

**EXHIBIT G****PHYSICIAN INCENTIVE PLAN REGULATION GUIDANCE****A. BACKGROUND/AUTHORITY:**

This Contract requires that Contractor's must disclose information about Physician Incentive Plans (PIP) to DMAP. If Contractor utilizes compensation arrangements placing physicians or Physician Groups at Substantial Financial Risk (as defined in this Exhibit) Contractor must also assure provision of adequate PIP Stop-loss Protection and conduct beneficiary surveys.

These Contract requirements implement federal law and regulations to protect DMAP Members against improper clinical decisions made under the influence of strong financial incentives. Therefore, it is the financial arrangement under which the physician is operating that is of interest and potential concern. Consequently, Contractors must report on the "bottom tier" - that is, the arrangement under which the participating physician is operating. The reporting requirement is imposed on Contractors because that is the entity or Physician Group with which DMAP has a contractual relationship and the entity, which is ultimately responsible, under the statute, for making sure that adequate safeguards are in place.

A Physician Incentive Plan (PIP) is defined as "any compensation to pay a physician or Physician Group that may directly or indirectly have the effect of reducing or limiting services furnished to any Contractor enrollee". The compensation arrangements negotiated between Subcontractors of an Managed Care Organization (MCO) (e.g., physician-hospital organizations, IPAs) and a physician or group are of particular importance, given that the compensation arrangements with which a physician is most familiar will have the greatest potential to affect the physician's referral behavior. For this reason, all Subcontracting tiers of the Contractor's arrangements are subject to the regulation and must be disclosed to DMAP.

Note that PIP rules differentiate between Physician Groups and Intermediate Entities. Examples of Intermediate Entities include Individual Practice Associations (IPAs) that contract with one or more Physician Groups, as well as physician-hospital organizations. IPAs that contract only with individual physicians and not with Physician Groups are considered Physician Groups under this rule.

CMS' web site: [www.cms.hhs.gov/healthplans/pip/](http://www.cms.hhs.gov/healthplans/pip/) can be accessed for the most recent information on disclosure requirements.

**B. GLOSSARY OF TERMS:**

As used in this Exhibit G, these terms have the following meaning wherever the term is used, unless expressly defined otherwise in this Contract.

**Bonus** means a payment a physician or entity receives beyond any salary, fee-for-service payments, Capitation or returned withhold. Bonuses and other compensation that are not based on referral levels (such as Bonuses based solely on quality of care, patient satisfaction or physician participation on a committee) are not considered in the calculation of Substantial Financial Risk.

**Capitation** means a set dollar payment per patient per unit of time (usually per month) that is paid to cover a specified set of services and administrative costs without regard to the actual number of services provided. The services covered may include a physician's own services, Referral Services or all medical services.

**Panel Size** means the number of patients served by a physician or Physician Group. If the panel is greater than 25,000 patients, then the Physician Group is not considered to be at Substantial Financial Risk because the risk is spread over the large number of patients. PIP Stop-loss Protection and Beneficiary Surveys would not be required.

**Physician Group** means a partnership, association, corporation, Individual Practice Association (IPA), or other group that distributes income from the practice among members. An IPA is a Physician Group only if it is composed of individual physicians and has no subcontracts with other Physician Groups.

**Intermediate Entities** are entities, which contract between Contractor and one of its Subcontractors and a physician or Physician Group, other than Physician Groups themselves. An IPA is considered an Intermediate Entity if it contracts with one or more Physician Groups in addition to contracting with individual physicians.

**Physician Incentive Plan (PIP)** means any compensation arrangement at any contracting level between Contractor and a physician or Physician Group that may directly or indirectly have the effect of reducing or limiting services furnished to DMAP Members. Contractor must report on Physician Incentive Plans between the Contractor itself and individual physicians and groups and also between groups or Intermediate contracting Entities (e.g., certain IPAs, Physician-Hospital Organizations) and individual physicians and groups.

**PIP Stop-loss Protection** refers to insurance required to protect Physicians or Physician Groups to whom Substantial Financial Risk has been transferred.

**Potential Payments** means the maximum anticipated total payments (based on the most recent year's utilization and experience and any current or anticipated factors that may affect payment amounts) that could be received if use or costs of Referral Services were low enough. These payments include amounts paid for services furnished or referred by the physician/group, plus amounts paid for administrative costs. The only payments not included in Potential Payments are Bonuses or other compensation not based on referrals (e.g., bonuses based on patient satisfaction or other quality of care factors).

