

SUMMARY OF CCO CONTRACT REVISIONS

Date: July 11, 2019

To: RFA Awardees

From: OHA

Introduction

This document summarizes the revisions made to the CCO Contract template posted on January 25, 2019 (“January Contract”) which are incorporated into the CCO Contract July 5, 2019 template (“July Contract”) provided to CCO awardees simultaneously with this summary. For exact details of revisions made, please see the July Contract in compare form, which shows all the changes made to the January Contract.

This summary is organized into two different parts. The first part identifies substantive changes to obligations under the Contract. The second part identifies technical changes such as revisions for purposes of clarity and consistency such as syntax, reorganization of sequence of sections, capitalizing defined terms, deleting repetitive sections, correcting citation format, etc. If an Exhibit is not specifically called out in either Part of this summary, then there were no substantive or significant changes made nor any technical changes other than the generic changes noted under “Entire Contract.”

Concurrently with the updating of the CCO 2.0 Contract, OHA has undertaken efforts to revise OAR Chapter 410, Division 141, which will result in a restructuring and renumbering of those rules. The July Contract reflects the revisions to Division 141 made to date. The revisions to Division 141 will be exposed to awardees soon. The revisions to OAR Chapter 410, Division 141 will thereafter be sent to the Rules Advisory Committees (“RACs”) and then subject to a formal comment period prior to finalizing. Any changes made to OAR Chapter 410, Division 141 will be also be made, if applicable, to the Contract at a later stage.

PART ONE: SUBSTANTIVE CHANGES

1. Entire Contract.

- Provisions that were repeated throughout the entire Contract are now confined to one or two provisions in the Contract as an over-arching obligation, e.g.:
 - Right of OHA to pursue remedies, including Sanctions, for a breach of Contract now resides in Exhibit D, Section 9.
 - Obligation of Contractor to maintain records and allow governmental representatives to inspect records is now confined to Exhibit D, Section 14.
 - Requirements applicable to Subcontractors now reside in Ex. B-Part 4.
- All Sections of the Contract that require deliverables to be provided to OHA now specify:
 - Due dates
 - Means of submission (e.g. via Administrative Notice)
 - Whether subject to review and approval and whether OHA has the right to require revisions
 - An Appendix has been created that lists all deliverables, due dates, and email address for delivery. This Appendix will be attached to the Contract.

- There are multiple locations where additional details related to the obligations CCOs have to Full Benefit Dual Eligible Members (Medicaid/Medicare), including the reporting of any affiliation a CCO may have to a Medicare Advantage Plan or Dual Special Needs Medicare Plan (or both)

2. **General Terms & Ex. A, Definitions**

- **“Contract Effective Date”** is the date the Contract is effective and is now October 1, 2019 instead of January 1, 2020. This new Contract Effective Date is because CCOs have obligations to fulfill prior to January 1, 2020 as to onboarding of Members. In addition, starting October 1, 2019, OHA has the right to review and approve materials provided to Members. *(See also, Ex. B, Part 3)*
- **“Coverage Effective Date”** is January 1, 2020 and is the date on which Members’ covered services from CCOs commence.
- **“Recoup”** and **“Recoupment”** has been revised to indicate that OHA has the right to withhold funds from amounts owing to Contractor, Providers, and other third parties as opposed to just Providers.
- **“Term”** of Contract is explicitly for a period of five calendar years, commencing on January 1, 2020 and expiring on December 31, 2025.
 - Each calendar year of the Term is a “Contract Year.”
 - Identifies standards CCO must meet in order to be permitted to continue Term of Contract upon expiration of each Contract Year.
 - Notice requirement if CCO is not going to enter into new CCO Contract at end of a Contract Year amended to align w/ revised OAR 410-141-3010 and OAR 410-141-3041
- **“Social Determinants of Health and Health Equity”** is now **“Social Determinants of Health and Equity”**
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3. **Exhibit B, Part 2 – Covered and Non-Covered Services**

- Section 5 has additional details regarding reporting requirements that need to be submitted to OHA regarding performance of NEMT Services.
- Section 7:
 - States that CCOs may substitute Pharmacy Benefit Management services by instead contracting with the Oregon Prescription Program.
 - Adds additional details regarding requirements for Pharmacy Benefit Management services.

