

**DATE:** March 28, 2023

ALL PLAN LETTER 23-006  
SUPERSEDES ALL PLAN LETTER 17-004

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

**SUBJECT:** DELEGATION AND SUBCONTRACTOR NETWORK CERTIFICATION

**PURPOSE:**

The purpose of this All Plan Letter (APL) is to provide Medi-Cal managed care plans (MCPs) with guidance on the requirements for delegation and monitoring of Subcontractors. This APL also details the Subcontractor Network Certification (SNC) process wherein MCPs must provide assurances that each Subcontractor's and Downstream Subcontractor's Provider Network meets state and federal Network adequacy and access requirements.

**BACKGROUND:**

Title 42 Code of Federal Regulations (CFR) section 438.230 specifies the requirements MCPs must include in all contracts or written agreements with any Subcontractors.<sup>1</sup> This regulation addresses the duties and obligations of MCPs and their Subcontractors. The regulation also emphasizes that regardless of the relationship 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 Department of Health Care Services (DHCS).

Furthermore, MCPs must ensure, through their contracts with any Subcontractors, that their Subcontractors provide written disclosures of information on ownership and control as required under 42 CFR 455.104.<sup>2</sup> To address frequent findings relating to 42 CFR 455.104, the Centers for Medicare and Medicaid Services (CMS) has issued guidance, in the form of a toolkit.<sup>3</sup> In the toolkit, CMS clarifies that a board member should be listed as a "person with ownership or control interest" or as a "managing employee," to the extent they meet either definition pursuant to 42 CFR 455.101. MCPs must comply

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<sup>1</sup> 42 CFR 438. The CFR is searchable at: <https://www.ecfr.gov/>.

<sup>2</sup> 42 CFR 438.608

<sup>3</sup> The CMS-issued toolkit is available at: <https://www.cms.gov/sites/default/files/repo-new/25/Toolkit%20for%20Disclosures%20of%20Ownership%20and%20Control%2042%20CFR%20455%20104%20final.pdf>

with the ownership and control disclosure requirement as set forth in 42 CFR 455.104 by collecting information on whether their Subcontractors are persons with ownership or control interest, or managing employees.

Additionally, the California Advancing and Innovating Medi-Cal (CalAIM) 1915(b) Waiver Special Terms and Conditions (STCs) requires DHCS to provide CMS with assurances that MCPs are holding all Subcontractors who assume risk to DHCS' Network adequacy and access standards as of the 2022 Reporting Year (RY).<sup>4, 5</sup> As a result, MCPs will be required to undergo an annual SNC as part of its Annual Network Certification.<sup>6</sup>

## **POLICY:**

### Definitions

For purposes of this APL, the following definitions apply:

- Subcontractor – an individual or entity that has a Subcontractor Agreement with the MCP that relates directly or indirectly to the performance of the MCP's obligations under its contract with DHCS. A Network Provider is not a Subcontractor solely because it enters into a Network Provider Agreement.
- Downstream Subcontractor – an individual or entity that has a Downstream Subcontractor Agreement with a Subcontractor of the MCP or a Downstream Subcontractor that relates directly or indirectly to the performance of the Subcontractor's obligations under its Subcontractor Agreement with the MCP.
- Subcontractor Network – a Provider Network of a Subcontractor or Downstream Subcontractor, wherein the Subcontractor or Downstream Subcontractor is delegated risk and is responsible for arranging for the provision of and paying for Covered Services as stated in their Subcontractor or Downstream Subcontractor Agreement.

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<sup>4</sup> See the CalAIM Waiver Special Terms and Conditions, available at: <https://www.dhcs.ca.gov/provgovpart/Documents/CalAIM-1915b-STCs.pdf>

<sup>5</sup> For purposes of this APL, the RY is the calendar year.

<sup>6</sup> For more information on the Annual Network Certification process, see APL 23-001, or any superseding APL. APLs are searchable at: <https://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx>

- Subcontracted Network Certification (SNC) – a process that entails MCPs reporting on their monitoring of Subcontractors’ and Downstream Subcontractors’ Provider Networks and submitting documentation to DHCS verifying the compliance and/or noncompliance reported.

