

<i>Name of MCO</i>	
<i>Reviewer(s)</i>	
<i>Date Reviewed</i>	
<i>Title of Document(s) Reviewed</i>	

***Subcontracting***

1. *Ability to Subcontract*

*The MCO may subcontract for any or all functions covered by this contract, subject to the requirements of this contract.*

2. *Accountability for Subcontracts*

*The MCO oversees and is held accountable for any functions and responsibilities that it delegates to any subcontractor. In order to meet these requirements the MCO must assure that:*

- *All subcontracts fulfill the Medicaid managed care requirements in 42 CFR Part 438 that are appropriate to the service or activity delegated under the subcontract;*
- *The MCO evaluates the prospective subcontractor’s ability to perform the activities to be delegated; and*
- *The MCO and the subcontractor have a written agreement that specifies the activities and reporting responsibilities delegated to the subcontractor and provides for revoking delegation or imposing other sanctions if the subcontractor's performance is inadequate.*

3. *Certification of Subcontracts*

- *The Department shall review MCO subcontracts. The Department’s subcontract review will assure that the MCO has the standard language in this article in subcontracts, except for specific provisions that are inapplicable in a specific MCO management subcontract.*
- *By the effective date of this contract, the MCO shall have submitted to the Department its subcontracts, or revisions to previously approved subcontracts, for approval. This can occur by one of two means:*
  - i. *The MCO submits each subcontract; or*
  - ii. *The MCO submits template language planned for use in the MCO’s subcontracts.*
- *The MCO shall attest annually that all subcontracts include the required provisions for subcontracts in this article.*

*Department’s Discretion Regarding Subcontracts*

- *At any time, the Department may review, approve, approve with modification, impose conditions or limitations or deny any and all subcontracts under this contract at its sole discretion and without the need to demonstrate cause. The Department may consider factors to protect the interests of the State and members, including but not limited to, the subcontractor’s past performance.*

- *If as the result of a Department action under paragraph a, the Department requires the MCO to find a new subcontractor, the MCO shall secure a new subcontractor in one hundred-twenty (120) calendar days, and allow sixty (60) calendar days to implement any other change required by the Department:*
  - iii. *The MCO may request a waiver of this deadline for subcontracting and for any other change, justifying the reasons the extension is needed.*
  - iv. *The Department, at its own discretion, may extend the deadline if the MCO shows to the satisfaction of the Department that additional time is needed.*
- *Any disapproval of subcontracts or failure of the MCO to comply with conditions or limitations imposed under paragraph 4.a may result in the application by the Department of remedies pursuant to Article XVI.D., Sanctions for Violation, Breach, or Non-Performance, page 184.*

**Instructions:** *Standard Language for Subcontracts*

*All subcontracts for member services shall be in writing, shall include the provisions of this subsection, and shall include and comply with any general requirements of this contract that are appropriate to the service.*

*The subcontractor must agree to abide by all applicable provisions of this contract. Subcontractor compliance with this contract specifically includes, but is not limited to, the following requirements (except for specific areas that are inapplicable in a specific subcontract):*

