by OMH and OASAS.	§ 21.19(a)(ii)

Care Transitions Network

for People with Serious Mental Illness

Right to Network Participation

NYS MEDICAID MODEL CONTRACT

Mental Health Services	Contracting Requirement	Citation
Outpatient clinics operated under 14 NYCRR Part 599, (other than State-operated clinics, or clinics authorized to deliver integrated outpatient services under 14 NYCRR Part 598)	• 50% of all such clinics, or a minimum of two clinics per county, whichever is greater, provided that such clinics are operated by no fewer than two distinct provider agencies, if available. • Must include clinic providers that offer urgent and non-urgent same day, evening and weekend services	§ 21.19(b)(i)(A)
PROS programs operated under 14 NYCRR Part 512, Continuing Day Treatment (CDT) programs operated under 14 NYCRR Part 587, and Intensive Psychiatric Rehabilitation Treatment (IPRT) programs operated under 14 NYCRR Part 587	• For urban counties, the network must include 50% of all such providers or two providers per county, whichever is greater; and • For rural counties, the network must include 50% of all such providers or two providers per region, whichever is greater.	§ 21.19(b)(i)(B)
ACT programs operated under 14 NYCRR Part 508 and Partial Hospitalization (PH) programs operated under 14 NYCRR Part 587	• For urban counties, the network must include two providers per county; and, • For rural counties, the network must include two providers per region.	§ 21.19(b)(i)(C), (D)
Inpatient Psychiatric Hospitalization Services operated under 14 NYCRR Parts 580 or 582 and Comprehensive Psychiatric Emergency Programs operated under 14 NYCRR Part 590	• For urban counties, the network must include two providers per county; and, • For rural counties, the network must include two providers per region.	§ 21.19(b)(i)(E), (F)

Care Transitions Network

for People with Serious Mental Illness

Right to Network Participation

NYS MEDICAID MODEL CONTRACT

Substance Use Disorder Services	Contracting Requirement	Citation
Chemical Dependence Outpatient clinics operated under 14 NYCRR Part 822 or clinics authorized to deliver integrated outpatient services under 14 NYCRR Part 825	• 50% of all such clinics, or a minimum of two clinics per county, whichever is greater, provided that such clinics are operated by no fewer than two distinct provider agencies, if available. • Must include clinic providers that offer urgent and non-urgent same day, evening and weekend services	§ 21.19(b)(ii)(A)
Chemical Dependence Outpatient Rehabilitation Clinics operated under 14 NYCRR Part 822	• The network must include 50% of all such clinics or two clinics per county, whichever is greater	§ 21.19(b)(ii)(B)
Opioid Treatment Programs operated under 14 NYCRR Part 822 or authorized to deliver integrated outpatient services under 14 NYCRR Part 825	• For urban counties: the network must include all programs in the county. • For rural counties: the network must include all programs in the region.	§ 21.19(b)(iI)(C)
Buprenorphine Prescribers	• The network must include all authorized prescribers in the Contractor's service area.	§ 21.19(b)(ii)(D)
Detoxification Services provided in inpatient facilities, including medically-managed and medically-supervised detoxification services, and outpatient settings certified pursuant to 14 NYCRR Part 816, and Chemical Dependence Inpatient Rehabilitation Services operated under 14 NYCRR Part 818, and Residential Substance Use Disorder Treatment Services Operated Under 14 NYCRR Part 820	• For urban counties, the network must include two providers per county; and • For rural counties, the network must include two providers per region	§ 21.19(b)(ii)(E), (F), (G), (H)

Care Transitions Network
for People with Serious Mental Illness

Behavioral Health Clinics / PCP Assignment

NYS MEDICAID MODEL CONTRACT

Section 21	Primary Care Providers	Citation
Behavioral Health Clinics	• Plans are permitted to use Primary Care Providers employed by behavioral health clinics, including: mental health clinics operated pursuant to OMH regulations 14 NYCRR Part 598 or 599; OASAS-certified clinics, including Opioid Treatment Programs certified pursuant to OASAS regulations 14 NYCRR Parts 816.8, 822, or 825; and Diagnostic and Treatment Centers (D&TCs), authorized pursuant to NYCRR Part 404. • Enrollees choosing to receive their primary care services at a Behavioral Health Clinic must choose or be assigned a specific provider or provider team within the clinic to serve as his/her PCP. • When an Enrollee chooses or is assigned to a team, one of the practitioners must be designated as “lead” provider for that Enrollee. This "lead" PCP will be held accountable for performing all required PCP duties.	§ 21.14(e)

