



## **Selective Contracting Required Elements of Provider Selection and Termination Policies and Procedures**

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The DMC-ODS (Drug MediCal Organized Delivery System) Waiver and 42 CFR (Code of Federal Regulations) Section 438 require that counties have policies and procedures for provider selection, and protests and appeals by providers who are not selected. The following elements are recommended for inclusion in the county's policy and procedure:

- Contractors must have a documented process for credentialing and re-credentialing of providers (i.e., individual practitioners)
- The county selects only providers that have a license and/or certification issued by the state that is in good standing
- The county selects only providers that, prior to the furnishing of services under this pilot, have enrolled with, or revalidated their current enrollment with, DHCS (Department of Health Care Services) as a DMC provider under applicable federal and state regulations, have been screened in accordance with 42 CFR 455.450(c) as a "high" categorical risk prior to furnishing services under this pilot, have signed a Medicaid provider agreement with DHCS as required by 42 CFR 431.107, and have complied with the ownership and control disclosure requirements of 42 CFR 455.104.
- The county does not select any providers who are under investigation for MediCal fraud
- The county selects only providers that have a Medical Director who, prior to the delivery of services under this pilot, has enrolled with DHCS under applicable state regulations, has been screened in accordance with 42 CFR 455.450(a) as a "limited" categorical risk within a year prior to serving as a Medical Director under this pilot, and has signed a Medicaid provider agreement with DHCS as required by 42 CFR 431.107
- The county does not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment
- The county/provider contract allows for revoking delegation of county responsibilities to a contractor or imposing other sanctions if the contractor's performance is inadequate
- The county "may not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification solely on the basis of that license or certification" This does not mean that 1) the county is required to contract with providers beyond the number

necessary to meet the needs of its enrollee; 2) preclude the county from using different reimbursements amount for different specialties or for different practitioners in the same specialty; or 3) preclude the county from establishing measures that are designed to maintain quality of services and control costs while being consistent with the county's responsibility to its enrollees.

- The county requires providers to meet state standards for timely access to care and services, taking into account the urgency of the need for services
- The county ensures that providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid fee-for-services, if the provider serves only Medicaid enrollees
- The county follows the Bidder Appeals Process (Attachment Y of MediCal 2020 Waiver, p. 265):
  - i. Following a county's contract protest procedure, a provider may appeal to DHCS if it believes that the county erroneously rejected the provider's solicitation for a contract.
  - ii. A provider may appeal to DHCS, following an unsuccessful contract protest, if the provider meets all objective qualifications and it has reason to believe the county has an inadequate network of providers to meet beneficiary need and the provider can demonstrate it is capable of providing high quality services under current rates, and:

It can demonstrate arbitrary or inappropriate county fiscal limitations; or

It can demonstrate that the contract was denied for reasons unrelated to the quality of the provider or network adequacy.

- iii. DHCS does not have the authority to enforce State or Federal equal employment opportunity laws through this appeal process. If a provider believes that a county's decision not to contract violated Federal or State equal employment opportunity laws, that provider should file a complaint with the appropriate government agency.
- iv. A provider shall have 30 calendar days from the conclusion of the county protest period to submit an appeal to the DHCS. Untimely appeals will not be considered. The provider shall serve a copy of its appeal documentation on the county. The appeal documentation, together with a proof of service, may be served by certified mail, facsimile, or personal delivery.
- v. The provider shall include the following documentation to DHCS for consideration of an appeal:
  - a) County's solicitation document;
  - b) Provider's response to the county's solicitation document;
  - c) County's written decision not to contract
  - d) Documentation submitted for purposes of the county protest;
  - e) Decision from county protest; and
  - f) Evidence supporting the basis of appeal.
- vi. The county shall have 10 working days from the date set forth on the provider's proof of service to submit its written response with supporting documentation to DHCS. In its response, the County must include the following documentation: 1) the qualification and selection procedures set forth in its solicitation documents;

2) the most current data pertaining to the number of providers within the county, the capacity of those providers, and the number of beneficiaries served in the county, including any anticipated change in need and the rationale for the change; and 3) the basis for asserting that the appealing Provider should not have been awarded a contract based upon the County's solicitation procedures. The county shall serve a copy of its response, together with a proof of service, to the provider by certified mail, facsimile, or personal delivery.

- vii. Within 10 calendar days of receiving the county's written response to the provider's appeal, DHCS will set a date for the parties to discuss the respective positions set forth in the appeal documentation. A representative from DHCS with subject matter knowledge will be present to facilitate the discussion.
- viii. Following the facilitated discussion, DHCS will review the evidence provided and will make a determination.
- ix. Following DHCS' determination that the county must take further action pursuant to Paragraph 8 above, the county must submit a Corrective Action Plan (CAP) to DHCS within 30 days. The CAP must detail how and when the county will follow its solicitation procedure to remedy the issues identified by DHCS. DHCS may remove the county from participating in the Waiver if the CAP is not promptly implemented. If the county is removed from participating in the Waiver, the county will revert to providing State Plan approved services.
- x. The decision issued by DHCS shall be final and not appealable.