

Meeting #2

Date: August 27, 2015 1:00 PM

Location: MetLife Building, 200 Park Avenue, New York NY 10166

Attendees:



Regulatory Meeting
2 Attendance August

Overview

This was the second meeting of the Regulatory Impact Subcommittee (SC). The purpose of meeting #2 was to finalize recommendations for the policy questions related to Provider Risk Sharing (PRS) and Default Risk Reserves (DRR), which were introduced in the SC meeting #1. The Co-chairs and DOH also introduced the next set of policy questions that the SC will address. These new policy questions included VBP Contracting Entities and the need for specific changes to the Medicaid Managed Care Model Contract (Model Contract) and Provider Contracting Guidelines (PCG).

The Agenda for this meeting included:

1. Welcome and Overview
2. Recap: Provider Risk Sharing & Default Risk Review
3. Policy Questions and Options: Provider Risk Sharing and Default Risk Review
4. Introduction to Contracting Entities, Model Contract, and Provider Contracting Guidelines

Key Discussion Points (reference the slide deck “Regulatory Impact Subcommittee Meeting 2”)

1) Recap and Options Review: Provider Risk Sharing and Default Risk Reserves

A brief summary of the main concepts behind PRS, DRR, and the levels of VBP was provided as well as a recap of the conversation from the previous meeting. The SC members were asked to develop final recommendations for the State’s consideration and close the topic prior to the end of the meeting for both PRS and DRR. The SC reached consensus around each topic (as outlined below); and recommendations for both PRS and DRR are to be drafted and shared with the subcommittee for review prior to the next meeting.

Provider Risk Sharing

The members evaluated the options for PRS and favored **Option 1 - Leaving Regulation 164 as it currently stands**. However, In order to ensure that all parties entering VBP arrangements understand how Regulation 164 applies depending on the VBP Levels, the DOH and DFS will draft a Memorandum of



Understanding (MOU) that will delineate the specifics of the DOH and DFS provider contract review process (see below) and will be drafted following the Subcommittee's approval of the PRS and DRR recommendations.

Default Risk Reserves

The discussion on DRR Policy Options resulted in preliminary consensus around **Option 2b: Allow providers to engage in VBP Level Two arrangements without a financial security deposit**, but with the requirement for additional safeguards to mitigate risk. It was agreed that the SC would examine closely the review process before settling solidly on this recommendation. The Technical Design subcommittees will separately be responsible for developing detailed safeguards to lessen provider risk, while this SC is responsible for assessing regulatory and financial risk mitigation. The SC agreed to categorize VBP contracting arrangements into the following three (3) categories of review:

1. Intense Review: Arrangements requiring DFS approval under Regulation 164
2. Moderate Review: Arrangements requiring DOH review and approval
3. Limited Review: Agreements between parties with no State review required

A draft recommendation of this approach, including specific criteria and triggers related to each level of review, will be developed and circulated for comment.

2) Introduction to Contracting Entities and the Medicaid Managed Care Model Contract and Provider Contracting Guidelines






Contracting Entities

The SC discussed the preferred contracting vehicle(s) for contracting with an MCO for VBP arrangements. Currently, a PPS does not have the legal capacity on its own to contract directly with an MCO, however, given the desire to sustain the PPS infrastructure, the SC was asked to review whether PPSs should be granted this ability. Ultimately, the SC did not believe it was necessary to formally recognize a PPS as a legal entity capable of standalone contracting due to the sufficient existing legal framework afforded by forming an IPA or an ACO. **The SC recommended that no changes be made to recognize a PPS as a formal legal entity and instead maintain existing contracting vehicles (e.g., IPAs and ACOs).** Based on the SC's agreement with this approach, a draft recommendation will be developed and shared with the SC for review prior to the next meeting.

Medicaid Managed Care Model Contract and Provider Contracting Guidelines

Many of the technical and regulatory changes that will be implemented as part of the transition to VBP in Medicaid Managed Care will require changes to the Model Contract and Provider Guidelines. The DOH recognizes that changes may be required, and would consider reviewing and modifying these documents based on specific requests. These documents have been shared with the SC members, who were asked to submit their comments or suggested changes by the extended deadline of Friday, September 25, 2015 (original date was Friday, September 11, 2015).

Materials distributed during the meeting:

Document	Description
<p>NYS VBP Regulatory Impact Meeting #2</p>  <p>NYS VBP Regulatory Impact Meeting 2_08</p>	<p>A presentation deck of policy questions and options for Provider Risk Sharing/Default Risk Reserves and introduction to Contracting Entities, the Medicaid Managed Care Model Contract, and Provider Contracting Guidelines.</p>
<p>Provider Risk Sharing Policy Brief</p>  <p>Provider Risk Sharing Policy Brief_</p>	<p>This policy brief details 3 possible options related to provider risk sharing in VBP arrangements.</p>
<p>Default Risk Reserve Policy Brief</p>  <p>Default Risk Reserves Policy Brief</p>	<p>This policy brief details 3 possible options related to default risk reserves in VBP arrangements.</p>
<p>State Examples of Risk Sharing</p>  <p>VBP Regulatory Risk Arrangement St</p>	<p>This document compares and contrasts VBP-like models in other states.</p>
<p>Payment Examples for VBP</p>  <p>VBP Regulatory Risk Arrangement P:</p>	<p>This document outlines several VBP payment scenarios.</p>

Key Decisions

The SC made a decision to draft recommendations on the following:

- ✓ Option 1 for Provider Risk Sharing
- ✓ Option 2b for Default Risk Reserves
- ✓ No changes be made to recognize a PPS as a formal legal entity and instead maintain existing contracting vehicles (e.g., IPAs and ACOs)

Action Items:

- Recommendations for PRS, DRR, and Contracting Entities will be finalized and distributed to the SC ahead of the next meeting;
- The SC and DOH will work to develop practical examples with specific details related to PRS and DRR;



- Upon the finalization of the recommendation, DOH and DFS will collaborate to develop an MOU that outlines the categorization of risk arrangements into the various levels of oversight that were discussed; and
- Comments and change suggestions to the Model Contract and PCG are to be sent back to the SC co-chairs by September 25th.

Conclusion

The next SC meeting will be held in Albany on September 21, 2015 (more details to come) and will include:

- 1) A discussion of the recommendations drafted;
- 2) An overview of the comments and recommended changes to the Model Contract and PCG; and
- 3) An introduction to the new SC topics, including:
 - a. Anti-Kickback (Fee Splitting)
 - b. Self-Referral (Stark Law)
 - c. Prompt Payment
 - d. Civil Monetary Penalties