ACO: Shared Savings Model

Checklist of Key Questions

- Risk
  - Upside only?
  - Downside risk? How much?
  - How will downside losses be paid for?
- Shared Savings
  - How much of the savings will be shared (or retained by the ACO)?
  - Who decides distribution of savings among participants?
  - What have hospital/specialty partners contributed?
- PCMH Activities
  - What investments will the ACO make in the PCMH?
  - How much input on clinical pathways/guidelines?
  - What quality metrics will be used?

ACO: Full Risk Capitation Model

Checklist of Key Questions

- ❑ Risk
  - How will downside losses be paid for?
  - What if ACO runs out of money?
- ❑ Profit Distribution
  - How much of any profits will be shared?
  - Who decides distribution of profits among participants?
  - What have hospital/specialty partners contributed?
- ❑ PCMH
  - What investments will the ACO make in the PCMH?
  - How much input on clinical pathways/guidelines?
  - What quality metrics will be used?

Managed Care Checklist

Provider guidance in the preparation of MCO contract provisions:

- The contract should establish clear timelines for payment of claims and penalties for late payment.
- A specific definition of a “clean claim” and associated forms and instructional manuals on claims submission should be provided with the contract.
- The contract should include a reasonable timeframe (not less than 60 days) for the provider’s submission of claims to the MCO.
- The contract should impose a deadline on the MCO’s payment of claims (not greater than 45 days after submission) and should impose interest for late payment of claims. In the capitation setting, payment by the MCO should be required early in the month that that payment covers.

Managed Care Checklist

- The contract should require the MCO to be responsible for collecting all payments due from third-party payors.
- The MCO should be obligated to assure payment to the provider in situations in which there is third-party liability.
- The contract should not include provisions allowing unilateral recoupment of overpayments by the MCO, nor allow the MCO to offset any overpayments against future claim payments.
- The contract should not include provisions that allow the MCO to unilaterally change the terms of payment.
- Any change to the fee schedule or capitation payment should be negotiated and agreed to by the parties. The provider should try to negotiate for an automatic annual increase in fees or in the capitation payment.
- The contract should specifically provide for a dispute resolution process that includes graduated steps (including informal negotiation, mediation, and arbitration).

Managed Care Checklist

In agreeing to MCO contracts, provider should be:

- Familiar with the billing rules of each payor to which the provider submits claims for payment.
- Familiar with the False Claims Act, the General Health Care Fraud Statute, and with billing and coding practices that can be risk areas for violations of these laws.
- Prepared to regularly review patient accounts for credit balances and overpayments and timely return any overpayments, particularly those involving Medicare or Medicaid funds.
- Regularly reviewing whether practitioners' licensure is current
- Screening practitioners (as well as all other individuals affiliated with the provider) for exclusion from government health care programs.
- Prepared to implement a system to ensure that claims for payment are submitted to MCOs only for services rendered by practitioners who meet each respective MCO's criteria for payment.
- Prepared to conduct regular pre-submission claims audits to ensure compliance with coding and billing rules and MCOs' criteria for payment.
- Prepared to conduct regular medical record reviews to ensure that documentation substantiates claims for payment.

Contract Review Checklist

- ✓ **Maximum Panel Size**: Does the contract include a provision giving the provider a right to notify the MCO that it has reached its patient capacity (without specifying what that capacity is), and to cap enrollment at that point?
- ✓ **Minimum Panel Size**: Does the contract include a provision requiring the payment method to switch from capitation to fee-for-service if the panel falls below the minimum?
- ✓ **Member Verification**: Does the contract impose on the MCO the risk for errors in the MCO's eligibility verification?
- ✓ **Enrollee Change of Providers**: Does the contract allow the provider to transfer an enrollee to another primary care provider for cause?

Contract Review Checklist

- ✓ **Cost-Sharing:** Does the contract require the MCO to supply the provider with up-to-date information concerning cost-sharing?
- ✓ **Cost-Sharing:** Does the contract provide a resource for the provider to consult if it cannot determine a particular patient's cost-sharing liability?
- ✓ **Waiver and Reduction of Cost-Sharing:** Does the contract permit the provider to discount or waive cost-sharing obligations?

Contract Review Checklist

- ✓ **Member Verification**: Does the contract impose on the MCO the risk for errors in the MCO's eligibility verification?
- ✓ **Cost-Sharing:** Does the contract require the MCO to supply the provider with up-to-date information concerning cost-sharing?
- ✓ **Cost-Sharing:** Does the contract provide a resource for the provider to consult if it cannot determine a particular patient's cost-sharing liability?
- ✓ **All-Products Clauses**: Does the contract contain an "all products" provision, and if so, is it in the best interest of your organization?
- ✓ **Scope of Services**: Does the contract clearly define the scope of services?
- ✓ **Covered Services**: Does the contract or its attachments clearly identify the covered services available to enrollees?
- ✓ **Non-Covered Services**: Does the contract specify any requirements that the provider must meet in order to charge enrollees for non-covered services?
- ✓ **Choice of Practitioner**: Does the contract impose any limitations on which types of practitioners may provide services?