**Referral Services** means any specialty, inpatient, outpatient or laboratory services that are ordered or arranged, but not furnished directly. Situations may arise where services not normally considered Referral Services will need to be considered Referral Services for purposes of determining if a physician/group is at Substantial Financial Risk. For instance, Contractor may require a physician/group to authorize "retroactive" referrals for emergency care received outside the Contractor's network. In so far as the physician/group can experience an increase in Bonus (if emergency referrals are low) or a reduction in capitation/increase in withhold (if emergency referrals are high), then these Emergency Services are considered Referral Services and need to be included in the calculation of Substantial Financial Risk. Also, if a Physician Group contracts with an individual physician or another group to provide services, which the initial group cannot provide itself, any services referred to the contracted physician/group should be considered Referral Services.

**Substantial Financial Risk (SFR)** means an incentive arrangement that places the physician or Physician Group at risk for amounts beyond the risk threshold, if the risk is based on the use or costs of Referral Services. The risk threshold is 25%. Calculation of Substantial Financial Risk shall be determined pursuant to subsection D of Exhibit G.

**Withhold** means a percentage of payments or set dollar amounts that are deducted from a service fee, capitation or salary payment, and that may or may not be returned, depending on specific predetermined factors.

### C. REPORTING TO DMAP:

In order to determine compliance with 42 CFR 422.208-422.210, Contractor shall report to DMAP the following information for each medical group and physician providing health services to the DMAP Members:

- Whether any risk is transferred to the Provider
- Whether risk is transferred to the Provider for Referral Services
- What method is used to transfer risk
- What percent of the total Potential Payment to the Provider is at risk for referrals
- What is the number of patients included in the same risk arrangement if the number of patients is 25,000 or fewer, what is the type and amount of PIP Stop-loss Protection insurance
- Whether Contractor's Physician Incentive Plan places physicians or Physician Groups at "Substantial Financial Risk" as determined in paragraph D of Exhibit G.
- If SFR is established:
  - (a) the amount of PIP Stop-loss Protection required; and
  - (b) the means for complying with survey requirements

CMS PIP Disclosure Form (OMB No. 0938-0700) or the Physician Incentive Plan Disclosure Form (see Report A12, Exhibit A), shall be filed with DMAP according to the provisions of Section U(5). The CMS PIP Disclosure Form (OMB No. 0938-0700) and instructions and the Physician Incentive Plan Worksheet for Providers can be obtained by accessing CMS' web site: [www.cms.hhs.gov/healthplans/pip/](http://www.cms.hhs.gov/healthplans/pip/).

### D. CALCULATION AND DETERMINATION:

Contractor shall determine the amount of referral risk by using the following formula:

Amount at risk for Referral Services  
 Referral Risk = Maximum Potential Payments

The amount at risk for Referral Services is the difference between the maximum potential referral payments and the minimum potential referral payments. Bonuses unrelated to utilization (e.g., quality bonuses such as those related to member satisfaction or open physician panels) should not be counted towards referral payments. Maximum Potential Payments is defined as the maximum anticipated total payments that the physician/group could receive. If there is no specific dollar or percentage amount noted in the incentive arrangement, then the PIP should be considered as potentially putting 100% of the Potential Payments at risk for Referral Services.

The SFR threshold is set at 25% of "Potential Payments" for Covered Services, regardless of the frequency of assessment (i.e. collection) or distribution of payments. SFR is present when the 25% threshold is exceeded. However, if the pool of patients that are included in the risk arrangement exceeds 25,000, the arrangement is not considered to be at SFR because the risk is spread over so many lives. See pooling rules below.

The following incentive arrangements should be considered as SFR:

- (a) Withholds greater than 25 percent of Potential Payments.
- (b) Withholds less than 25 percent of Potential Payments if the physician or Physician Group is potentially liable for amounts exceeding 25 percent of Potential Payments.
- (c) Bonuses that are greater than 33 percent of Potential Payments minus the Bonus.
- (d) Withholds plus Bonuses if the Withholds plus Bonuses equal more than 25 percent of Potential Payments. The threshold Bonus percentage for a particular Withhold percentage may be calculated using the formula:  $\text{Withhold \%} = -0.75 (\text{Bonus \%}) + 25\%$ .
- (e) Capitation, arrangements, if the difference between the maximum Potential Payments and the minimum Potential Payments is more than 25 percent of the maximum Potential Payments; or the maximum and minimum Potential Payments are not clearly explained in the physician's or Physician Group's contract.
- (f) Any other incentive arrangements that have the potential to hold a physician or Physician Group liable for more than 25 percent of Potential Payments.

**E.** If Contractor’s Physician Incentive Plan places physicians or Physician Groups at SFR, Contractors shall:

- Establish and maintain PIP Stop-loss Protection, as required in E (1), and
- Conduct survey as required in E (2)

1. PIP Stop Loss Protection

Stop-loss Protection must be in place to protect physicians and/or Physician Groups to whom SFR has been transferred. Either aggregate or per patient stop-loss may be acquired. Aggregate insurance is excess loss coverage that accumulates based on total costs of the entire population for which they are at risk and which provides reimbursement after the expected total cost exceeds a pre-determined level. Individual insurance is where a specific Provider excess loss accumulates based on per member per year claims.

