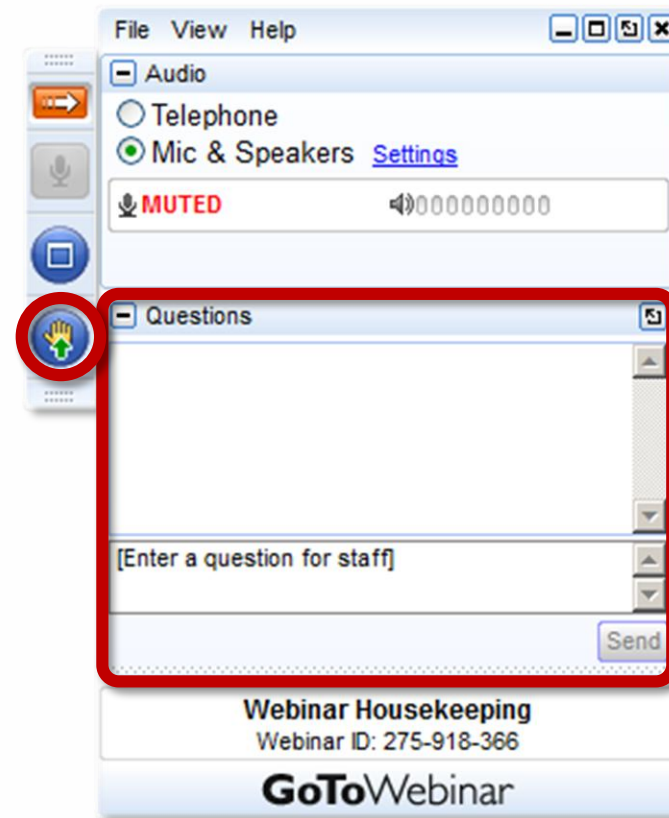


PART 3: EMERGING COMPLIANCE HOTSPOTS FOR CCBHCS: CARE COORDINATION AND ARRANGEMENTS WITH DESIGNATED COLLABORATING ORGANIZATIONS



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Comments & Questions?



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AGENDA

- I. Care Coordination and the CCBHC Demonstration
- II. Care Coordination Agreements
- III. Designated Collaborating Organization (DCO) Framework
- IV. Compliance Hotspots



PROGRAM SELECTION CRITERIA

In choosing demo States, CMS will give preference to States whose CCBHC demonstration program will:

Provide the most complete scope of services

Improve availability of, access to, and participation in, services

Improve availability of, access to, and participation in assisted outpatient mental health treatment in the State

Demonstrate the potential to expand available mental health services in a demonstration area and increase the quality of such services without increasing net Federal spending

