



JENNIFER KENT  
DIRECTOR

State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

**DATE:** April 18, 2017

ALL PLAN LETTER 17-004

**TO:** ALL MEDI-CAL MANAGED CARE HEALTH PLANS

**SUBJECT:** SUBCONTRACTUAL RELATIONSHIPS AND DELEGATION

**PURPOSE:**

The purpose of this All Plan Letter (APL) is to summarize new subcontracting and delegation requirements issued by the Centers for Medicare and Medicaid Services (CMS) and to clarify existing contract requirements. This APL also provides guidance to Medi-Cal managed care health care plans (MCPs) on subcontractor and delegated entity monitoring requirements that MCPs must meet in order to fulfil their obligations under the MCP contract with the Department of Health Care Services (DHCS).

**BACKGROUND:**

Effective July 1, 2017, Title 42 of the Code of Federal Regulations (CFR), Section (§) 438.230 requires MCPs to meet certain subcontracting and delegation requirements. These requirements apply to any contract or written agreement an MCP has with any subcontractor in furtherance of the MCP's obligations under its contract with DHCS.<sup>1</sup>

“Subcontractor” means an individual or entity that has a subcontract with the MCP that relates directly or indirectly to the performance of the MCP's obligations under the contract with DHCS. A network provider is not a subcontractor by virtue of the network provider agreement.<sup>2</sup> Regardless of the relationship that the MCP has with a subcontractor, whether direct or indirect through additional layers of contracting or delegation, the MCP has the ultimate responsibility for adhering to, and fully complying with, all terms and conditions of its contract with the DHCS.

**POLICY:**

***MCP Delegation and Subcontracting***

If an MCP delegates any activity or obligation to a subcontractor, whether directly or

---

<sup>1</sup> 42 CFR § 438.230(a)

<sup>2</sup> 42 CFR § 438.2

indirectly, the subcontract or written agreement shall:

- Specify any and all delegated activities, obligations, and related reporting responsibilities.
- Include the subcontractor's agreement to perform the delegated activities and reporting responsibilities.
- Provide for the revocation of the delegation of activities or obligations, or specify other remedies where DHCS or the MCP determines the subcontractor is not performing satisfactorily.

In addition, the MCP contract requires that subcontractors must agree to comply with all applicable Medicaid laws and regulations as well as applicable State and federal laws.<sup>3</sup> MCPs maintain the responsibility of ensuring that subcontractors are, and continue to be, in compliance with all applicable Medi-Cal, State and federal laws, and contractual requirements.<sup>4</sup>

#### ***MCP Review of Subcontractor's Ownership and Control Disclosures***

Subcontractors are required to provide written disclosure of information on subcontractors' ownership and control.<sup>5</sup> The review of ownership and control disclosures applies to subcontractors contracting with an MCP. MCPs shall collect and review their subcontractors' ownership and control disclosure information as set forth in 42 CFR § 455.104.<sup>6</sup> MCPs must make the subcontractors' ownership and control disclosure information available, and upon request, this information is subject to audit by DHCS. MCPs shall alert their Managed Care Operations Division (MCOD) contract manager within three business days upon discovery that a subcontractor is out of compliance with these requirements, and/or if a disclosure reveals any potential violation(s) of the ownership and control requirements.

#### ***Audit and Inspection of Subcontractor***

MCPs shall ensure through subcontracts or written agreements that subcontractors allow DHCS, CMS, the Department of Health and Human Services (DHHS) Inspector General, the Comptroller General, Department of Justice, and the Department of Managed Health Care, or their designees, to audit, inspect, and evaluate information related to Medi-Cal enrollees. Subcontractors must make available for purposes of an audit, evaluation or inspection, its premises, physical facilities, equipment, books, records, contracts, computers or other electronic systems related to Medi-Cal enrollees. The subcontract must also specify the right to audit will exist through 10 years from the final date of the contract period, or from the date of completion of any audit, whichever is later.<sup>7</sup>

---

<sup>3</sup> 42 CFR § 438.230(c)(1)(i)-(iii)

<sup>4</sup> 42 CFR § 438.230(c)(2)