Care Transitions Network
for People with Serious Mental Illness

Medicaid Payment Protections

NYS MEDICAID MODEL CONTRACT

Provider/Service Type	Payment Requirement	Citation
OMH or OASAS licensed or certified providers	Must pay no less than Medicaid FFS rates for period of 24 months from the effective date of the Behavioral Health Benefit Inclusion in each geographic service area, regardless of whether services furnished in or out of network.	§ 10.21(d)
	Must guarantee payment at FFS rates for continuous ongoing episodes of care, up to 24 months, for medically necessary services provided to Plan regardless of their contract status.	§ 10.21(e)

Care Transitions Network
for People with Serious Mental Illness

Value-Based Payment Arrangements

NYS MEDICAID MODEL CONTRACT

Topic	Requirement	Citation
Value-Based Payment	Plans must receive approval from DOH, OMH, and OASAS for alternative payment arrangements affecting licensed, certified or designated Behavioral Health Providers if the methodology differs from traditional fee for service.	§ 22.5 (k)

Care Transitions Network
for People with Serious Mental Illness

“All Products” Clauses

- MCOs frequently pay providers at different rates for various lines of business (private commercial insurers, Medicare Advantage, Medicaid.)
- An “all-products” clause requires the provider to participate in all products (and rates) offered by the MCO (both currently and prospectively)
- Providers should have the ability to opt-out of any new products offered by the MCO.

Care Transitions Network
for People with Serious Mental Illness

Prohibition on All Products Clauses

NYS MEDICAID MODEL CONTRACT

Requirement	Citation
Plans are prohibited from conditioning the participation of a BH provider upon agreement to participate in a Contractor's non-Medicaid line(s) of business.	Section 22.3(b)
"Behavioral Health Provider" means a provider of mental health services licensed under Article 31 of the Mental Hygiene Law, a provider of substance use services certified under Article 32 of the Mental Hygiene Law and a New York State-designated provider of Behavioral Health Home and Community Based Services. For the purposes of this Agreement, individual practitioners are not considered Behavioral Health Providers except where specifically indicated.	Section 1

Care Transitions Network

for People with Serious Mental Illness

Timely Claiming Rules

MCOs typically require the submission of claims no more than 90 days after the date of service.

- Determine whether state law or other obligations on the MCO dictate a longer claims filing period.

Review the proposed contract for provisions concerning the consequences of **late claim submission**

- Negotiate for a provision that makes MCO denial of late claims discretionary rather than mandatory

Care Transitions Network
for People with Serious Mental Illness

Prompt Payment

Just as the MCO has an interest in timely claims submission, a provider has an interest in timely payment.

- A “clean claim” is a claim, received by a MCO for adjudication, that requires no further information, adjustment, or alteration by the provider of the services, or by a third party, in order to be processed and paid by the MCO. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity.
- Providers should seek to have prompt pay rules, including any automatic interest provisions, written into the provider agreement.
- Providers should have right to receive a written explanation for all denied claims and the information that is needed by the MCO to process the claim for payment.

Care Transitions Network
for People with Serious Mental Illness

Prompt Payment

NYS MEDICAID MODEL CONTRACT

Timely Payment	Citation
Plans shall make payments to Participating Providers and to Non- Participating Providers, as applicable, for items and services covered under this Agreement on a timely basis, consistent with the claims payment procedures described in SIL § 3224-a, which requires: • 30 day processing of clean electronic claims • Written notice of reason for denied claims • 12% interest for late payments	Section 22.6

Care Transitions Network

for People with Serious Mental Illness

Prompt Payment Protections

Practice Pointer. The contract should incorporate the prompt payment statute, not simply provide the citation, so that the legal requirements are understood by both parties.

Sample provision:

- *Health Plan shall pay Provider for Covered Services in accordance with the rates set forth in Exhibit D within thirty (30) days of receipt of a Clean Claim in accordance with New York State Insurance Law 3224-b, or such other time period required by applicable law/regulations or Government Contracts. In accordance with New York State Insurance Law 3224-a, Health Plan agrees to provide written notice of the reason for any denied claims and pay Provider interest of 12% per annum for any claims paid beyond thirty (30) days.*

Care Transitions Network
for People with Serious Mental Illness

Correction of Overpayments & Underpayments

MCO contracts typically allow the MCO to recoup **overpayments** (excess payment by the MCO to the provider)

- Determine whether there are any limits on the MCO's **timeframe** for recouping overpayments from a provider.

