



Department of Health

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Executive Deputy Commissioner

April 8, 2020

Re: COVID-19 Guidance for Managed Care
Organization Contracting and Surveillance
Relief

Dear Managed Care Organization Chief Executive Officers, Medical Directors, Chief Financial Officers, Chief Operating Officers, Government Relations Managers and Compliance Officers:

The New York State Department of Health (NYSDOH) is providing this guidance to Health Maintenance Organizations (HMO), special purpose health maintenance organizations, also known as Prepaid Health Services Plans (PHSP), comprehensive HIV Special Needs Plans (HIV SNP), Health and Recovery Plans (HARP) and Managed Long Term Care Plans (MLTCP, FIDA-IDD and PACE) certified by the State of New York under Article 44 of the Public Health Law (MCO), which may hereinafter be referred to as Managed Care Organizations (MCO) pertaining to the current novel coronavirus (COVID-19) public health crisis. This guidance is provided due to the state of disaster emergency declared by [Executive Order 202](#), and shall remain in effect until subsequent notice from the NYSDOH, which will be provided prior to, or upon, the expiration of such state disaster emergency.

Background

The health and safety of the State's health care providers, and our ability to provide and support patient care, remain our top priorities. Community-wide transmission of COVID-19 has occurred in the United States (US) and the number of Persons Under Investigation (PUIs) and confirmed COVID-19 cases is increasing in NYS. The situation with COVID-19 infections identified in the US continues to evolve and is rapidly changing. It is important for all agencies to keep apprised of current guidance by regularly visiting the NYSDOH and Centers for Disease Control and Prevention (CDC) websites, as well as the NYSDOH Health Commerce System (HCS).

- NYSDOH: <https://coronavirus.health.ny.gov/home>
- CDC: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- HCS: <https://commerce.health.state.ny.us>

It is important to keep staff updated as the situation changes and educate them about the disease, its signs and symptoms, protocols for exposure to confirmed cases, conditions for return to work for staff with confirmed or suspected cases, and necessary infection control to protect themselves and the people they serve. NYSDOH distributes alerts and advisories on its website. It is vital that providers maintain up-to-date contact with both NYSDOH and the CDC. Providers may wish to provide internal contact information for their staff and members to call with concerns, reports, or questions.

1) PROVIDER AND MANAGEMENT CONTRACTING

NYSDOH is aware that to facilitate the safe delivery of services, MCOs are increasing access to telehealth and telephonic modalities through their provider and management contracts. In addition, the routine contracting processes support ongoing MCO and provider operations. To assist MCOs, NYSDOH is making the following changes to the contract review and approval process:

- (a) Non-Risk or Upside Only Risk MCO-Provider Contracts (Tier 1): During the state of emergency, NYSDOH is **suspending the prior approval** of Tier 1 contracts, deeming such contracts **conditionally approved**, and allowing the MCOs to **implement such contracts immediately**. MCOs must continue to submit all provider contracts, templates and amendments electronically to contract@health.ny.gov. NYSDOH retains the right to perform its customary review, and to require the MCO to make modifications to such contracts, when requested. All other MCO-Provider contracting procedures remain in place, available at: https://www.health.ny.gov/health_care/managed_care/hmoipa/hmo_ipa.htm.
- (b) MCO-Management Service Agreements (MSA):
- (i) NYSDOH is **suspending the requirement of prior approval** of certain Management Service Agreements (MSA). NYSDOH will deem agreements **conditionally approved** during the State of Emergency that either:
1. **Amend** an existing agreement to only extend the length of the agreement; or
 2. Extend **existing agreements** with the same terms, subject to the **five-year** resubmission requirement.
- MCOs must continue to submit all MSA and amendments electronically to contract@health.ny.gov. NYSDOH retains the right to perform its customary review and to require the MCO to make modifications to such MSA, when requested. All other MCO-MSA review and approval procedures remain in place, available at: https://www.health.ny.gov/health_care/managed_care/pdf/mgmt_contract_guidelines.pdf.
- (ii) NYSDOH is **suspending** the requirement that MCO's submit evidence of the management contractor's financial stability, pursuant to 98-1.11(l)(5), during the state of emergency.
- (iii) NYSDOH is **suspending** the requirement for submission and approval of new MSAs due to affiliations or mergers of management contractors, during the state of emergency.
- (c) Supporting Documentation for MCO-Provider contracts and MSA. During the state of emergency, NYSDOH is **suspending** the following:
- (i) The notarization requirement on the Certification Statements (Forms DOH 4255 and DOH 5038);
 - (ii) The MCO Officer/Legal Counsel signature requirement on the Certification Statements (Forms DOH 4255 and DOH 5038) for both provider and management services contracts, substituted by an email from the MCO Officer/Legal Counsel, attesting to the content of the Certification Statements. The email should contain attestation language contained in the Certification Statements. The subject line of the email should include the Unique ID Number for the contract; and