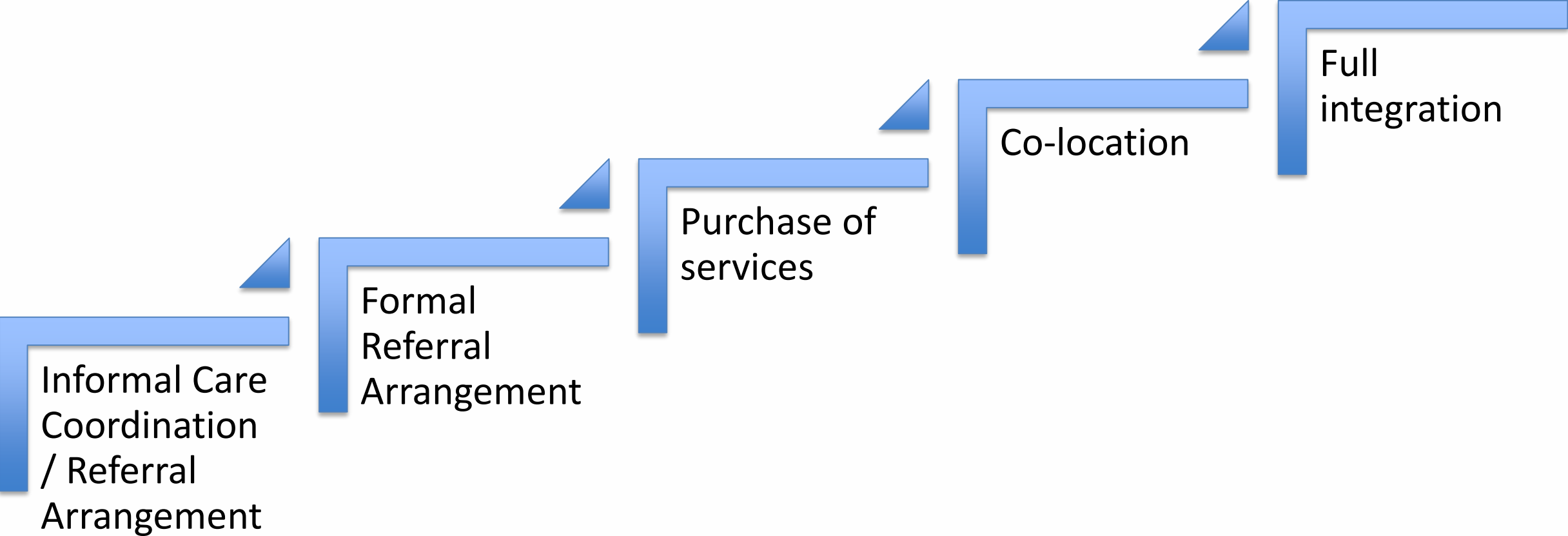
CARE COORDINATION: EXAMPLE

- Licensed mental health and SUD provider coordinates care with other providers to reduce use of ER and inpatient facilities.
 - De-escalates client crises, transitions clients back to into the community, places clients into supportive housing
 - Psychiatric hospitalization rate among those served of less than 2.5% in 2014
 - Nearly 65% of clients diverted from ER
- Savings of successfully guiding just one high-resource-user to a model of customized community-based care is estimated to save \$39,000 per year
- Both of these results align with cost savings, better health outcomes, and optimally tailored service to clients.

CCBHCs AND CARE COORDINATION



CONTRACTUAL RELATIONSHIPS AMONG HEALTH CARE PROVIDERS



POLLING QUESTION

- ✓ How many organizations listening on the webinar coordinate care with other entities in the community, either through formal or informal referral arrangements?

Care Coordination Agreements in the CCBHC Demonstration



STATUTORY REQUIREMENT TO ESTABLISH CARE COORDINATION AGREEMENTS

CCBHCs are required to have agreements establishing care coordination expectations with certain entities in the area served by the CCBHC:

- 1) Federally qualified health centers (and as applicable, rural health clinics)
- 2) Inpatient psychiatric facilities and substance use detoxification, post-detoxification step-down services, and residential programs.
- 3) Other community or regional services, supports, and providers, including schools, child welfare agencies, and juvenile and criminal justice agencies and facilities, Indian Health Service youth regional treatment centers, State licensed and nationally accredited child placing agencies for therapeutic foster care service, and other social and human services.
- 4) Department of Veterans Affairs medical centers, independent outpatient clinics, drop-in centers, and other facilities of the Department as defined in section 1801 of title 38, United States Code.
- 5) Inpatient acute care hospitals and hospital outpatient clinics.

Protecting Access to Medicare Act of 2014 (PAMA) § 223(a)(2)(C)

PROGRAM REQUIREMENTS FOR CARE COORDINATION UNDER CCBHC DEMONSTRATION

- SAMHSA developed criteria based on review of selected Medicaid programs, FQHC and Medical Health Home standards, and quality measures used in states.
- Finalized Criteria after public participatory process between November 2014-March 2015, National Listening Session, consultation with tribal leaders, written public comments and solicitation for response on SAMHSA website.
- Favorite quote: “[T]he criteria set high expectations which are likely to require changes and adjustments to current service delivery systems.”