**Subcontract Review Tool**

	<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
	<p><b>Parties of the Subcontract</b></p> <p><i>The MCO and subcontractor entering into the agreement are clearly defined.</i></p>				
	<p><b>Purpose of the Program</b></p> <p><i>The subcontract clearly defines the purpose of the program.</i></p>				
	<p><b>Services</b></p> <p><i>The subcontract clearly delineates the services being provided, arranged, or coordinated by the subcontractor</i></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><b>Compensation</b></p> <p><i>The subcontract specifies rates for purchasing services from the provider. The subcontract specifies payment arrangements in accordance with Section M.6., Thirty-Day Payment Requirement, page 108 of this article..</i></p>				
<p><b>Term and Termination</b></p> <p><i>The subcontract specifies the start date of the subcontract and the means to renew, terminate and renegotiate. The subcontract specifies the MCO's ability to terminate and suspend the subcontract based on quality deficiencies and a process for the provider appealing the termination or suspension decision.</i></p> <p><i>The MCO will ensure that subcontracts reflect all current MCO Contract and subcontract requirements.</i></p>				
<p><b>Legal Liability</b></p> <p><i>The subcontract must not terminate legal liability of the MCO.</i></p> <p><i>If the MCO delegates selection of providers to another entity, the MCO retains the right to approve, suspend, or terminate any provider selected by that entity.</i></p>				
<p><b>Quality Management (QM) Programs</b></p> <p><i>The subcontractor agrees to participate in and contribute required data to the MCO's QM programs as required in Article XII, Quality Management (QM), page 148.</i></p>				
<p><b>Utilization Data</b></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><i>The subcontractor agrees to submit MCO utilization data in the format specified by the MCO, so the MCO can meet the Department’s specifications required by Article XIV, Reports and Data, page 169.</i></p>				
<p><b>Restrictive Measures</b></p> <p><i>The MCO must require its subcontractors to adhere to regulatory requirements and standards set by the MCO relative to restrictive measures including any type of restraint, isolation, seclusion, protective equipment, or medical restraint as required in Article V, Care Management, page 44. The MCO must require its subcontractors to adhere to regulatory.</i></p>				
<p><b>Critical Incidents</b></p> <p><i>The MCO shall require its subcontractors to identify, respond to and document and report critical incidents including unexpected deaths, as required in Article XII, Quality Management (QM), page 148</i></p>				
<p><b>Non-Discrimination</b></p> <p><i>The subcontractor agrees to comply with all non-discrimination requirements and all applicable affirmative action and civil rights compliance laws and regulations as described in Article XIII.B., page 159 (also reference <a href="http://dhs.wisconsin.gov/civilrights/Index.htm">http://dhs.wisconsin.gov/civilrights/Index.htm</a>).</i></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><b><i>Insurance and Indemnification</i></b></p> <p><b><i>The subcontractor attests to carrying the appropriate insurance and indemnification</i></b></p>				
<p><b><i>Notices</i></b></p> <p><b><i>The subcontract specifies a means and a contact person for each party for purposes related to the subcontract (e.g., interpretations, subcontract termination).</i></b></p>				
<p><b><i>Access to Premises</i></b></p> <p><b><i>The subcontractor agrees to provide representatives of the MCO, as well as duly authorized agents or representatives of the Department and the Federal Department of Health and Human Services, access to its premises, and/or medical records in accordance with Article XIII.F., Access to Premises and Information, page 165.</i></b></p>				
<p><b><i>Certification and Licensure</i></b></p> <p><b><i>The subcontractor agrees to provide applicable licensure, certification and accreditation status upon request of the MCO and to comply with all applicable regulations. Health professions which are certified by Medicaid agree to provide information about their education, board certification and recertification upon request of the MCO. The subcontractor agrees to notify the MCO of changes in licensure.</i></b></p>				
<p><b><i>Records</i></b></p> <p><b><i>The subcontractor agrees to comply with all applicable Federal and State record retention requirements in Article XIV.F., Records Retention, page 173.</i></b></p>				

