3-Part Contracting Series for Rest-of-State (ROS) Adult Behavioral Health Providers
Webinar #1

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Introduction & Housekeeping

- 1st webinar of ROS Contracting Series

- Housekeeping
  - WebEx Chat Functionality for Q&A
  - Slides are posted at MCTAC.org and a recording will be available soon (usually less than one week)
  - Questions not addressed today will be re-visited during subsequent presentations

- Reminder: Information and timelines are current as of the date of the presentation
What is MCTAC?

MCTAC is a training, consultation, and educational resource center that offers resources to all mental health and substance use disorder providers in New York State.

MCTAC’s Goal
Provide training and intensive support on quality improvement strategies, including business, organizational and clinical practices to achieve the overall goal of preparing and assisting providers with the transition to Medicaid Managed Care.
Who is MCTAC?

McSILVER INSTITUTE
FOR POVERTY POLICY AND RESEARCH

The National Center on Addiction and Substance Abuse

MCTAC
Adam J. Falcone, Partner -- Feldesman Tucker Leifer Fidell LLP

A partner in the health law practice group, Adam counsels clients on a wide range of health law issues, with a focus on fraud and abuse, reimbursement and payment, and antitrust and competition matters.

Drawing on his extensive knowledge of health care policy and markets, Adam regularly speaks to groups across the country on managed care contracting, value-based payment methodologies, and health reform opportunities.

In particular, he brings strategic counsel to clients that are responding to changes in their local marketplace, negotiating participating provider agreements, and seeking to establish provider networks such as Accountable Care Organizations.
NEGOTIATING MANAGED CARE CONTRACTS
from a POSITION of STRENGTH

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Before you sign, use the P.E.N!

✓ Prepare
✓ Evaluate
✓ Negotiate
PREPARATION PHASE

A party that recognizes its strengths has an advantage in achieving its objectives.
IDENTIFYING YOUR STRENGTHS

Assess Leverage

Increase Leverage or Value

Compete Based on Value

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Self-Assessment Questions:
- Is the MCO required to include me in its network?
- Is the MCO required to cover one or more of my services?
- Is the MCO required to pay me a specific rate?

Get Answers! Examine the following:
- State insurance laws and regulations
- Medicaid laws or regulations
- MCO’s contract with the State Medicaid agency
  - Medicaid Managed Care Model Contracts
  - [https://www.health.ny.gov/health_care/managed_care/providers/#model_contracts](https://www.health.ny.gov/health_care/managed_care/providers/#model_contracts)
- Insurance Exchange regulations and rules

Hint: Key terms to look for: “provider network”, “network adequacy”, “network service”, “network contracting requirements,” and “minimum network standards”
ASSESSING LEVERAGE: MARKET-BASED

Self-Assessment Questions:
- Does the MCO have alternatives if it does not contract with me?
- Can the MCO afford to leave me out of its network?
- Is the MCO establishing a new product or provider network?
- Is MCO facing critical deadlines in order to enter marketplace by a certain date?

Get Answers! Conduct a market analysis
- What counties in New York State do I serve?
- What organizations furnish similar services to me?
- For each of my services, what percent of the market do I serve as compared to other organizations?

Hint: Fewer providers = Greater leverage
- Assess breadth and scope of services
- Analyze market share
- Consider brand and reputation
Competing on value enhances your negotiating position because of the particular services, skills or qualities you bring to the table.
Self-Assessment Questions:

- Can you offer potential cost-savings to the MCO through reductions in ER visits or inpatient admissions?
  - Adherence to antipsychotic medications
  - Better management of behavioral health or SUDs
  - Identification of undiagnosed behavioral health or SUDs?
- For any of the above, can you quantify the savings?

Get Answers!

- Collect data and report on quality measures
- Access data on total costs of care for your patients
Self-Assessment Questions:

- Do you offer integrated physical and behavioral health care?
  - What model of integration?
  - Have you been designated as a health home?

- Do you have written affiliation arrangements for the referral of patients with significant mental illness or substance use disorders from primary care providers?