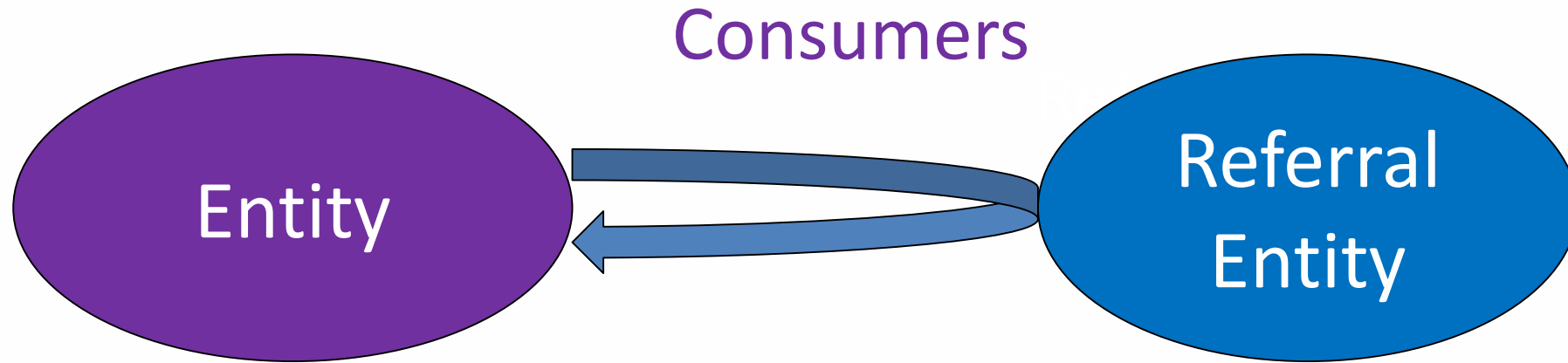
* RFA for SAMHSA Planning Grants for CCBHC, Appendix II – Criteria for the Demonstration Program to Improve Community Mental Health Centers and to Establish Certified Community Behavioral Health Clinics, available at: http://www.samhsa.gov/sites/default/files/programs_campaigns/ccbhc-criteria.pdf

CARE COORDINATION AGREEMENT

- Care coordination agreements* are an arrangement between the CCBHC and external entities with which care is coordinated.
 - Evidenced by: a contract, Memorandum of Agreement (MOA), or Memorandum of Understanding (MOU) with the other entity, or by a letter of support, letter of agreement, or letter of commitment from the other entity.*
 - Describing: the parties' mutual expectations and responsibilities related to care coordination.*

*RFA for SAMHSA Planning Grants for CCBHC, Appendix II – Criteria for the Demonstration Program to Improve Community Mental Health Centers and to Establish Certified Community Behavioral Health Clinics, p.4.

REFERRAL ARRANGEMENT



- Referral Entity agrees to furnish services to consumers referred by Entity (and possibly vice versa, in mutual referral arrangement)
- Referral Entity may agree to furnish referral services under conditions set forth by Entity (*e.g.*, application of discount schedule)
- Typically, unless the referral arrangement is part of a larger contractual transaction, no consideration is exchanged between the parties

CCBHCs AND DESIGNATED COLLABORATING ORGANIZATIONS



“DESIGNATED COLLABORATING ORGANIZATIONS” IN THE CCBHC DEMONSTRATION

- Per federal statute, CCBHC required services must be provided directly “or referred through formal relationships with other providers” (PAMA § 223(a)(2)(D))
- **Interpretation in [SAMHSA guidance](#)***: If a CCBHC is unable to provide a required service directly, the required CCBHC service must be provided through a “designated collaborating organization” (DCO)
- **“Designated Collaborating Organization (DCO):** A DCO is an entity that is not under the direct supervision of the CCBHC but is engaged in a formal relationship with the CCBHC and delivers services under the same requirements as the CCBHC. Payment for DCO services is included within the scope of the CCBHC PPS, and DCO encounters will be treated as CCBHC encounters for purposes of the PPS. The CCBHC maintains clinical responsibility for the services provided for CCBHC consumers by the DCO. . . .” (From [SAMHSA guidance](#)*)