The rule specifies that if aggregate stop-loss is provided, it must cover 90% of the cost of Referral Services that exceed 25% of Potential Payments. Physicians and groups can be liable for only 10%. If per patient PIP Stop-loss Protection is acquired, it must be determined based on the physician or Physician Group’s patient Panel Size (calculated according to subsection (2) below) and cover 90% of the referral costs which exceed the following per patient limits:

Panel Size	Combined Institutional & Professional Deductible	Institutional Deductible	Professional Deductible
1-1000	\$6,000*	\$10,000*	\$3,000*
1,001 - 5000	\$30,000	\$40,000	\$10,000

5,001 - 8,000	\$40,000	\$60,000	\$15,000
8,001 - 10,000	\$75,000	\$100,000	\$20,000
10,001 - 25,000	\$150,000	\$200,000	\$25,000
> 25,000	none	none	none

\*The asterisks in this table indicate that, in these situations, PIP Stop-loss insurance would be impractical. Not only would the premiums be prohibitively expensive, but the protections for patients would likely not be adequate for panels of fewer than 500 patients. Contractors and Physician Groups clearly should not be putting physicians at financial risk for Panel Sizes this small. It is our understanding that doing so is not common. For completeness, however, we do show what the limits would be in these circumstances.

The institutional and professional stop-loss limits above represent the actuarial equivalents of the combined institutional and professional deductible. The Physician Group or Contractor may choose to purchase whatever type is best suited to cover the referral risk in the incentive arrangement.

2. Pooling Criteria

To determine the Patient Panel Size in the above chart, Contractor may pool according to the specific criteria below. If Contractor meets all five criteria required for the pooling of risk, Contractor is allowed to pool that risk in order to determine the amount of stop-loss required by the regulation:

- (i) Pooling of patients is otherwise consistent with the relevant contracts governing the compensation arrangements for the physician or group;
- (ii) The physician or group is at risk for Referral Services with respect to each of the categories of patients being pooled;
- (iii) The terms of the compensation arrangements permit the physician or group to spread the risk across the categories of patients being pooled (i.e., payments must be held in a common risk pool);
- (iv) The distribution of payments to physicians from the risk pool is not calculated separately by patient category (either by Contractor or by Medicaid, Medicare, or commercial); and
- (v) The terms of the risk borne by the physician or group are comparable for all categories of patients being pooled.

3. Contractor shall establish a procedure under which their Subcontractors are required to submit stop-loss documentation. Contractors shall collect Stop-loss information from each Subcontractor and shall retain this information for a recommended three (3) years.

**F. SURVEYS:**

Contractor shall conduct a customer survey of both enrollees and disenrollees if any physician or Physician Groups in the Contractor’s network are placed at Substantial Financial Risk for Referral Services, as defined by the Physician Incentive Regulations. If a survey is required it must be conducted in accordance with Section XX, Paragraph H of this Exhibit G. The most current guidance on surveys

required by the Physician Incentive Regulation can be found on the CMS web site: [www.cms.hhs.gov/healthplans/pip/](http://www.cms.hhs.gov/healthplans/pip/).

**G. DISCLOSURE TO DMAP Members:**

At DMAP Member's request, Contractor must provide information indicating whether it or any of its contractors or Subcontractors use a PIP that may affect the use of Referral Services, the type of incentive arrangement(s) used, and whether PIP Stop-loss Protection is provided. If Contractor is required to conduct a survey, it must also provide DMAP Members with a summary of survey results. (See Guidance on Disclosure of Physician Incentive Regulation Information to Beneficiaries at CMS' web site: [www.cms.hhs.gov/healthplans/pip/beneinfo.asp](http://www.cms.hhs.gov/healthplans/pip/beneinfo.asp)).

**H. MONITORING:**

1. Contractor shall file the CMS PIP Disclosure Form (OMB No. 0938-0700) or the Physician Incentive Disclosure Form (see Exhibit A, Report A12), with DMAP according to the provisions of Section U(5). The CMS PIP Disclosure Form (OMB No. 0938-0700) can be obtained by accessing the CMS web site: [www.cms.hhs.gov/healthplans/pip/disclose.asp](http://www.cms.hhs.gov/healthplans/pip/disclose.asp).
2. CMS PIP Disclosure Form (OMB No. 0938-0700) and the Physician Incentive Disclosure Form (see Exhibit A, Report A12), is subject to review by DMAP and subject to correction/clarification.