## **I. MONITORING SUBCONTRACTORS**

### **A. Delegation Accountability**

If an MCP delegates any activity or obligation to a Subcontractor, whether directly or indirectly, the Subcontractor Agreement must:

- 1) Specify any and all delegated activities, obligations, and related reporting responsibilities;
- 2) Include the Subcontractor’s agreement to perform the delegated activities, obligations, and reporting responsibilities; and
- 3) 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.<sup>7</sup>

The Subcontractor Agreement must also state that the Subcontractor agrees to comply with all applicable Medicaid laws and regulations, including all subregulatory guidance and Contract provisions, as well as the applicable state and federal laws.<sup>8</sup> MCPs must maintain and communicate to Subcontractors their policies and procedures for monitoring Subcontractors’ compliance with all requirements related to all delegated activities, obligations, and related reporting responsibilities as described in this APL. All policies and procedures must be made available to DHCS upon request.

### **B. Ownership and Control Disclosures**

To identify potential conflicts of interest, MCPs are required to collect and review their Subcontractors’ ownership and control disclosures as set forth in 42 CFR 455.104.<sup>9</sup> The review of ownership and control disclosures applies to all

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<sup>7</sup> 42 CFR 438.230(c)(1)

<sup>8</sup> 42 CFR 438.230(c)(2)

<sup>9</sup> 42 CFR 438.608(c)

Subcontractors that contract with the MCP, including disclosing entities, fiscal agents, and managed care entities.

MCPs must require and ensure Subcontractors accurately provide all required information in their disclosures. This information includes the date of birth and social security number for each person with an ownership or control interest and for each managing employee. An officer or director of a disclosing entity that is organized as a corporation should be considered a person with control interest.<sup>10</sup> The CMS toolkit specifies that a board member of a disclosing entity must be listed as a “managing employee” to the extent that they meet that definition in 42 CFR 455.101. The CMS toolkit also specifies that a board member of the disclosing entity must be listed as a “person with an ownership or control interest” to the extent that they meet that definition in 42 CFR 455.101.

MCPs must review to identify potential conflicts of interest and make Subcontractors’ ownership and control disclosures available upon request, as the information is subject to audit by DHCS. MCPs must alert their Managed Care Operations Division (MCPD) Contract Manager within ten Working Days upon discovery that a Subcontractor is noncompliant with these requirements, and/or if a disclosure reveals any potential violations of the ownership and control requirements.

### **C. Data Reporting**

MCPs must monitor the quality and compliance of Subcontractor data that MCPs submit to DHCS or other entities, pursuant to reporting responsibilities under state and federal laws. MCPs must ensure the 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, electronic visit verification reporting, and any other ad hoc data requests required by DHCS.

MCPs must require Subcontractors to submit complete, accurate, and timely Network Provider encounter data to the MCPs for all items and services furnished to Members either directly or through Downstream Subcontractors or other arrangements with Providers. MCPs must have in place mechanisms, including data validation and reporting systems, sufficient to ensure a

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<sup>10</sup> 42 CFR 455.104(b)(1)

Subcontractor's Network Provider encounter data is complete, accurate, reasonable, and timely prior to submission to DHCS.

#### **D. Monitoring, Corrective Action, and Sanctions**

MCPs must regularly monitor all functional areas delegated to Subcontractors. MCPs must also impose corrective action and/or financial sanctions on Subcontractors upon discovery of noncompliance with the terms of their Subcontractor Agreement or any Medi-Cal requirements. MCPs must report any significant instances (i.e., in terms of gravity, scope and/or frequency) of noncompliance, imposition of corrective actions, or financial sanctions pertaining to their obligations under the contract with DHCS to their MCO Contract Managers within three Working Days of the discovery or imposition.

## **II. SUBCONTRACTOR NETWORK CERTIFICATION**

### **A. Circumstances for Submission**

DHCS is required by state and federal laws to annually certify each MCP's full Provider Network for compliance with Network adequacy and access requirements and provide an assurance of that compliance to CMS for the RY.<sup>11</sup> As of the 2022 RY, the CalAIM 1915(b) Waiver STCs also require DHCS to provide the same assurances of Network adequacy and access for the Provider Networks of all MCP Subcontractors and Downstream Subcontractors that have assumed risk per their Subcontractor and Downstream Subcontractor Agreements. Henceforth, MCPs are required to undergo a SNC annually that is separate and distinct from the submission process for the Annual Network Certification (ANC).