- Can you offer MCOs potential cost savings through ensuring appropriate coordination of care for your patients’ physical health conditions?
Self-Assessment Questions:

- Are you able to participate in Value Based Payments (VBP)?
- Do your outcomes qualify the MCO for incentive payments from the State?
- Do you have the capacity to incur some downside financial risk that would otherwise fall upon the MCO?
  - Capitated payment for the provision of services furnished by your organization
  - Bundled payments or case rates for specific diagnoses or conditions
  - Shared savings and losses for total costs of care
COMPETING ON VALUE

➢ Communicate Your Value!

➢ Marketing materials that communicates the value you offer to MCOs

➢ In-person meetings with MCOs to describe cost and clinical outcomes

➢ Participation at conferences that highlight your achievements

➢ Informal networking events

➢ Community events
Collaborations with other providers through joint ventures or integrated provider networks may increase leverage in the marketplace, enhance your value, or both, thereby improving your negotiation position.
TYPES OF JOINT VENTURES

- Primary Care Provider + Behavioral Health Provider = Joint Venture

- Referral Arrangement
- Co-location Agreement
- Purchase of Services
- Merger
TYPES OF PROVIDER NETWORKS

IPA
- Behavioral Health Provider
- Primary Care Provider

Behavioral Health Organization
- Behavioral Health Provider
- SUD Provider

Management Services Organization
- Behavioral Health Provider
- SUD Provider
DEVELOPING PROVIDER NETWORKS

• Providers form networks for a variety of purposes:

  • Shared Support Services
    ✓ IT Support for Electronic Health Record (EHR)
    ✓ Health Information Exchange (HIE)
    ✓ Credentialing practitioners; exclusion/debarment background checks
    ✓ Third-Party Billing

  • Managed care contracting
    ✓ Marketing network of health care providers
    ✓ Facilitating managed care contracting
    ✓ Negotiating capitated risk contracts
    ✓ Negotiating shared savings arrangements
In general, providers must make independent, unilateral decisions on contractual terms and negotiate separately in order to comply with state and federal antitrust laws.
FTC/DOJ Statements of Antitrust Enforcement in Health Care

• “Statement 8” - Creates “safety zone” for provider networks that allows a network to negotiate and contract with third parties as a single entity on behalf of its participants and to engage in other activities typically considered anti-competitive, if the participants are sufficiently integrated.

• Financial Integration means substantial financial risk-sharing by network participants in providing all the services that are jointly priced through the network
  • Capitation
  • Shared savings (upside, downside, or both)

• Caution: Beware of market share limitations
“RULE OF REASON” TEST FOR CLINICAL INTEGRATION

“Rule of Reason” test applies to determine whether providers’ integration through the network is likely to produce significant efficiencies that benefit consumers and the price agreements by the network physicians are reasonably necessary to realize those efficiencies.

• Clinical Integration: Active and on-going programs to evaluate and modify clinical practice patterns of all network providers

• FTC issues Advisory Opinions to guide organizations on clinical integration
NON-INTEGRATED PROVIDER NETWORKS

- Used if network is neither financially or clinically integrated

- Messenger *facilitates* contracting by transmitting offers between MCO and each provider

- Key Requirements:
  - Each provider determines whether to accept MCO's offer
  - Messenger may not negotiate rates!
EVALUATION PHASE

Review the proposed contract to determine whether it fits within your organization’s goals and expectations.
EVALUATING THE CONTRACT

1. Consider timeframe for review

2. Assemble your contract review team
   - Establish a “point person” and review team lead
   - Assign areas of contract review to team members based on their expertise

3. Assemble documents
   - Obtain entire proposed contract from MCO, including all referenced and incorporated documents
   - Do not assume MCO knows your scope of services!
   - Obtain other documents necessary to understand legal obligations (for example, in Medicaid managed care, the MCO’s contract with the State)
4. **Assess the MCO’s Operational Performance**

Considering past performance of the MCO is crucial. If possible, gather information about past experience of the provider with this MCO:

- Did the MCO meet its payment obligations on time?
- Was the basis for denied claims reasonable?
- Did the MCO give the provider a role in the development of policies, such as utilization review?
- Was the MCO responsive to the provider’s requests?

