

Contracting Strategy Summary

STRATEGY A plan of action for accomplishing an objective

Before you sign, use the **PEN!**



Prepare



Evaluate



Negotiate

PREPARATION



A party that recognizes its strengths has an advantage in achieving its goals.

Assess Your Leverage: regulatory, market-based, and competitive factors.

- ▶ Review New York's RFQ for Managed Care Organizations (MCOs), state insurance and Medicaid regulations, and DOH/OMH/OASAS guidance documents to determine MCO requirements:
 - Include your provider type/service in its network?
 - Contract with all provider types/services?
 - Pay you a specific rate or level for a period of time?
- ▶ Determine whether the MCO needs you to participate in their network because the MCO needs:
 - To establish a new product/provider network.
 - Regulatory approval of network adequacy.
 - To enter the marketplace by a given date.
- ▶ Conduct a market self-assessment to identify other providers that furnish similar services in your region

Competing on Value: the particular services, skills, or qualities you bring to the table

- ▶ Demonstrating potential value may include:
 - High rates of prescription drug adherence, low numbers of ER visits/hospitalizations, and reductions in overall cost of care.
 - Referral agreements, co-locations; purchase of services to integrate physical and behavioral health services.
 - Acceptance of some financial risk through monthly capitation, bundled payments or case rates for specific diagnoses or conditions, shared saving/shared risk for total cost of care.
- ▶ Communicate the value you offer to MCOs through marketing materials and meetings.

Collaborations with Other Providers: joint ventures or integrated provider networks may increase leverage in the marketplace, enhance your value, or both.

- ⚠ Networks offer shared support services or managed care contracting services, but providers should proceed with caution! Collaboration among providers implicates antitrust laws.
 - General rule: *providers must independently evaluate and decide upon contractual terms and negotiate separately to comply with antitrust laws.*
 - "Safety zone" for sufficiently integrated provider networks allows the network to negotiate managed care contracts on behalf of participants.
 - "Messenger model" for non-integrated provider networks may facilitate contracting but not negotiate price-related terms.



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THE MANAGED CARE TECHNICAL
ASSISTANCE CENTER OF NEW YORK




Developed in collaboration with:

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MANAGED CARE CONTRACTING FOR BEHAVIORAL HEALTH

Contracting Strategy Summary**EVALUATION**

Review the proposed contract to determine whether it fits within your organization's goals and expectations:

- ☐ **1 Establish a timeframe for review**
- ☐ **2 Assemble your team**
 - Appoint a team lead/point person
 - Assign review objectives to members based on expertise
- ☐ **3 Assemble documents**
 - Obtain entire proposed contract, including all referenced/incorporated documents
 - Gather documents that will inform legal obligations (e.g., MCO's contracts with state and federal agencies)
- ☐ **4 Assess MCO's operational performance**
 - Promptness of payment to providers
 - Reasonableness of denied claims
 - Inclusion of providers in developing policies
 - Responsiveness to provider inquiries and requests
- ☐ **5 Assess MCO's financial condition**
 - Review insurance filings to ascertain financial stability and strength
- ☐ **6 Review the contract**
 - Understand what each contract provision means
 - Ensure that each party's responsibilities/obligations are clearly defined
 - Review all documents incorporated in, attached to, or referenced by the contract
 - Review any referenced laws and regulations
 - Ensure contract complies with applicable federal and state laws and regulations
 - Ensure financial terms reflect sound business judgment
 - Identify provisions detrimental to your organization from financial, clinical, operational, and legal perspectives
- ☐ **7 Identify and prioritize issues**
 -  Critical issues that will prevent you from proceeding because risks outweigh benefits
 -  Significant issues that create undesirable risks
 -  Issues that would be addressed to reduce low risks in an ideal situation

NEGOTIATION

See pages 3–4 of the Contracting Strategy Summary for more useful tips and an outline of the Negotiation process.

NEGOTIATION



A discussion aimed at reaching agreement

Decide Logistical Issues Upfront

- *Who will negotiate—a single individual or a team of two?*
 - ↳ The more people involved in negotiation, the more adversarial it may feel to the other party.
- *How will you negotiate—by e-mail, phone, or in-person?*
 - ↳ Negotiations by phone or in-person may be more effective and efficient than e-mail, as they generally avoid (or help to correct) misunderstandings.

Take a Collaborative Approach to Negotiations

- Identify issues upon which both sides agree in order to create rapport. For example:
 - ↳ Confirm your interest in participating in the provider network.
 - ↳ Acknowledge pressure on the other party to comply with state requirements and deadlines.
- Explain your concern over particular provisions.
 - ↳ Do not presume that the other party understands your business!
 - ↳ Describe the financial, clinical, or operational impact a provision might have on your organization.
- Use questions rather than statements. For instance:
 - ↳ Ask *why has this provision been included in the contract?*
 - ↳ Ask *how do we object and appeal the MCO's decision?*
 - ↳ Ask *do you have any flexibility on these terms?*
 - ↳ Ask *can this provision be modified to protect both parties?*
- Engage the other party in brainstorming options that can address concerns or benefit both parties.
 - ↳ Look for zones of agreement and areas of overlap, emphasizing the importance of maintaining an ongoing relationship.
- Propose that provisions should be based on objective and external standards. For instance:
 - ↳ Industry standards related to credentialing, licensing, or accreditation.
 - ↳ Medicaid reimbursement rates or methodologies.
 - ↳ Medicaid procedures and policies on prior authorization or utilization management.

**Tip: Avoid bargaining over positions!**

This occurs when one or both parties get stuck in ensuring that they “win” on their positions, regardless of whether the overall goal is attained. It often occurs when parties take extreme positions in the expectation that they will have room to bargain down and results in a loss of focus on underlying concerns.

Strategy for Negotiation continues on the following page.

MANAGED CARE CONTRACTING FOR BEHAVIORAL HEALTH

Contracting Strategy Summary**NEGOTIATION****A discussion aimed at reaching agreement****CONTINUED****Avoid Common Negotiating Pitfalls**

- Failing to keep the overall goal in mind and focusing only on winning.
- Getting angry as a means of persuading the other party to adopt your position.
- Taking an extreme position initially in order to attain a more reasonable position later.
- Failing to make an effort to remain flexible (without compromising your own goals).

**Know When to Walk Away** Consider:

- The amount of leverage you should have in the negotiation based on the assessment conducted in the preparation phase.
- The degree to which critical issues identified in the evaluation phase were adequately addressed and the organization's tolerance for risk.
- The importance of participating in the MCO's provider network and the impact on the organization (and patients) if you decline participation.
- The extent to which the contract embodies the provider's overall goals and objectives.
- If the contract includes provisions that would result in the provider clearly running afoul of applicable legal requirements.

**Remember: E.L.V.I.S.!**

- E**ducate the MCO's representative on your concerns and issues.
- L**earn about the MCO's position by responding with questions rather than statements.
- V**oice options for mutual gain and generate various possibilities before making final decisions.
- I**nsist that resulting provisions be based on objective standards.
- S**tate the importance of maintaining an ongoing relationship.

*Before you sign, use the **PEN**!***Prepare****Evaluate****Negotiate****See pages 1-2 of the Contracting Strategy Summary for information regarding Preparation and Evaluation.**For more resources on Managed Care contracting, visit the *Tools and Resources* page at **mctac.org**.

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