



DESIGNATED COLLABORATING ORGANIZATION (DCO) ARRANGEMENTS: OVERVIEW OF LEGAL REQUIREMENTS AND CHECKLIST OF RECOMMENDED TERMS

The Protecting Access to Medicare Act of 2014 (PAMA), which authorized the Certified Community Behavioral Health Clinics (CCBHC) demonstration program, required the Department of Health and Human Services (HHS) to establish criteria for a clinic to be certified by a state as a CCBHC in Medicaid. PAMA requires that CCBHCs provide an array of required services that must either be provided directly by the CCBHC or “through formal relationships with other providers.”²³

Substance Abuse and Mental Health Services Administration (SAMHSA) guidance on the CCBHC demonstration narrowed the requirements for the “formal relationships” with other providers that a CCBHC may use to make required services available to the CCBHC’s consumers. SAMHSA advised that if a CCBHC is not able to provide a required service directly, the service must be provided through a relationship with what SAMHSA termed a “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.

In addition, SAMHSA advised that of the nine (9) required CCBHC services, only five (5) may be provided via DCOs. The remainder must be furnished directly by the CCBHC.

Text Box: CCBHC Services

Must Be Provided Directly

- Screening, Assessment and Diagnosis
- Person-Centered and Family-Centered Treatment Planning
- Outpatient Mental Health and Substance Use Services
- Crisis Behavioral Health Services

[May be provided via DCO under limited conditions: (1) A “state-sanctioned alternative acting as a DCO” may furnish this service in lieu of the CCBHC providing it directly. (2) Ambulatory and medical detoxification in ASAM categories 3.2-WM and 3.7-WM, a component of crisis behavioral health services, may be provided via DCO.]

²³ Protecting Access to Medicare Act, Pub. L. No. 113-93 (Apr. 1, 2014) § 223(a)(1)(D), 128 Stat. 1079.



May Be Provided Via DCO

- Outpatient Clinic Primary Care Screening and Monitoring
- Targeted Case Management Services
- Psychiatric Rehabilitation Services
- Peer Supports, Peer Counseling and Family/Caregiver Supports
- Intensive, Community-Based Mental Health Care for Members of the Armed Forces and Veterans

The DCO relationship, as described in the SAMHSA and Center for Medicare and Medicaid Services (CMS) guidance, is a contractual arrangement under which the CCBHC purchases the services of the DCO. The CCBHC assumes clinical responsibility for the provision of the service furnished by the DCO and serves as the billing provider for the service.²⁴

Because the CCBHC is financially responsible for the provision of the CCBHC services rendered via DCO, the CCBHC's contracting costs associated with those services are included on the cost report that the CCBHC is required to submit to support its prospective payment system (PPS) rate.²⁵

Typically, the CCBHC and DCO would be entirely distinct organizations, but SAMHSA guidance has indicated that in some instances, a CCBHC and a DCO may be related entities. For example, the DCO and CCBHC may be separate clinics within a larger, non-profit organization.²⁶ Or, similarly, a DCO may be a subsidiary of the CCBHC has a stand-alone site or subsidiary.²⁷

Health care providers may function as a DCO whether they are a nonprofit, for-profit, or governmental entity. CCBHCs, on the other hand, must be non-profit or governmental entities.

²⁴ RFA, Appendix II, p. 35.

²⁵ RFA, Appendix III, pp. 7, 11.

²⁶ See SAMHSA, Planning Grants for Certified Community Behavioral Health Clinics, RFA No. SM-16-001, *Frequently Asked Questions*, available at www.samhsa.gov/sites/default/files/grants/pdf/faq/sm-16-001-faq_1.pdf, p. 5 (Question 18).

²⁷ A CCBHC would be unable to apply the principles of commercially reasonable contracting that would normally govern a purchase of services arrangement, where its DCO is its own subsidiary or a component of the organization. "Arm's length" negotiation would be impossible in this context. Prospective CCBHCs that intend to use a subsidiary or portion of their organization as a DCO should consult legal counsel concerning the structuring of the arrangement.