* RFA for SAMHSA Planning Grants for CCBHC, Appendix II – Criteria for the Demonstration Program to Improve Community Mental Health Centers and to Establish Certified Community Behavioral Health Clinics, p.6

CCBHC DEMONSTRATION – BROAD SCOPE OF REQUIRED SERVICES

“Provision (in a manner reflecting person-centered care) of the following services which, if not available directly through the certified community behavioral health clinic, are provided or referred through formal relationships with other providers:

- (i) **Crisis mental health services**, including 24-hour mobile crisis teams, emergency crisis intervention services, and crisis stabilization.
- (ii) **Screening, assessment, and diagnosis**, including risk assessment.
- (iii) **Patient-centered treatment planning** or similar processes, including risk assessment and crisis planning.
- (iv) **Outpatient mental health and substance use services**.
- (v) **Outpatient clinic primary care screening and monitoring** of key health indicators and health risk.
- (vi) **Targeted case management**.
- (vii) **Psychiatric rehabilitation services**.
- (viii) **Peer support and counselor services and family supports**.
- (ix) **Intensive, community-based mental health care for members of the armed forces and veterans**, particularly those members and veterans located in rural areas, provided the care is consistent with minimum clinical mental health guidelines promulgated by the Veterans Health Administration including clinical guidelines contained in the Uniform Mental Health Services Handbook of such Administration.”

Protecting Access to Medicare Act § 223(a)(2)(D) (emphasis added)

CCBHC SERVICES THAT MAY BE PROVIDED BY DCO

- Per [SAMHSA guidance](#)*, of the nine required CCBHC services, CCBHCs ***may*** contract with DCOs to provide:
 - Outpatient primary care screening and monitoring
 - Targeted case management
 - Psychiatric rehabilitation
 - Peer and family supports
 - Intensive community-based outpatient behavioral health care for members of the US Armed Forces and veterans
- CCBHCs ***may not*** contract with DCOs to provide:
 - Screening, assessment and diagnosis
 - Person-centered treatment planning
 - Outpatient mental health and substance use services

* RFA for SAMHSA Planning Grants for CCBHC, Appendix II – Criteria for the Demonstration Program to Improve Community Mental Health Centers and to Establish Certified Community Behavioral Health Clinics, pp. 35-52

CCBHC SERVICES THAT MAY BE PROVIDED BY DCO, CONT.

- In general, CCBHCs must directly provide crisis behavioral health services; however, CCBHC may contract with DCO to provide crisis behavioral health services under certain conditions set forth in SAMHSA guidance
 - Crisis behavioral health services may be provided via a “state-sanctioned alternative” acting as a DCO*
 - Ambulatory and medical detoxification in ASAM categories 3.2-WM and 3.7-WM may be provided via DCO**

*RFA for SAMHSA Planning Grants for CCBHC, Appendix II – Criteria for the Demonstration Program to Improve Community Mental Health Centers and to Establish Certified Community Behavioral Health Clinics, pp. 35-52

** RFA, Appendix II, p. 37; SAMHSA Technical Assistance Clarifications (Dec. 10, 2015), #1

CCBHC CLINICALLY RESPONSIBLE FOR SERVICES RENDERED BY DCOs

CCBHC is **clinically responsible** – CCBHC ensures that services rendered by DCOs

- Meet cultural competency requirement in SAMHSA CCBHC requirements
- Are reflected in CCBHC Uniform Reporting System data reported by CCBHC
- Meet SAMHSA CCBHC standards for accessibility of services (application of sliding fee scale; no denial of services based on ability to pay, regardless of insurance status; services rendered within specified time period after appointment request)
- Meet all relevant SAMHSA program requirements applicable to the specific contracted service
- Are rendered in keeping with State law, *e.g.*, each clinician is acting within the scope of his/her license/certification and applicable supervision requirements are met

CCBHC must make its grievance procedures available to consumers who receive services via DCO

Note: CCBHC will be holding itself out as the provider of the DCO-rendered service!