Contract Review Checklist

- ✓ **Referrals**: Are policies, procedures, protocols and timelines regarding referrals clearly spelled out in the contract or attached and incorporated by reference?
- ✓ **Referrals**: Does the contract allow the provider to determine whether and when to make referrals for specialty care or hospitalization?
- ✓ **Gag Clauses**: Does the contract impose any limitations on the provider's practitioners from advising an enrollee about the patient's health status or treatment options, the risks, benefits, and consequences of treatment or non-treatment, and the opportunity for the patient to refuse treatment or express preferences about future treatment decisions?
- ✓ **Access Standards**: Can the provider meet the access and appointment standards under its current resources and staffing?
- ✓ **Access Standards:** Is payment adequate under the contract to cover all of the costs incurred in meeting the access and appointment standards?
- ✓ **Non-Discrimination Provisions**: Is the provider's current clinical capacity sufficient to meet the increased demand that an influx of new MCO enrollees might produce?
- ✓ **Enrollee Change of Providers**: Does the contract allow the provider to transfer an enrollee to another primary care provider for cause?

Standard Legal Provisions Checklist

- ✓ Does the contract specify all parties and exclude those who are not parties to the contract from any rights or benefits?
- ✓ Does the contract include a provision on breach and give the breaching party an opportunity to cure?
- ✓ Is renewal of the agreement contingent on renegotiation and agreement on payment terms?
- ✓ Try to eliminate "non-compete" clauses in the contract.
- ✓ Does the contract give the provider the ability to terminate the contract if the provider does not agree to proposed amendments?

Contract Review Checklist

Licensing, Credentialing & Accreditation

- ✓ Does the loss of licensure of one of the provider's practitioners ***not*** trigger immediate termination, so long as the provider assures the MCO of its continuing capacity to perform?
- ✓ Does the contract ***not*** require the provider to inform the MCO if it or any of its health care practitioners are simply under investigation, before conclusive disciplinary action is decided upon?
- ✓ Does the contract define the meaning of a "complete application" for purposes of credentialing new practitioners?
- ✓ Does the contract define the amount of time the MCO has to credential new practitioners?
- ✓ Does the contract leave open the possibility of a delegated credentialing arrangement?

Contract Review Checklist

Utilization Management/Utilization Review Provisions

- Are all UM/UR procedures, including prior and post authorization requirements, either in the body of the contract or attached to it, giving the provider an opportunity to review them prior to signing contract?
- Does the contract explicitly contain the MCO's definition of "medical necessity“?
- Does the contract give the provider notice if the MCO does not agree with the practitioner's medical opinion?
- Do changes to the M/UR procedures, including referral procedures, require notice to and an opportunity to comment by the provider?
- Is the treatment discretion of the practitioner preserved or, at a minimum, taken into account by the MCO's UM/UR Program?
- Does the MCO have clear responsibility for notifying members of any denial of a requested referral or hospital admission, with all such denials being in writing, (with a copy to the requesting physician)?
- Does the contract specify the types of services requiring prior authorization and those not requiring prior authorization?
- Does the MCO have a procedure for receiving and responding to requests for prior authorization -- 24 hours per day, 7 days per week? Make sure there are clear time limits by which the MCO must respond to a request for prior authorization, with failure to respond in a timely fashion deemed to constitute prior authorization.
- Does the contract hold the provider harmless for any legal consequences resulting from the MCO’s denial of pre-authorization for requested services?

Contract Review Checklist

Insurance Requirements

- Does the contract clearly state the forms and amounts of insurance that the provider must secure?
- If the contract requires the provider to increase its insurance coverage, has the provider negotiated for an increase in the capitation rate or fee schedule under the contract to cover this cost?
- Has the provider determined whether the malpractice insurance required under the contract is broader than the scope of the provider's current coverage?
- Does the contract require the MCO to maintain comprehensive liability insurance that will protect the provider in case of the MCO's insolvency?

Indemnification:

- Does the contract require the MCO and provider to indemnify each other with respect to their contractual responsibilities?
- Has the provider ensured that the indemnity requirements that apply to the provider do not include conduct outside its control?
- Does the contract require the MCO to indemnify the provider for consequences of the MCO's improper denial of prior authorization for a service?