<sup>5</sup> 42 CFR § 438.608(c)(2)

<sup>6</sup> 42 CFR § 438.602(c)

<sup>7</sup> 42 CFR § 438.230(c)(3)(i)-(iii)

If DHCS, CMS, or the DHHS Inspector General determine there is a reasonable possibility of fraud or similar risk, DHCS, CMS, or the DHHS Inspector General may inspect, evaluate, and audit the subcontractor at any time.<sup>8</sup> Upon resolution of a full investigation of fraud, DHCS reserves the right to suspend or terminate the subcontractor from participation in the Medicaid program; seek recovery of payments made to the subcontractor; or impose other sanctions provided under the State Plan or governing APLs.

MCPs shall implement and maintain, and must contractually require subcontractors and other delegated entities to implement and maintain, policies and procedures that are designed to detect and prevent fraud, waste, and abuse.<sup>9</sup>

### ***Monitoring Subcontracted and Delegated Functions***

MCPs are ultimately responsible for ensuring that their subcontractors and delegated entities comply with all applicable State and federal laws and regulations; contract requirements; reporting requirements; and other DHCS guidance including, but not limited to, APLs. MCPs must have in place policies and procedures to communicate these requirements to all subcontractor and delegated entities.

MCPs must also have in place policies and procedures for imposing corrective action and financial sanctions on subcontractors upon discovery of noncompliance with the subcontract or other Medi-Cal requirements. MCPs shall report any significant instances of non-compliance, imposition of corrective actions, or financial sanctions pertaining to their obligations under the contract with DHCS to their MCOD contract managers within three business days of discovery or imposition.

All MCP policies and procedures relating to monitoring and oversight of subcontractors and delegated entities as described by this APL must be made available to DHCS upon request.

### ***Monitoring of Subcontractor Data Reporting***

MCPs remain ultimately responsible for the data submitted by subcontractors. MCPs must have in place policies and procedures to communicate the requirements to all subcontractors and delegated entities, and to monitor the quality and compliance of subcontractor data and, specifically, data that is submitted to DHCS or other entities pursuant to reporting responsibilities under State law. MCPs must ensure all other data reported by subcontractors is complete, accurate, reasonable, and timely. This includes, but is not limited to, encounter data, monthly 274 provider network data files, data reported through quarterly templates, and any other ad hoc data requests required by DHCS.

---

<sup>8</sup> 42 CFR § 438.230(c)(3)(iv)

<sup>9</sup> 42 CFR § 438.608(a)

MCPs must ensure subcontractors submit complete, accurate, and timely encounter data to DHCS for all items and services furnished to Medi-Cal beneficiaries through subcontracts or other arrangements, including capitated providers. Subcontractors must be required to submit claims and encounter data to MCPs. MCPs shall have in place mechanisms, including edits and reporting systems, sufficient to ensure encounter data, including subcontractor encounter data, is complete, accurate, reasonable, and timely prior to submission to DHCS.

***Monitoring of Subcontractor Care Coordination Requirements***

MCPs remain ultimately responsible for meeting the care coordination requirements contained in the contract with DHCS, and must ensure that the delegation of care coordination services results in consistent treatment of MCP beneficiaries across delegated entities. MCPs must ensure subcontractors meet all applicable care coordination requirements for Medi-Cal beneficiaries as required in the contract with DHCS. Such care coordination activities include, but are not limited to, those designated to assure availability and access to care, clinical services, specialty services and care management services, including comprehensive basic and complex case management. MCPs must also exchange available information and data, including member-level data, with subcontractors to facilitate care coordination activities. Information and data sharing must be conducted in accordance with all applicable Health Insurance Portability and Accountability Act requirements, and other State and federal statutes and regulations. MCPs must have in place policies and procedures to monitor subcontractor compliance with care coordination requirements and must ensure that care coordination is provided in compliance with the oversight and reporting requirements set forth in their contract with DHCS and all applicable APLs.

If you have any questions regarding this APL, please contact your MCO contract manager.

Sincerely,

Original Signed by Nathan Nau

Nathan Nau, Chief  
Managed Care Quality and Monitoring Division