4. **Exhibit B, Part 3 - Patient Rights and Responsibilities, Engagement and Choice**

- *Section 4* includes additional details regarding the requirements of materials provided to Members including making materials available in hard copy, electronic copy, and if posted on Contractor’s website, as well as providing materials in languages other than English and to those with special needs.
- *Section 5* includes additional details regarding the requirements of CCO’s Member Handbooks including timelines for providing the Member Handbook to Members, delivery in paper hardcopy or electronically, and developing and documenting Contractor’s policy for providing Member Handbooks in languages other than English.
- *Section 14* outlines CCO’s obligations with respect to preparing materials and processes necessary for onboarding Members, which are subject to review and approval by OHA prior to December 1, 2019.

5. Exhibit B, Part 4 – Providers and Delivery System

- *Section 2* includes additional details regarding requirements for access to care in accordance with OAR 410-141-3220
- *Section 4* includes additional details regarding the requirements and reporting of Contractor's efforts to build a workforce/Provider Network that reflects the demographics of its Service Area.
- *Section 12* includes all Subcontractor requirements – which were previously scattered throughout the Contract -- and clarifies:
 - To the extent a CCO Subcontracts any services or obligations to a Subcontractor, Subcontractor must perform the services and meet the obligations and terms and conditions as if the Subcontractor is the CCO. This includes all reporting, monitoring, data collection and data reporting, document maintenance and retention, and permitting OHA and CMS and their designees to have access to facilities, systems, documents, information, etc.
 - If a Subcontractor breaches any of the terms and conditions of this Contract, such breach will be deemed a breach of Contractor.
 - Fraud, Waste, and Abuse reporting timelines of the Subcontractor are shorter than those of the CCO since the Subcontractor may have to report the Fraud, Waste, and Abuse to the CCO and the CCO must in turn report that information to OHA or DOJ in the time frames required under the Contract
 - If Contractor is not eligible to be paid for services by OHA, then neither is a Subcontractor eligible for payment.

6. Exhibit B, Part 9 – Program Integrity

- Liquidated Damages have been deleted (Section 5 of the January Contract). However, events that were subject to liquidated damages in the January Contract are now subject to civil money penalties (*See Section 7 of the July Contract*).
- Fraud, Waste, and Abuse provisions have been edited to clarify:
 - Contractor's obligations to create, and content of a FWA Prevention Handbook (includes policies and procedures) and to whom that information has to be provided (*See Section 11*)
 - Contractor's obligation to draft and then update an annual FWA Prevention Plan and to actively engage in activities to prevent FWA
 - Contractor's obligations to provide and require attendance at FWA training and provide annual reporting of such trainings.
 - Other reporting obligations with respect to:
 - Auditing of Providers
 - Referral and investigation report
 - FWA reporting must be made to both MFCU (DOJ) and PIAU (OHA)
 - An annual Assessment report detailing success of the annual FWA plan
- Details protections afforded to whistleblowers
- Overpayment provisions clarify obligations with respect to self-reporting and reporting if due to suspicion of Fraud, Waste, and Abuse.

7. Exhibit C - Consideration

- *Section 1* specifies that when OHA makes Qualified Directed Payments to CCOs, such amounts include the QDP amounts required to be paid to hospitals plus funds (to be retained by CCOs) that are to be used to cover the costs of administering managed care taxes.
- Added procedure for Qualified Directed Payments