CCBHC FINANCIAL OVERSIGHT OF SERVICES RENDERED BY DCOs

CCBHC is **financially responsible** – therefore, the CCBHC

- Bears financial risk for collection of patient out-of-pocket liability (fees and cost-sharing)
- Bears legal responsibility for coordination of benefits
- Is responsible for ensuring that DCO-related costs are included in CCBHC Medicaid cost report
- Is responsible for billing Medicaid for services furnished by DCOs

These risks/responsibilities apply to all consumers, not just Medicaid beneficiaries.

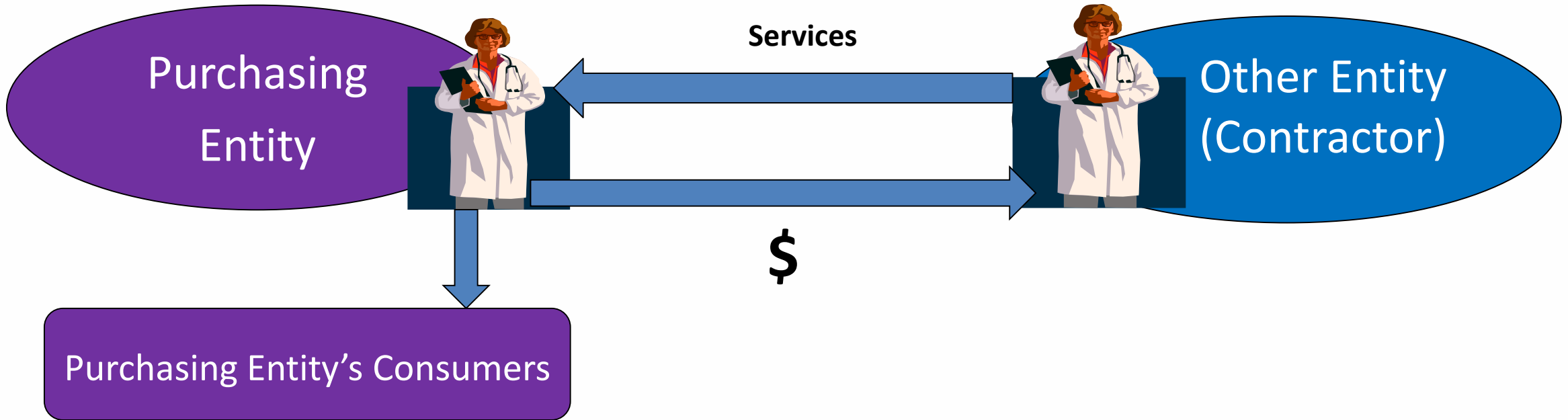
Note: potentially more flexibility re: billing other payors

CMS AND SAMHSA REQUIREMENTS RE: SERVICES FURNISHED VIA DCO

- CCBHC maintains **clinical and financial responsibility** for care furnished by DCOs ([SAMHSA guidance](#) pp. 6, 33)
- Payment for DCO services included within scope of CCBHC PPS rate ([CMS guidance](#) pp. 7, 11)
- CCBHC must serve as the Medicaid billing provider for DCO services (CMS [10/25/15 Qs and As](#), Questions 5 and 6)

*Implication of CMS and SAMHSA guidance: Required services not provided directly by CCBHC **must be provided via purchase of services agreement, not through a formal referral arrangement.***

PURCHASE OF SERVICES



Purchasing Entity contracts with Other Entity to furnish services to Purchasing Entity's consumers on behalf of Purchasing Entity

CARE COORDINATION OR DCO: WHAT TYPE OF ARRANGEMENT IS BEST?