SNC is also required (1) when a Subcontractor Network experiences a significant change, and (2) when the MCP enters into a new risk-based Subcontractor Agreement with a Subcontractor that expands the MCP's existing Provider Network. A significant change is (1) an event that impacts the provision of health care services for 2,000 or more Members or (2) when a Subcontractor Network change causes the MCP to become noncompliant with any of the Network adequacy and access standards outlined in APL 23-001 or any superseding APL. In either instance, MCPs must submit the applicable SNC documentation for only

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<sup>11</sup> 42 CFR section 438.207(d).

the Network adequacy and access standards impacted by the significant change or noncompliance. If a significant change occurs within the 90 calendar days prior to the SNC annual submission date, the MCP can document the change as part of that RY SNC filing. For any significant changes that occur after the SNC annual submission date, the MCP should submit the applicable SNC documentation for only the Network adequacy and access standards impacted by the significant change and report the change in the SNC for that RY.

## **B. Subcontractor Network Criteria**

Subcontractors and Downstream Subcontractors can be MCPs that are delegated to arrange for the provision of Covered Services on behalf of another MCP, or any other entities that are delegated responsibility by MCPs and Subcontractors for specific services and/or populations such as medical groups, independent physician associations, clinics, and community-based organizations. Whether a Subcontractor or Downstream Subcontractor is fully or partially delegated for functions and obligations under their Subcontractor or Downstream Subcontractor Agreement, Subcontractor Networks are only required to meet the Network adequacy and access standards for the Members assigned to the Subcontractor Network, and for Covered Services the Subcontractor or Downstream Subcontractor is contracted to arrange for Members on behalf of the MCP or Subcontractor. Refer to the SNC Instruction Manual (Attachment A) for details on determining which standards each Subcontractor Network must meet based on populations served and services covered.

For the annual SNC, MCPs must include all Subcontractor Networks reported via the 274 Provider Network data file, unless the Subcontractor Network is exempt per the criteria listed below and the required documentation provided substantiates the exemption.<sup>12</sup> In addition to Service Areas where MCPs only contract directly with individual Providers and no Subcontractor Networks exist, the following describes the Subcontractor Networks that are exempt from SNC:

- 1) MCP only contracts with one Subcontractor Network in the Service Area, and no Providers directly contract with the MCP;

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<sup>12</sup> The documentation for submission to substantiate exemptions is outlined in the Subcontractor Network Certification Instruction Manual (Attachment A)

- 2) The Subcontractor Network only provides specialty or ancillary services;  
or
- 3) The Subcontractor Network only provides care through single case agreements and is not available to all the MCP's Members upon enrollment.

MCPs are to submit exemption requests with their SNC submission per the instructions provided in Attachment A using the Subcontractor Network Exemptions Request template (Attachment B). DHCS will review each exemption request and provide a formal notification of the disposition to the MCP. Approvals are valid for one calendar year until the next annual SNC filing.

### **C. Submission**

MCPs must submit the required SNC documentation to DHCS that accurately reflects the MCP's monitoring of Subcontractor Networks, no later than 45 days following the RY or, if the date falls on a weekend, the next Working Day. MCPs must submit all required SNC documentation as described in Attachment A with the correct file naming conventions through the DHCS Secure File Transfer Protocol site. MCPs that fail to submit complete and accurate SNC documentation by the SNC annual submission date are subject to the imposition of a corrective action plan (CAP) and/or other enforcement actions pursuant to the MCP Contract, Welfare and Institutions Code (WIC) section 14197.7(e), and APL 22-015 or any superseding APL.<sup>13</sup>

The SNC submission consists of three parts: (1) the Subcontractor Network Exemptions Request template (Attachment B), (2) the Network Adequacy and Access Assurances Report (NAAAR) (Attachment C), and (3) verification documents. The NAAAR, Attachment C, is a modified CMS reporting template containing two sections, Sections B and C, that MCPs are required to complete. Section A of the template is prepopulated with the state's Network adequacy and access standards for which MCPs must hold their Subcontractors accountable, as applicable per Subcontractor Network. Because these Network adequacy and access standards are the same as those DHCS uses to certify MCPs' Provider Networks through the ANC process, please refer to APL 23-001, or any superseding APL, for the specific time or distance, timely access, Provider to

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<sup>13</sup> State law is searchable at: <https://leginfo.legislature.ca.gov/>. MCP boilerplate contracts are available at: <https://www.dhcs.ca.gov/provgovpart/Pages/MMCDBoilerplateContracts.aspx>. APLs are searchable at: <https://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx>.

Member ratios, and mandatory Provider types standards MCPs must use to monitor the compliance of their Subcontractor Networks.

In Section B of the NAAAR, MCPs must delineate the types of analyses they use to monitor and determine the Network adequacy and access compliance of Subcontractor Networks. In Section C, MCPs report, in detail, the compliance results and findings of all the Subcontractor Network monitoring analyses conducted within the RY. Refer to Attachment A for detailed instructions on how to fill out the NAAAR.