Contracts commonly permit the MCO to recoup an overpayment by **offset;** the MCO subtracts the overpayment from any amounts due to the provider

- Determine whether the contract requires the MCO to provide **notice** of the alleged overpayment (and afforded the provider an opportunity to **appeal** the determination) prior to offset.
- Determine whether the contract permits the provider to dispute **underpayments** within a time frame that is equal to the time frame that a MCO may recoup overpayments.

Care Transitions Network
for People with Serious Mental Illness

NYS INSURANCE LAW §3224-b(b) / ¶ C.8 of the Standard Clauses

Recoupment of Overpayments Protections

Notice Period	Explanation	Time Period
Except duplicate payments, requires 30 days' notice prior to recovery of overpayment (e.g., by offset)	• Patient name • Service date • Payment amount • Proposed adjustment • Reasonably specific explanation of proposed adjustment	Recovery may not occur after 24 months of original payment, except for (1) recoveries based on fraud, intentional misconduct or abusive billing and (2) Medicaid enrollees

Care Transitions Network
for People with Serious Mental Illness

Credentialing – Timing

Most MCO contracts provide for credentialing at the outset of the contract and at regular intervals (e.g., every three years)

- MCO credentialing of a practitioner must be effective on the date of service in order for the provider to receive payment for services to an MCO enrollee
- MCOs may provide a maximum timeframe for completion of credentialing (usually around 30 days), but only upon the MCO's receipt of a "complete application"
- **Practice Pointer:** Delay new practitioner's start date until credentialed by at least one MCO

Care Transitions Network
for People with Serious Mental Illness

Credentialing

NYS MEDICAID MODEL CONTRACT

Topic	Requirement	Citation
Credentialing of OMH and OASAS licensed or certified programs	License or certification must suffice for the Plan's credentialing process. Plans are prohibited from separately credentialing individual staff members in their capacity as employees of these programs. Plans may still collect and accept program integrity related information	§ 21.4 (a)(ii)