- (iii) The submission and approval of Character and Competence (C&C) for management contractors that have already undergone C&C by the Division of Health Plan Contracting and Oversight or the Division of Long Term Care, during the State of Emergency. NYSDOH retains the right to perform its regulatory review and to require the MCO to make modifications when requested.

2) PROGRAM SURVEILLANCE OVERSIGHT

NYSDOH is aware that MCOs are facilitating safe operations (e.g., remote work) for their staff and diverting staff and resources to support critical and ongoing delivery of services to their members. To assist MCOs in administrative relief while responding to the state of emergency, NYSDOH is making the following changes to surveillance and oversight activities:

- (a) NYSDOH is **suspending** issuance of all new Statements of Deficiency (SOD) and Statements of Finding (SOF) during the state of emergency, unless noncompliance is egregious and/or compromises the health, safety or welfare of MCO enrollees.
- (b) NYSDOH will continue to perform oversight, investigation, and resolution of MCO non-compliance through complaints and ad hoc focus surveys, during the state of emergency.
- (c) The Bureau of Consumer Services and the MLTC Technical Assistance Center will continue to coordinate the timely resolution of complaints with MCOs during the state of emergency. MCOs are required to respond promptly to the NYSDOH investigator's request for information, by email where possible. Voicemail messages may also be left, if needed. The MCO should always reference the NYSDOH complaint case number provided.
- (d) NYSDOH will **suspend** the following surveillance activities during the state of emergency:
 - (i) Comprehensive and Targeted Operational Surveys;
 - (ii) Routine Focus Surveys, including provider network, provider manual, member handbook;
 - (iii) Root Cause Surveys;
 - (iv) Readiness Surveys; and
 - (v) EQRO surveys including member services, provider directory/ access and availability, and PCP ratio.
- (e) During the state of emergency, NYSDOH is **suspending** the submission and approval of Character and Competence (C&C) for the MCO's medical director, members of the board and officers, controlling persons, owners, partners, including those in the MCO's holding company, and if the MCO is a limited liability company (LLC), the members and managers of LLC, provided the C&C has already been performed by the Division of Health Plan Contracting and Oversight or the Division of Long Term Care. However, MCOs shall continue to notify NYSDOH of any departures or replacements, by email at bmccsmail@health.ny.gov. NYSDOH retains the right to perform its regulatory review and to require the MCO to make modifications, when requested.

Instructions for Provider Personnel who are at Risk of Being a Person Under Investigation (PUI)

Staff are exposed to the general community every day and could become infected with COVID-19. Providers should ensure they have a policy to screen staff for symptoms or contacts that might have put them at risk for COVID-19, prior to them conducting face-to-face visits with enrolled members. It is important that providers strictly enforce their illness and sick

leave policies. Staff showing symptoms of illness should not be permitted to remain at work or visit members. Providers may allow staff with confirmed, or suspected COVID-19, to return to work in conformance with NYSDOH published Health Advisories.

Staff who have been potentially exposed to someone with confirmed COVID-19, or to someone who is a person under investigation (PUI) for COVID-19, may return to work in conformance with NYSDOH published Health Advisories, based on exposure risk for having contracted COVID-19 and any presenting symptoms.

If a staff person is found to be ill upon screening, the agency should send the person home immediately and suggest that they contact their primary care physician, or refer them to immediate medical care, if necessary.

Where can I direct my questions about COVID-19?

Questions can be directed to icp@health.ny.gov or to the toll-free call center at 888-364-3065.

Where can I direct my questions about this guidance?

Please send any questions relating to this guidance to bmccsmail@health.ny.gov.

Your diligence in implementing appropriate measures for COVID-19 preparedness is appreciated.