5. **Assess the MCO’s Financial Stability**

Evaluate the MCO’s background and fitness. If possible, the provider should examine the following elements of the MCO’s operation:

- Financial stability and strength
- Administrative record
- Operational methods
- Structural framework
6. Review the Contract

- Do you understand what all provisions mean?
- What provisions disadvantage your organization from a financial, clinical, operational, or legal perspective?
- Are responsibilities for each party clearly stated and all terms defined?
- Does the contract include all of the relevant appendices and exhibits?
- Have you reviewed any policies, procedures and documents referenced in the contract?
- Have you reviewed any references to statutes, codes, regulations to know what they say?
- Is the contract consistent with all other applicable Federal and State legal requirements?
- Does the contract reflects sound business judgment?
7. Identify and *Prioritize* Issues

- Make a list of the issues you identified during the contract review process.
- Categorize each issue as follows:
  - **Red**: Critical issues that without addressing you cannot afford to proceed because the risks (not just financial) are unacceptable for the organization
  - **Yellow**: Significant issues that should be addressed before proceeding because they create undesirable risks for the organization
  - **Green**: Issues that ideally would be addressed prior to proceeding to reduce potential risks
Negotiation is discussion aimed at reaching an agreement.
NEGOTIATING THE CONTRACT

A common error is bargaining over positions, which

- occurs when one or both parties get stuck in ensuring that they win on their positions, regardless of whether the overall goal is attained
- occurs when parties take extreme positions in the expectation that they will have room to bargain down
- results in a loss of focus on underlying concerns
Instead, focus on underlying interests:

- Respond with questions, rather than statements, and respond specifically to the MCO’s concerns
- Develop options for mutual gain and generate a variety of possibilities before deciding what to do
- Look for zones of agreement and areas of overlap
NEGOTIATING THE CONTRACT

If you did not resolve all of the critical issues to your satisfaction, consider:

- whether this one MCO contract is essential to your operations
- whether the risks of contracting outweigh the risks of not contracting with the MCO
- whether you can terminate the contract early in the event that the financial or legal harm becomes too great to bear
- whether you have any other options for achieving a better outcome, i.e., using an agent for negotiations
NEGOTIATING THE CONTRACT

➢ **Educate**: Do not assume that the MCO’s representative understands your concerns.

➢ **Learn**: Respond with questions, rather than statements, and respond specifically to the MCO’s concerns.

➢ **Voice** options for mutual gain and generate a variety of possibilities before deciding what to do.

➢ **Insist** that resulting provisions be based on some objective standard.

➢ **State** the importance of maintaining an ongoing relationship.
CONCLUDING THOUGHTS

- Managed care contracting requires you to evaluate your position in the marketplace for behavioral health and SUD services.

- Assess your strengths and weaknesses in the context of managed care
  - Which organizations comprise your competitors for MCO contracts?
  - Can you compete with other organizations on the basis of value?

- What organizational strategies will lead to increased leverage and the ability to compete on value in the managed care marketplace?
  - Consider pursuing collaborations with other providers, including the formation of integrated networks for shared services and managed care contracting

- Initiate conversations with MCOs about payment methodologies that support the delivery of quality services and lower overall costs.
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Upcoming Events
Technical Assistance Schedule
Please visit mctac.org for more info & to register

Contracting

➢ **Webinar:**
  ▪ Timelines & State Protections: 2/17

➢ **In Person Contracting Fairs:**
  ▪ **Buffalo:** Monday, 2/29
  ▪ **Syracuse:** Tuesday, 3/1
  ▪ **Albany:** Wednesday, 3/2
  ▪ **Long Island:** Friday, 3/18
  ▪ **Lake Placid/North Country:** Coming Soon: April 2016
  ▪ **Hudson Valley:** COMING SOON: March 2016

UM/Billing In Person Events

➢ **Buffalo:** Monday, 4/11
➢ **Syracuse:** Tuesday, 4/12
➢ **Finger Lakes:** Thursday, 4/14
➢ **North Country:** Coming Soon, April 2016
➢ **Albany:** COMING SOON, May 2016
➢ **Hudson Valley:** COMING SOON, May 2016
➢ **Long Island:** COMING SOON
Questions

Visit www.mctac.org to view past trainings, sign-up for updates and event announcements, and access resources.