

National Learning Community Network Development Track

Network Management

Wednesday July 26, 2023

Today's Agenda

1. Welcome & roll call
2. ACL updates & announcements
3. Guest presentation, Network Management: Paul Cantrell
4. Q&A and discussion
5. Wrap up

Notices of Proposed Rule Making – Input Needed

- **Older Americans Act Proposed Rule**

- ACL seeks input on proposed updates to the regulations for most of its Older Americans Act (OAA) programs.
 - Last substantial update to most OAA program regulations was in 1988
- The 60-day comment ends August 15, 2023, and ACL is looking for input from aging and disability networks and those served by OAA programs.
- Instructions for submitting comments can be found [here](#).

- **CY 2024 CMS Medicare Physician Fee Schedule Proposed Rule**

- CMS is proposing coding and payment changes to better account for resources involved in furnishing patient-centered care involving a multidisciplinary team of clinical staff and other auxiliary personnel.
- Specifically proposing to pay separately for Community Health Integration (CHI), Social Determinants of Health (SDOH) Risk Assessment, and Principal Illness Navigation (PIN) services to account for resources when clinicians involve community health workers, care navigators, and peer support specialists in furnishing medically necessary care.
- Comments must be received no later than 5 p.m. on September 11, 2023
 - See pages 2-3 of NPRM for instructions for submitting comments (<https://public-inspection.federalregister.gov/2023-14624.pdf>)
 - For further information contact MedicarePhysicianFeeSchedule@cms.hhs.gov

Paul Cantrell



- *former* Director, Georgia Insurance Department
- *former* Corporate Director, Humana
- President, Clear View Strategies, LLC
- Exec. Director, Comprehensive Care Connections (PA)

Learning Objectives/Key Concepts

- Managing Risk: Insurance coverage needs for your network to meet contracting requirements
- Managing downstream provider contracts
- Types of credentialing for community care hubs and network service providers
- Anti-trust and Conflict of Interest concerns and potential firewall needs.

Poll Question # 1

What type of hub are you building?

- Central Authority
- Lead Agency
- Federation
- Another structure: _____

Poll Question # 2

What type of contracts does your hub hold today?

- Service/Care Coordination/Management (*including transitions in care setting*)
- Service provision (*meals delivery, EBPs, home mods, etc.*)
- Something else: _____
- We do not currently hold contracts as a hub

Poll Question # 3

As a hub, do you currently perform or audit performance of the following from your network?

- Data security, including penetration testing
- Required trainings
- Background, exclusion, and debarment checks
- Mandatory insurance coverages
- Anti-Trust risk management
- Conflicts of Interest protections and firewalls

Insurance and Risk

Insurance is a Risk Management Tool

- What coverage is required by your payer or the state?
- What risks does your agency want to mitigate?
- What actions related to Downstream Risks should you protect your agency (the hub) against?

Insurance Types

- Professional Liability
- General Liability
- Directors' & Officers' Liability
- Multi-Organizational Coverage
- Crime and Terrorism
- Owned/Non-owned Auto
- Cyber/Network Security
- Umbrella

Professional Liability

Also known as Errors and Omissions, professional liability protects your organization against claims made by a third party (i.e., anyone who does not work for your CBO). Generally, these claims are about a client of yours alleging your organization failed to do something it was obligated to do and other forms of abstract risk, such as—

- Errors and omissions
- Failure to perform
- Breach of contract
- Negligence
- Misrepresentation

General Liability

Also protects your organization against claims made by a third party.

However, general liability covers physical risks, such as

- Harm to reputation
- Bodily injury (other than employees)
- Property damage
- False statements harm (*advertisements or mis-statements about others*)

Directors' & Officers' (D&O) Liability

Covers your Board of Directors and Officers (D&O) from personal liability related to acts of the organization generally—and the specific actions those directors and officers take (or fail to take) in their official role on behalf of the organization. Be certain to review your policy to verify that it covers—or does not exclude coverage of—the types of work your CBO will be doing under contract as a hub.

Multi-Organizational Coverage

Many hubs may have subsidiaries or the hub may be a subsidiary of another (parent) organization. Insurance coverages that name one organization do not necessarily cover other legally related entities.

Confirm that your policies do cover such legally-related entities or that each carries its own coverages.

This is especially important for hubs related to your contracted provider CBOs.

Crime

Covers various crimes against your organization, such as

- Employee dishonesty
- Computer and credit card fraud
- Financial scams (e.g., phishing)

Terrorism

A specific type of crime that is generally excluded under other types of coverages. Covers various crimes against your organization or society (that impacts your organization) that are intentional in nature and generally intended to cause fear and maximum damage, often with a extreme religious or political purpose.