Care Transitions Network

for People with Serious Mental Illness

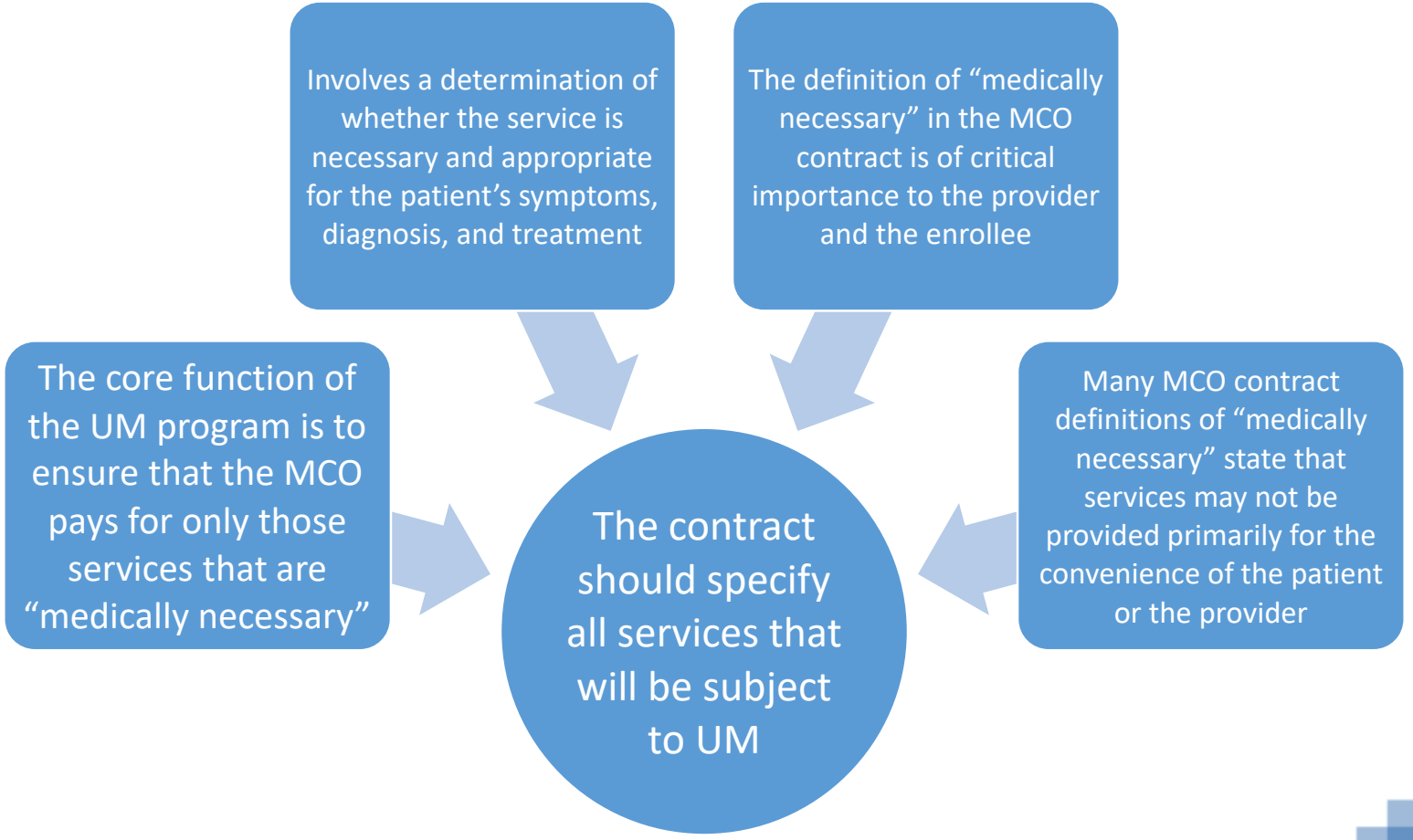
Utilization Management

UM programs are relevant to behavioral health providers because:

- MCOs often impose prior authorization or visit limits for **behavioral health services**
- MCOs often require authorization before ordering certain **drug screening tests**
- MCOs increasingly require prior authorization before a provider may **refer patients for rehabilitative services**

Care Transitions Network
for People with Serious Mental Illness

“Medical Necessity”



Care Transitions Network
for People with Serious Mental Illness

Self-Referrals

NYS MEDICAID MODEL CONTRACT

Topic	Requirement	Citation
Self-Referrals	Enrollees may obtain unlimited self-referrals for mental health and Substance Use Disorder assessments from participating providers without requiring preauthorization or referral from the enrollee's Primary Care Provider.	§ 10.15 (a)(i)

Care Transitions Network

for People with Serious Mental Illness

Prior Authorization

NYS MEDICAID MODEL CONTRACT

Requirement	Citation
Plans shall not require prior authorization for either urgent or non-urgent ambulatory services delivered by: OASAS certified Part 822 outpatient clinics (including intensive outpatient services), outpatient rehabilitation and opioid treatment programs, OASAS certified Part 816 medically supervised outpatient withdrawal and stabilization programs, OMH Part 599 licensed outpatient clinics (including community mental health services), OASAS Part 825 integrated clinics, OMH Part 598 integrated clinics and Title 10 Part 404 Diagnostic and Treatment Centers.	Appendix F ("Action Requirements"), Paragraph 3(g)

Care Transitions Network

for People with Serious Mental Illness

Utilization Review

NYS MEDICAID MODEL CONTRACT

Topic	Requirement	Citation
Mandated Use of LOCADTR	Plans must utilize the Level of Care and Drug Treatment Referral ("LOCADTR") tool for making initial and ongoing Substance Use Disorder level of care decisions in NYS.	§ 10.23(a)

Care Transitions Network
for People with Serious Mental Illness

Questions and Comments

Adam J. Falcone, Esq.

AFalcone@ftlf.com

(202) 466-8960

Feldesman Tucker Leifer Fidell LLP

1129 20th St NW, Ste. 400

Washington, DC 20036

Care Transitions Network

for People with Serious Mental Illness

Additional Webinars in this Series

All Webinars Scheduled for 1:00-2:00pm ET

Webinar 4: Forming Community Partnerships to Participate in VBP Arrangements; Wednesday, July 11

Webinar 5: Forming Community Partnerships to Participate in VBP Arrangements; Wednesday, July 18

Webinar 6: Data Sharing and Confidentiality Part 1; Wednesday, August 1

Webinar 7: Data Sharing and Confidentiality Part 2; Wednesday, August 15

Webinar 8: Employment & Professional Services Agreements; Wednesday, August 29

Webinar 9: Forming Provider Networks to Participate in VBP Arrangements; Wednesday, September 12

Webinar 10: TBD; Wednesday, September 26

To register for additional webinars, please use the links above or visit the Care Transitions Network website below for more information.

https://www.thenationalcouncil.org/care-transitions-network-people-serious-mental-illness/technical-assistance/webinars/

Care Transitions Network
for People with Serious Mental Illness