	<i>Review Criteria</i>	<i>Yes</i>	<i>Partial</i>	<i>No</i>	<i>Reviewer Comments:</i>
	<p><b><i>Member Records</i></b></p> <p><i>The subcontractor agrees to the requirements for maintenance and transfer of member records stipulated in Article XIII.A., Member Records, page 157.</i></p> <p><i>The subcontractor agrees to make records available to members and his/her authorized representatives within ten (10) business days of the record request if the records are maintained on site and sixty (60) calendar days if maintained off site in accordance with the standards in 45 CFR 164.524 (b)(2).</i></p> <p><i>The subcontractor agrees to forward records to the MCO pursuant to grievances and appeals within fifteen (15) business days of the MCO's request or, immediately, if the appeal is expedited. If the subcontractor does not meet the fifteen (15) business day requirement, the subcontractor must explain why and indicate when the records will be provided.</i></p>				
	<p><b><i>Confidentiality</i></b></p> <p><i>The subcontractor agrees otherwise to preserve the full confidentiality of records, in accordance with Article XIII.A., Member Records, page 157, and protect from unauthorized disclosure all information, records, and data collected under the subcontract. Access to this information shall be limited to persons who, or agencies such as the Department and CMS which, require information in order to perform their duties related to this contract.</i></p>				
	<p><b><i>Access to Services</i></b></p> <p><i>The subcontractor agrees not to create barriers to access to care by imposing requirements on members that are inconsistent with the provision of services in the benefit package that are necessary to achieve outcomes.</i></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><b>Authorization for Providing Services</b></p> <p><i>The subcontract directs the subcontractor on how to obtain information that delineates the process the subcontractor follows to receive authorization for providing services in the benefit package to members. The subcontractor agrees to clearly specify</i></p>				
<p><b>Billing Members /Hold Harmless</b></p> <p><i>The payments by the MCO and/or any third party payer will be the sole compensation for services rendered under the Contract. The subcontractor agrees not to bill members and to hold harmless individual members, the Department and CMS in the event the MCO cannot pay for services that are the legal obligation of the MCO to pay, including, but not limited to, the MCO's insolvency, breach of contract, and provider billing.</i></p> <p><i>The MCO and the subcontractor may not bill a member for covered and non-covered services, except in accordance with provisions in Article VII, Sections I. Billing Members, and J. Department Policy for Member Use of Personal Resources, page 79.</i></p>				
<p><b>Provider Appeals</b></p> <p><i>The subcontractor agrees to abide by the terms of Section N, Appeals to the MCO and Department for Payment/Denial of Providers Claims, page 109 of this article.</i></p>				
<p><b>Member Appeals and Grievances</b></p> <p><i>The subcontractor must recognize that members have the right to file appeals or grievances and assure that such action will not adversely affect the way that the subcontractor treats the member.</i></p> <p><i>The subcontractor agrees to cooperate and not interfere with the members' appeals, grievances and fair hearings procedures and investigations and timeframes in accordance with Article XI, Grievances and Appeals, page 132.</i></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><i>The MCO must furnish the following grievance, appeal and fair hearing procedures and timeframes to all providers and subcontractors at the time that they enter into a contract:</i></p> <p><i>The member’s right to a fair hearing, how to obtain a hearing, and representation rules at a hearing;</i></p> <p><i>The member’s right to file grievances and appeals and their requirements and timeframes for filing;</i></p> <p><i>The availability of assistance in filing;</i></p> <p><i>The toll-free numbers to file oral grievances and appeals;</i></p> <p><i>The member’s right to request continuation of benefits during an appeal or fair hearing filing and, if the MCO’s action is upheld in a hearing, the member may be liable for the cost of any continued benefits; and</i></p> <p><i>The member’s appeal rights to challenge the failure of the MCO to cover a service.</i></p>				
<p><b>Prohibited Practice</b></p> <p><i>The MCO and the subcontractor agree to prohibit communication, activities or written materials that make any assertion or statement, that the MCO or provider is endorsed by CMS, the Federal or State government, or any other entity.</i></p> <p><i>Marketing/outreach activities or materials distributed by a residential services subcontractor, which claim in marketing its services to the general public, that the Family Care, Partnership or PACE programs will pay for an individual to continue to receive services from the subcontractor after the individual’s private financial resources have been exhausted are prohibited.</i></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><b><i>Establishing and Maintaining Subcontracts</i></b></p> <p><b><i>The MCO must:</i></b></p> <p><b><i>Establish mechanisms to monitor the performance of subcontractors to ensure compliance with provisions of the subcontract on an ongoing basis, including formal review according to a periodic schedule, consistent with industry standards or state laws and regulations.</i></b></p> <p><b><i>Identify deficiencies or areas for improvement.</i></b></p> <p><b><i>Take corrective action if there is a failure to comply.</i></b></p>				
<p><b><i>Cultural Competency and Values</i></b></p> <p><b><i>The MCO shall encourage and foster cultural competency among MCO staff and providers.</i></b></p> <p><b><i>The MCO shall incorporate in its policies, administration, provider contract, and service practice the values of honoring members' beliefs, being sensitive to cultural diversity including members with limited English proficiency and diverse cultural and ethnic backgrounds, and fostering in staff/providers attitudes and interpersonal communication styles which respect members' cultural backgrounds.</i></b></p>				
<p><b><i>Access to Providers</i></b></p> <p><b><i>Access Standards</i></b></p> <p><b><i>The MCO shall ensure all services and all service providers comply with access standards provided in Article VII, Services, page 70 and the access standards in this article.</i></b></p>				