For more information see TRIP in the Resources list.

Owned/Non-owned/Personal Auto

- **Owned/Leased by CBO:** Auto coverages for your vehicles
- **Non-owned autos:** Auto coverage to protect your CBO when an employee or contractor is driving their personal vehicle for official work-related activities.
- **Employee considerations:** Many personal auto policies will not cover an accident involving an individual using their personal auto to perform work-related activities unless the policy includes “business use”.

Cyber/Network Security

Covers liability and expenses incurred as a result of ransomware and other malicious acts, errors, and omissions (by other than employees) in connection with data security breaches that impact electronic information under your agency's control. For example, breaches of your IT system to steal personally identifiable information about your clients, credit card numbers, health insurance information, social security numbers, etc..

Umbrella

A layer of insurance protection that goes on top of your organization's other liability insurance protections. This coverage can help secure higher limits that you, or your contracted payer, may deem necessary.



Activities that May Create Risk

- Negotiating contracts with payers (& executing those contracts)
- Contracting downstream providers to perform services
- Outsourcing administrative functions
- Data management and sharing (Paper and Electronic)
- Employment practices
- Informing and Training (or lack of adequate training)
- Contract adherence
- Fiscal management

Contracting Provisions that May Create Risk

- **Duty to perform** (*Task execution and related performance standards and quality metrics*)
- **Payment** (*fiscal management of inflows and outflows*)
- **Termination** (*of hub by payer & of CBO by hub*)
- **Dispute resolution** (*hub vs payer, CBO vs CBO, & CBO vs hub*)
- **Work assignment** (*volume, territory, timing, etc.*)
- **Data security** (*of hub for payer & of CBO for hub*)

Managing Downstream Provider Contracts

First tier, downstream and related entities (FDRs)

“... any party that enters into a written arrangement with an [Medicare Advantage] organization or contract applicant to provide administrative services or health care services for a Medicare eligible individual”

- The FDR assumes the same responsibilities as the plan takes on and is subject to CMS auditing, just like the plan.
- The FDR (your hub is likely an FDR under any contract with a Medicare Advantage plan) is also directly responsible for the compliance of its service providers (and liable for their failures).

Downstream Provider Contracts

- Compare contract terms and conditions. They should be completely aligned!
- What are the referral expectations?
- Geographic expectations?
- Payment terms?
- Data requirements?
- Insurance requirements?
- Liability provisions?

Credentiailling *and* Operational Readiness

Three Distinct Contracting Segments

Pre-Contract

All of the steps through a signed agreement.

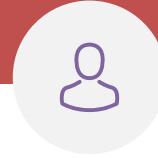


Operational Readiness



Execution

Doing the work: quality assurance and performance improvement.



Credentialing and Operational Readiness

Compliance Program, generally:

- ✓ **Governance:** Compliance Officer/Committee, Board responsibilities, and independence
- ✓ **Documentation management:** Code of Conduct, Policies and Procedures, staff reporting, audits and reviews, etc.
- ✓ **Trainings and Re-trainings:** HIPAA, non-discrimination and DEI
- ✓ **Business Continuity and Disaster Recovery Plans:** Do you have one? Periodic testing? Training?
- ✓ **Facilities and Materials accessibility standards:** Are your facilities and materials in compliance with access and inclusion standards?
- ✓ **Conflicts of Interest:** Attestations and Re-attestations? Training?
- ✓ **Anti-trust:** Trainings? Use in inter-organizational meetings?
- ✓ **Background, exclusion, and debarment checks:** Frequency?

Credentialing and Operational Readiness

Data Security:

- ✓ **Agency Physical and Electronic Records:** Securely maintained? HIPAA compliant (including minimum necessary standard)? Logs? Redundancies? Maintained in the US? BAA with storage provider?
- ✓ **HiTrust Certification:** Are you certified? Other means of proof?
- ✓ **Penetration Testing:** Are your cyber systems and facilities routinely audited for vulnerabilities? Results? Corrective actions?
- ✓ **Secure Data Exchange:** HL7/FHIR enabled? FTP capable?
- ✓ **Secure email:** Proper use training?
- ✓ **Medicaid/SMAC contract requirements:** If your hub is contracting with a Medicaid plan, does your agency fully comply with all waiver requirements? SMAC agreement? Other state Medicaid rules?