8. Exhibit D – Standard Terms and Conditions

- *Section 5.* Now details the process for correcting deliverables not approved by OHA and clarifying that failure to correct constitutes a breach of the Contract. Also includes a process for appealing decision of disapproval of a deliverable.
- *Section 8.* Details events that are subject to indemnification by CCOs of OHA follows:
 - Unauthorized disclosure of confidential information of Members
 - Breach of HIPAA obligations
 - Impermissible denial of services
 - Failure to comply with reporting obligations under the Contract
 - Failure to enforce any provision of a Subcontractor
 - Subcontracting with a third-party when such subcontracting is prohibited under the terms and conditions of the Contract
- *Section 8. Para. d* clarifies that OHA will have no liability for:
 - The debts or liabilities of any CCO or their Subcontractors
 - Covered Services provided by Contractor
- *Section 10.* Clarifies obligations relating to Transitioning upon notice of termination, Non-Renewal, and expiration. Termination is not immediate. Termination will occur only after the Transition Plan has been completed (see Sec. 9, Para. e., Sub.Para. (10))
- *Section 12.* Carves out exceptions to liability limitations as follows:
 - Damages imposed as a result of claims under the Oregon False Claims Act
 - Damages and events related to claims subject to indemnification
 - Unauthorized disclosures of confidential records including those subjects to HIPAA protections
 - OHA’s expenses related to termination
- *Section 14* Added requirements for redacting trade secrets and protected information, in order to implement SB 1041 transparency requirements. This section also addresses definition of “Trade Secret” under ORS 192.345
- *Section 25.* Expanded survival provisions to include Ex. A, Ex. B, Part 10, Sec. 3 (included previously so just moved to Ex. D), Ex. C (but Ex. C already subject to survival so just moved to Ex. D), Ex. D, provisions of Ex. E, provisions related to HIPAA/HITECH compliance, and Ex. H, Sec. 9.
- *Section 26* details how communications, deliverables, and other notifications are required to be made

9. Exhibit I – Grievance and Appeal System

- Additional details regarding the requirements of and exceptions to Notice of Adverse Benefit Determinations (*See Section 3*)
- New, more detailed provisions regarding the requirements for submitted the Grievance & Appeal System policies and procedures -aka Grievance and Appeal Handbook to OHA for review and approval (*See Section 10*)

10. Exhibit K – Social Determinants of Health and Equity

- Exhibit N (SDOH-HE) has been renamed Exhibit K:
- Community Advisory Council (“CAC”) provisions clarify:
 - Requirements & duties and obligations of CAC selection committee
 - Requirements and duties of CAC members, meeting requirements, contents and posting requirements of meeting reports
 - Duty of CCOs to publish a demographic report of CAC membership

- Requirements of Community Health Assessment (“CHA”) and Community Health Improvement Plan (“CHP”) have been bifurcated. CHA is now in *Section 6*. CHP now in *Section 7*.
- CHA provisions clarify obligations of CCO in conducting, and requirements to be included in, the Assessment:
 - Must create a shared CHA with those parties sharing CCO Service Area & identifies who those parties must include
 - Regardless of whether shared CHA, Tribes and Indian Health Workers must be involved
 - CHA must serve as basis of Community Health Improvement Plan
 - Identifies resources to guide undertaking and drafting of CHA & specific elements of CHA
 - Deadline for completion and requirement of OHA to review and approve
 - Requirement to make CHA widely available to public
- CHP provisions clarify obligations of CCO in conducting, and requirements to be included in, the CHP:
 - Must create a shared CHP with those parties who assisted in creation of shared CHA
 - Regardless of who collaborated in CHA, CHP must include participation of critical populations and others including mental health providers and entities representing and serving children and adolescents
 - CHP must be reviewed and adopted by CAC
 - Deadline for completion and requirement of OHA to review
 - Must submit an annual CHP progress report
- Health Equity provisions include:
 - Role and responsibilities of Health Equity “Administrator”
 - Contents of Health Equity Plan identified and subject to review and approval by OHA
- Traditional Health Workers (“THW”) provisions include
 - Role & responsibilities of THW Coordinator clarified
 - Reporting requirements of integration into plan of services and utilization by CCO and Members
- Former Section 3, Para. g of Exhibit N, has been deleted. Instead, there are two different SDOH-E spending programs. (*See Section 8*)
 - First plan is called the “BUILD Fund” (Boosting Up Investments in Long Term Development). This is a two-year program that requires certain sums to be spent on SDOH-E issues within a certain period of time, including one or more identified in a CCO’s CHP and the Statewide SDOH priority of housing and housing related services. The amounts required to be spent will be determined by OHA based on the Medicaid Growth Cap and availability of funds in OHA’s budget.
 - The Second plan is called the “SHARE Initiative (Supporting Health for All Through REinvestment). This is an annual program throughout the Term of the Contract. This program also requires certain amounts to be spent on issues relating to SDOH and health disparities and aligned with the CCOs’ CHPs. This program requires CCOs to work with community partners for delivering services that will be provided with the SHARE funds.