<i>Review Criteria</i>	<i>Yes</i>	<i>Partial</i>	<i>No</i>	<i>Reviewer Comments:</i>
<p><i>Assuring Access</i></p> <p><i>The MCO must do the following to assure access:</i></p> <p><i>Meet and require its providers to meet state standards for timely access to care and services, taking into account the urgency of the need for services.</i></p> <p><i>Ensure that network providers offer hours of operation that are no less than the hours of operation offered to commercial members or comparable to Medicaid fee-for-service members, if the provider serves only Medicaid members.</i></p> <p><i>Caregiver Background Checks</i></p> <p><i>The MCO shall comply with DHS 12 and DHS 13 Wis. Adm. Code, related to caregiver background and other checks</i></p> <p><i>All requirements of DHS 12 and DHS 13 Wisconsin Administrative Code pertain to any providers or MCO staff who comes into direct contact with a member, including:</i></p> <p><i>The MCO shall establish and implement a policy consistent with DHS 12 and DHS 13 Wisconsin Administrative Code, to appropriately respond to an MCO employee who is paid to provide services to a member when the employee has a caregiver conviction that is substantially related to the care of a member;</i></p> <p><i>The MCO shall perform, or require providers to perform, caregiver background checks on people paid to provide services to a member in accordance with DHS 12 Wisconsin Administrative Code;</i></p> <p><i>For MCO subcontractors that have staff providing services that result in direct contact with MCO members, the MCO shall ensure caregiver background checks are completed in accordance with DHS 12 Wisconsin Administrative Code;</i></p>				

<b>Review Criteria</b>	<b>Yes</b>	<b>Partial</b>	<b>No</b>	<b>Reviewer Comments:</b>
<p><i>The MCO maintains the ability to not pay or contract with any provider if the MCO deems it is unsafe based on the findings of past criminal convictions stated in the caregiver background check; and,</i></p> <p><i>The caregiver background check shall be made available to the member or entity that is the employer.</i></p>				
<p><b><i>Additional Requirements for Management Subcontracts</i></b></p> <p><i>Management subcontracts for administrative services will be subject to additional review to assure that rates are reasonable:</i></p> <p><b><i>Services and Compensation</i></b></p> <p><i>Subcontracts for MCO administrative services must clearly describe the services to be provided and the compensation to be paid.</i></p> <p><b><i>Bonuses, Profit Sharing</i></b></p> <p><i>Any potential bonus, profit-sharing, or other compensation not directly related to costs of providing goods and services to the MCO, shall be identified and clearly defined in terms of potential magnitude and expected magnitude during the subcontract period.</i></p> <p><i>Any such bonus or profit sharing shall be reasonable compared to services performed. The MCO shall document reasonableness.</i></p> <p><i>A maximum dollar amount for such bonus or profit sharing shall be specified for the subcontract period.</i></p>				