Credentialing and Operational Readiness Cont'd

Training – Onboarding, periodic ongoing, and specific re-trainings:

- ✓ **Documentation:** Maintain actual training materials? Proof of attendance (entry and exit)? Knowledge retention? Deficiencies and re-trainings?
- ✓ **HIPAA:** Required no less frequently than at onboarding and annually thereafter.
- ✓ **Non-Compliance reporting:** How to report, confidential nature, including directly to the Board, and non-retaliation policies?
- ✓ **Business Continuity and Disaster Recovery Plans:** Training and employee participation in drills?
- ✓ **Critical Incident reporting:** How handled and re-trainings?
- ✓ **Conflicts of Interest:** Training? Attestations and Re-attestations?
- ✓ **Anti-trust:** Trainings? Use in inter-organizational meetings?
- ✓ **Non-discrimination and DEI:** Trainings and operational policies in place?
- ✓ **Fraud, Waste, and Abuse (FWA):** Minimum annual requirement
- ✓ **Person-Centered Planning:** training on PCP techniques and best practices?
- ✓ **Records retention policy:** Annual training?

Anti-trust and Conflict of Interest

Conflicts of Interest (COI) Mitigation

- ✓ Avoid employing individuals with an unremedied COI or who has a member of the immediate family with an unremedied COI
- ✓ Avoid assigning an individual to perform duties which would constitute an unremedied COI
- ✓ Periodically review, identify, and remedy conflicts or potential conflicts
- ✓ Establish proactive policies and contract language that protect the federal programs' interests
- ✓ Create firewalls to avoid even an appearance of a COI

Anti-Trust Statement



Antitrust Compliance Policy Statement

Comprehensive Care Connections' (C3) policy is to comply fully and strictly with both federal and state antitrust laws.

C3's policy is motivated by a firm respect and belief in the antitrust laws and the free market philosophy underlying these laws as well as by recognition of the potentially severe detrimental consequences of antitrust violations. Our aim is to conduct all interactions in such a way as to avoid any potential for antitrust exposure in the first instance.

Full compliance with the antitrust laws is a requirement for C3 and responsibility for compliance rests with each service-offering C3 member and non-member participating organization.

In order to comply with all antitrust laws, C3 participating organizations, as potential market competitors, should not discuss certain subjects when they are together — either at formal meetings or in informal contacts with other industry members.

Topics to avoid discussing with competitors include: prices, price trends, timing of price changes, costs of common inputs, margins, terms of sale, discounts and rebates, advertised prices, promotional programs, inventory levels, production levels, capacities, new products or projects, and the like.

Further, with rare exceptions that should be made only upon the advice of counsel, service-offering C3 participating organizations are prohibited from the following interactions with other service-offering C3 participating organizations:

- Fixing or setting prices for selling products or services;
- Allocating geographic markets or customers between or among competitors;
- Bid rigging, bid rotation, or otherwise distorting the bid process;
- Boycotting customers or vendors;
- Agreeing upon levels of production or output;
- Conspiring to exclude competitors or customers from the market; and
- Discussing specific R&D, sales or marketing plans, or any company's confidential product, development, or production strategies.

C3 participants have an obligation to terminate any discussion, seek legal counsel's advice, or, if necessary, terminate any meeting if the discussion might be construed to raise any antitrust risks.

Notwithstanding the above restrictions, as a management services organization, C3 shall enter into discussions and contracts with C3 participant organizations as needed to ensure the successful execution of its obligations under C3 proposals and contracts.

Price

Products

Geography

Resources

- [Considerations for the Network Leadership of a Community Care Hub](#)
- [Model Contracts for Hubs and Networks](#)
- [Guide to Insurance in Contracting](#)
- [Contracting Dos and Don'ts](#)
- [A Lexicon of Contracting Terms](#)
- [Network Options: Form follows Function](#)
- [Terrorism Risk Insurance Program \(TRIP\)](#)
- [CMS Medicare Managed Care Manual Chapter 11 \(see page 3 for FDR entity information\)](#)
- [Aetna FAQs on FDRs](#)
- [Inland Empire Health Plan \(CA\) Compliance Manual for FDRs](#)
- [ACL Conflict of Interest Resource](#)

Questions/Comments?

Wrap Up

- Meeting recording and material will be provided by the National Learning Community email team
- **Final curriculum TA webinar:**
 - **Wednesday August 23rd @2-3:30pm ET, Building the Business Case**
- View upcoming **Network Member Engagement recording** in preparation for August Peer Group Dialog Meeting 8/9
- Email Maya with USAging (mopdebeke@usaging.org) if you do not have the final TA webinar session in your calendar.