The third part of the SNC submission is submission of documents for DHCS' review that verify the compliance results and findings reported on the NAAAR. Due to the size of California's Medicaid managed care program and the number of Subcontractor Networks, DHCS will verify documents for a subset of an MCP's Subcontractor Networks. DHCS will notify MCPs of the Subcontractor Networks to be sampled, at a minimum, at least 30 days in advance of the annual SNC submission date of 45 days after the end of the RY, or the next Working Day if the date falls on a weekend. MCPs are only required to send verification documents for Subcontractor Networks that DHCS notifies MCPs of that are to be sampled per Services Area/county for the specified RY.

A Service Area is the county or counties that the MCP is approved to operate in under the terms of their DHCS Contract. If the Service Area for a Subcontractor or Downstream Subcontractor is otherwise designated differently in the Subcontractor or Downstream Subcontractor Agreement, the MCP must show proof of that definition using the Subcontractor Network Exemptions Request (Attachment B).

To ensure every Subcontractor Network is verified, DHCS will remove the previously approved Subcontractor Network(s) from the MCP's pool of Subcontractor Networks after every annual SNC until all of the MCP's Subcontractor Networks have been sampled and verified. Once all of the MCP's Subcontractor Networks have been sampled and verified, the random selection cycle will begin again. Please refer to the Subcontractor Network Certification Instruction Manual (Attachment A) for more information about the required verification documents, including the list of acceptable types of documentation MCPs may submit to DHCS. DHCS may request additional MCP verification documents at any time in order to confirm that the information provided on the NAAAR is accurate. An MCP's failure to provide the requested documentation or



a determination by DHCS that the information in the SNC submission is invalid or inaccurate may lead to implementation of a CAP and/or other enforcement actions.

#### **D. Noncompliance**

All Subcontractor Network deficiencies impacting Member access to care, as identified by an MCP while monitoring, must result in the MCP, or the Subcontractor (if delegated utilization management), authorizing Covered Services from Out-of-Subcontractor Network (OOSN) Providers for Members in the deficient Subcontractor Network. OOSN Providers used to supplement a deficient Subcontractor Network may include Providers from an MCP's own direct Provider Network or those Out-of-Network when necessary. The MCP, or Subcontractor or Downstream Subcontractor which is delegated utilization management, must authorize Covered Services from OOSN Providers regardless of associated transportation or Provider costs until the deficiency is addressed. An MCP or Subcontractor must also ensure that the deficient Subcontractor or Downstream Subcontractor informs Members that OOSN access to services is available, and that the MCP's or Subcontractor's Member services staff are trained on Members' right to request OOSN access for Covered Services and transportation to Providers where the Subcontractor or Downstream Subcontractor is unable to comply with Network adequacy or access standards.

#### **E. Deficiencies and Corrective Action**

Upon completing the review of SNC submissions, DHCS will provide a CAP notification letter to each MCP found non-compliant with the SNC requirements of this APL, outlining the deficiencies and specific issues of noncompliance that the MCP must address. MCPs must provide an initial CAP response, no later than 30 calendar days after the issuance of the CAP notification letter, that details a plan of action and sets forth steps the MCP will take to correct the deficiencies identified.

MCPs have six months to correct all deficiencies during which time MCPs must provide DHCS with monthly status updates that demonstrate action steps the MCP is undertaking to address the CAP. DHCS may impose sanctions, or other appropriate enforcement actions, for failure to comply with Network adequacy

and access standards at the end of the six-month CAP period. If monetary sanctions are to be imposed, DHCS will consider the factors set forth in WIC section 14197.7(g) when assessing and determining the amount.

The requirements contained in this APL will necessitate a change in an MCP's contractually required P&Ps. MCPs must submit their updated P&Ps to their MCOD Contract Manager within 90 calendar days of the release of this APL.

MCPs are responsible for ensuring that their Subcontractors and Network Providers comply with all applicable State and federal laws and regulations, Contract requirements, and other DHCS guidance, including APLs and Policy Letters.<sup>14</sup> These requirements must be communicated by each MCP to all Subcontractors and Network Providers.

If you have any questions regarding this APL, please contact your MCOD Contract Manager.

Sincerely,

Original Signed by Dana Durham

Dana Durham, Chief  
Managed Care Quality and Monitoring Division

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<sup>14</sup> For more information on Subcontractors and Network Providers, including the definition and applicable requirements, see APL 19-001, and any subsequent APLs on this topic.