11. Exhibit L - Solvency Plan, Financial Reporting and Sustainable Rate of Growth

- Initial changes to conform to SB 1041, e, g, reporting deadlines; amendments resulting in recovery. Further changes resulting from SB 1041 may be made as part of the 2019 legislative changes to the contract, expected in August.

- Sanctions for not meeting sustainable rate of growth will be no earlier than 2021.

12. Exhibit M – Behavioral Health

- Two provisions concerning law enforcement and jails were revised; they describe key outcomes expected and how Contractors will work with Providers serving incarcerated Members.
- Changed “emergency response system” to “crisis management system” – which better reflects the attributes of the system.
- Changed the date that Contractors will be financially responsible for Members on the OSH waitlist to CY 2022 (was “after CY 2021”).
- Acute Care reporting database was changed from OPRCS to a “database as instructed by OHA” because OPRCS is no longer active.
- Reporting section was revised as follows:
 - List of specific data elements was removed and replaced with categories of metrics as determined by OHA.
 - OHA will provide a template for the reporting.
 - Provisions on assessment of appropriate expenditures on Behavioral Health were revised to clarify the purpose and process for this assessment.
- The following sections were pared down to include references to internal Contract provisions and/or OARs instead of including detailed provisions in the Exhibit: Value based payment arrangements, Timely Access, Prior Authorizations, Care Coordination, Intensive Care Coordination, and Wraparound services.
- The last Section of Ex. M, Section 22 requires an annual Mental Health Parity Report to be drafted and provided to OHA.

PART TWO: TECHNICAL CHANGES

1. Entire Contract.

- Substantive provisions were revised for purposes of clarity.
- Internal Contract references were standardized. To illustrate, an internal contract reference is written, depending on the level in which the applicable provision is located, as follows: Ex. B, Part 10, Sec. 1, Para. b, Sub.Para (1)(a).
- Corrected outdated URLs.
- Capitalized defined terms (this will not show in the comparison)
- Sections of the contract may have been reorganized within an Exhibit or moved into one Exhibit if related to a specific topic
- Deleted provisions that were unnecessarily repetitive

2. General Terms:

- New Section numbering system
- Sections on Contract Interpretation and Order of Precedence now in two distinct sections

3. Exhibit A, Definitions:

- Added defined terms
- Refined some existing definitions or referenced applicable statute, rule, or regulation when applicable
- Significantly new definitions, examples of which are as follows:
 - Abuse
 - Legal Holiday
 - Breast and Cervical Cancer Program
 - Managing Employee

- Choice Area
- Consumer Representative
- Contract Renewal
- Disclosing Entity
- Excess Payment
- Fiscal Agent
- Monitor
- New Affiliated Entity
- New Entity
- Other Disclosing Entity
- Primary Prevention
- Supplier

4. Exhibit B, Part 8 - Accountability and Transparency of Operations

- There were significant edits for purposes of organization and clarity. In particular, the following Sections were reorganized and edited:
 - Encounter Data, submission of Encounter Data, the Administrative Performance Standard (*See Sections 9-13*)
 - Third Party Liability/Personal Injury Liens (*See Sections 16&17*)
 - Disclosure of ownership interests and changes to ownership (*See Sections 18-20*)

5. Exhibit B, Part 10 - Transformation Reporting, Performance Measures, and External Quality Review

- Renamed title of this Exhibit from “Transformation, Performance Outcomes, and Accountability” to “Transformation Reporting, Performance Measures, and External Quality Review”

6. Exhibit I – Grievance and Appeal System

- There were significant edits made to Ex. I for purposes of organization and clarity. *See*, in particular, the basic requirements of CCO Grievance and Appeal System (*Section 1*)

7. Exhibit K – Social Determinants of Health and Equity

- This is what was previously Exhibit N (SDOH-HE).

8. Exhibit N – Social Determinants of Health and Health Equity

- (SDOH-HE) – Deleted and moved into Exhibit K and changed heading to align with new term as identified in Part 1 under “General Terms and Exhibit A, Definitions)