Care Coordination

- Entity is care coordination partner listed in law (PAMA § 223(a)(2)(C))
- Coordination would advance access to care for CCBHC consumers

DCO

- Potential partner provides a CCBHC required service
- CCBHC is unable to provide service directly
- Potential partner has clinical and operational ability to carry out DCO requirements

Compliance Hotspots for Care Coordination Agreements and Arrangements with DCOs



COMPLIANCE HOTSPOT #1: INCLUSION OF DCO SERVICES IN CCBHC REIMBURSEMENT

- The CCBHC's payment to the DCO for contracted services is included within the CCBHC PPS rate
- CCBHC must include on its base period cost report
 - Actual or anticipated costs to CCBHC of procuring DCO services*
 - Other costs specifically related to DCO (*e.g.*, mileage associated with mobile crisis services billed separately)

*[Certified Community Behavioral Health Clinic \(CCBHC\) Cost Report](#), "Trial Balance" and "Anticipated Costs" tabs, Section 1-B)

**CCBHC Cost Report Instructions, OMB #0398-1148, CMS-10398 (#43) pp. 8-14.

REIMBURSEMENT FOR DCO SERVICES MUST BE ALLOWABLE

- Per [CMS guidance](#) (p. 18), to determine CCBHC PPS rates, States must identify allowable costs in a base time period using a uniform cost report that adheres to
 - 45 C.F.R. Part 75 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards) AND
 - 42 C.F.R. Part 413 (Medicare principles of reasonable cost reimbursement)
- Allowable costs include costs associated with rendering CCBHC services to **ALL** CCBHC consumers (both Medicaid and non-Medicaid)
- 45 C.F.R. § 75.403: In determining if costs are allowable, the costs must be “necessary and reasonable” and must “be accorded consistent treatment” with non-Federal funds, “be determined according to Generally Accepted Accounting Principles (GAAP)” and “be adequately documented.”

REIMBURSEMENT FOR DCO SERVICES MUST BE REASONABLE

- Where the costs of contracted services are claimed as allowable, provider must document their reasonableness
- 45 C.F.R. § 75.404: “A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.”
- In determining whether costs are reasonable, consideration must be given to factors including “sound business practices,” “arm’s-length bargaining,” and “market prices for comparable goods and services for the geographical area.” (45 C.F.R. § 75.404 (b) and (c))

STRATEGIES FOR COMPLIANCE HOTSPOT #1: DOCUMENT, DOCUMENT, DOCUMENT!

- 42 C.F.R. § 413.20: “providers must maintain sufficient financial records and statistical data for proper determination of costs payable under the program”
- CCBHCs should have “adequate ongoing system for furnishing the records needed to provide accurate cost data and other information capable of verification by qualified auditors and adequate for cost reporting purposes...” (42 C.F.R. § 413.20)
- Ensure that Agreements require the DCO to document visits and services provided to CCBHC consumers!
- Require the DCO to provide those records to the CCBHC!

COMPLIANCE HOTSPOT #2: FAIR MARKET VALUE FOR PURCHASE OF SERVICES

- The **Anti-Kickback Statute** (42 U.S.C. §1320a-7b) prohibits persons and entities from intentionally offering, paying, soliciting or receiving anything of value to induce or reward referrals or generate federal health care program business
- The federal **Civil Monetary Penalties Law** (42 U.S.C. § 1320a-7a) authorizes penalties against health care providers that offer or give remuneration to any Medicare or Medicaid beneficiary likely to induce the receipt of items or services reimbursable under those programs
- **Bottom line:**
 - Can't purchase referrals
 - Can't vary a provider's compensation to induce referring consumers



STRATEGIES FOR COMPLIANCE HOTSPOT #2: OPERATIONALIZE FAIR MARKET VALUE!

- CCBHC's contract rates should be based on objective, documented fair market value
- Examples:
 - Salary surveys
 - Percentage of Medicare or Medicaid fee schedules
 - Percentage of charges
- Contract rate paid to other providers
 - **should not reflect a pass-through of the PPS rate**
 - May take into account administrative costs incurred by the other provider to meet CCBHC program and reporting requirements

COMPLIANCE HOTSPOT #3: COORDINATION OF BENEFITS AND COLLECTION OF COST-SHARING

- CCBHCs must abide by the requirements of Medicaid and other payors (including managed care companies) related to consumer cost-sharing
- Must collect Medicaid cost-sharing if consumer able to pay
- Consumers cannot be rejected for services or limited in service utilization based on ability to pay or place of residence*
 - These requirements apply to all consumers, not just Medicaid beneficiaries!
- CCBHC must ensure sliding fee scale available to consumers who access care at DCO
 - Note re: reduction of cost-sharing by application of sliding fee scale

* PAMA §223(a)(2)(B); RFA for SAMHSA Planning Grants for CCBHC, Appendix II – Criteria for the Demonstration Program to Improve Community Mental Health Centers and to Establish Certified Community Behavioral Health Clinics, pp. 19-21

STRATEGIES FOR COMPLIANCE HOTSPOT #3: DETERMINE THE PROCESS FOR FEES!

- Determine the process for collecting fees from consumers
 - How and when will the CCBHC sliding fee scale be used?
 - Who will collect fees from consumers?
 - When do the fees get collected? At time of visit?
 - How will fees be transferred back to CCBHC? Will the fees offset costs?
- Examine managed care and other payer agreements to determine if additional obligations exist
- Codify process



POLLING QUESTION

- ✓ How many organizations listening on the webinar already oversee contract arrangements with other entities for the coordination and/or the provision of services?

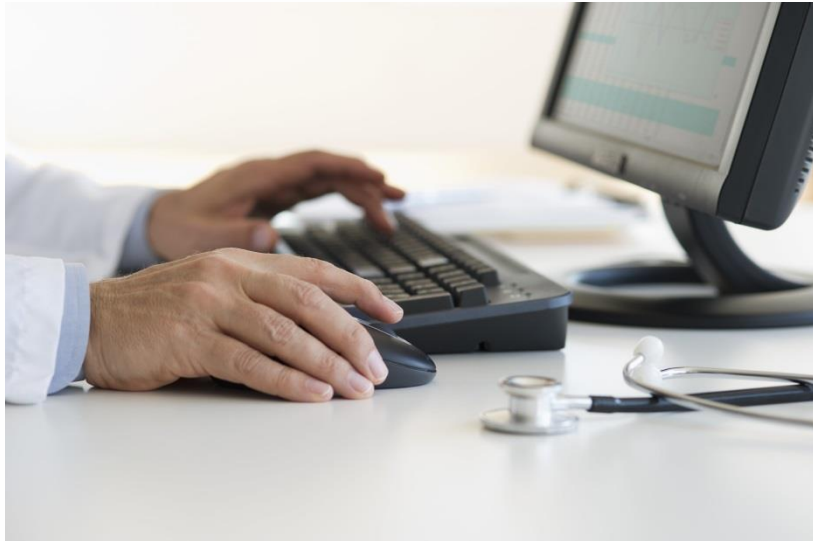
COMPLIANCE HOTSPOT #4: ESTABLISHING CONTRACTUAL ARRANGEMENTS

- Protect from liability!
 - In contracting, CCBHCs must protect themselves from liability attributable to care provided by other entities
 - Examples:
 - Malpractice or wrongful death liability;
 - Adverse audit findings; and
 - Breach of consumer privacy.
- Operationalize Program Requirements!
 - CCBHCs can use agreements to operationalize program requirements
 - Examples:
 - Coordination of Benefits;
 - Collection of cost-sharing;
 - Application of sliding fee schedule; and
 - Consumer tracking and referrals.
- Contracting strategies may vary with type of arrangement
 - *i.e.* Care Coordination Agreement versus DCO Purchase of Services Agreement

COMPLIANCE HOTSPOT #4: IMPORTANT CONTRACTUAL CONSIDERATIONS

- Credentialing
 - CCBHC should contractually require entities to attest to compliance with federal, state and local laws re: license, certification, credentialing
- Professional Liability Insurance
 - CCBHC may seek contractually
 - to require the other entity to indemnify CCBHC for malpractice liability associated with rendered services
 - to require the other entity to add CCBHC as a named insured on its malpractice insurance policy
- Indemnification

COMPLIANCE HOTSPOT #4: IMPORTANT CONTRACTUAL CONSIDERATIONS



Sharing of electronic health record (EHR)

CCBHC must work with the other entity to ensure compliance with privacy and confidentiality requirements

Be aware of HIPAA, 42 C.F.R. Part 2, and other federal and state privacy laws!

CCBHC should consider modifying consumer consent to allow sharing of protected health information with the other entity

CCBHC must develop a plan with the other entity for using health IT that includes information on how the CCBHC can support health IT exchange to improve care transitions

Will the other entity:

- share consumer information with CCBHC?
- chart in same health record as the CCBHC?

STRATEGIES FOR COMPLIANCE HOTSPOT #4: CONSIDERATIONS FOR CARE COORDINATION ARRANGEMENTS

Does the arrangement:

- ✓ Codification
 - ✓ Utilize a form appropriate for the arrangement such as: a contract, MOA, MOU, or letter of support, letter of agreement, or letter of commitment from the other entity?
- ✓ Care coordination
 - ✓ Establish the policies and protocols re: communication with the other entity and the CCBHC to improve care?
- ✓ CCBHC-delegated duties
 - ✓ List any obligations with respect to collection of cost-sharing, billing of payors, and/or collection and submission of data that the CCBHC is delegating to the other entity?
 - ✓ Include any obligations to provide care pursuant to a sliding fee schedule as appropriate for the arrangement?
- ✓ Non-exclusivity
 - ✓ NOT bar the CCBHC from undertaking other similar relationships?
- ✓ Confidentiality (consumer and business information)
 - ✓ Contain provisions to ensure protection of consumer privacy?
 - ✓ Contain provisions requiring each party to appropriately guard the other's sensitive business information?
- ✓ Records and reports
 - ✓ Require the other entity to maintain and timely submit to the CCBHC required data as appropriate for the arrangement?
 - ✓ Quality reporting, Encounter data, Other?
- ✓ Quality of Care
 - ✓ Require the other entity to observe all substantive CCBHC requirements in delivering care as appropriate for the arrangement?
- ✓ Reimbursement
 - ✓ Cover the CCBHC's costs associated with clinical oversight, financial oversight, and billing?
 - ✓ Establish fair market value for clinical services and other services if arrangement is for the purchase of services?
- ✓ Indemnification
 - ✓ Contain provisions to indemnify the CCBHC for risks associated with the relationship?
- ✓ Term, termination and remedies
 - ✓ Contain appropriate recourse for the CCBHC if the other entity breaches the agreement?

HYPOTHETICAL RELATED TO CARE COORDINATION

- HYPOTHETICAL:
 - A prospective CCBHC would like to contract with a Federally Qualified Health Center to provide outpatient primary care screening and monitoring.
 - What steps should the prospective CCBHC take to ensure that the contract complies with the demonstration requirements and the legal parameters for cost reporting?
- Think about the relevant legal parameters:
 - CCBHC Program Requirements
 - State cost reporting requirements (grounded in reasonable cost principles in 42 C.F.R. Part 413 and 45 C.F.R. Part 75)
 - Anti-Kickback Statute, 42 U.S.C. §1320a-7b

QUESTIONS?

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