DCO Arrangements: Purchase of Clinical Services

The purchase of required CCBHC services from DCOs must be documented in a written agreement. Consumers receiving CCBHC services from DCO personnel under the contract are considered to be CCBHC's consumers. The CCBHC is responsible for billing third-party payors, including Medicare, Medicaid, and private insurers, for services rendered under contract by the DCO. As a result, the CCBHC must obtain from the DCO adequate records and documentation of services rendered for billing third parties.

Additionally, the CCBHC is responsible for ensuring that consumer fees and cost-sharing for services rendered by the DCO under the contract are collected. This can be achieved through a variety of approaches, including contractually delegating to the DCO the collection of consumer fees and cost-sharing at the point of service.²⁸

Finally, the CCBHC must pay a fee to the DCO for services purchased under the agreement. Please note that the consideration paid by the CCBHC to the DCO under the contract should not reflect a "pass-through" of the PPS rate. Instead, the consideration should reflect an objective estimation of fair market value. Documentation of the fair market value basis for the consideration should be retained in the CCBHC's files. The estimation of fair market value could be based on salary surveys, fee schedules, or the historic costs to the DCO of furnishing the type of services rendered under the contract. For more information, see [Determining Fair Market Value](#).

The fact that the CCBHC is **clinically responsible** for the services rendered by DCOs under the contract means that the CCBHC must ensure that those services:

- Meet cultural competency standards set by SAMHSA and/or the CCBHC;
 - For example, the CCBHC must have in place a training plan for staff and for DCOs that addresses cultural competence and person-centered, family-centered, recovery-oriented, evidence-based, and trauma-informed care.
- Are reflected in the data reported by the CCBHC under SAMHSA's Uniform Reporting System;
- Meet SAMHSA CCBHC standards for accessibility of services (e.g., application of sliding fee scale; no limitation or denial of services based on ability to pay or residence, regardless of insurance status);
 - For more information on sliding fee discount policy, see [CCBHC Fee Schedule and Sliding Fee Discount Schedule](#).

²⁸ SAMHSA has stated in guidance that a CCBHC may contractually delegate the collection of consumer fees to the DCO, without compromising its financial responsibility for the service rendered by the DCO. See Project 223 Clarification to Guidance – Set 1 Distributed to Project Directors on March 21, 2016 (*available* at <http://www.samhsa.gov/section-223/clarifications>), at 4.



- Are rendered within specified time period after appointment request;
 - For example, established consumers must be provided with an appointment within ten (10) business days of the requested date for services, unless the state, the federal government, or accreditation standards are more stringent. If consumer presents to with an emergency or crisis need, the DCO must take immediate action, including any necessary outpatient follow-up care, and ensure clinical services are provided within one (1) business day of the request.
- Meet all relevant SAMHSA program requirements applicable to the specific contracted service;
 - For example, targeted case management services must include the appropriate scope of services for the specific population as specified by the state such as supports for persons deemed high risk of suicide during care transitions.
- 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; and
- The CCBHC should ensure that consumers who receive CCBHC services via DCO have access to the CCBHC's grievance procedures.

The fact that the CCBHC is **financially responsible** for the services rendered by DCOs under the contract means that the CCBHC:

- Bears financial risk for collection of consumer 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; and
- Is responsible for billing third party payers, including Medicaid and Medicare, for services furnished by DCOs to CCBHC consumers.

These risks and responsibilities apply to all services that the CCBHC purchases under the DCO contract, not just services rendered to Medicaid beneficiaries.

DESIGNATED COLLABORATING ORGANIZATION AGREEMENT CHECKLIST

Does the agreement contain provisions related to the scope and provision of services, such as terms that:

- Specify all of the services to be provided to the CCBHC?
- Provide that all consumers receiving services under the agreement are considered



consumers of the CCBHC?

- Describe how the CCBHC's policies and procedures related to the provision of services will apply?
- State that neither party is under obligation to refer consumers or business to the other party as a result of the agreement?
- State that the health care professionals of each party retain the ability to refer based on professional judgment (and consumers retain the freedom to see whatever provider they choose)?
- Require the DCO to furnish services consistent with CCBHC's applicable health care and personnel policies, procedures, standards, and protocols?
- Require the DCO and its clinicians to satisfy the CCBHC's professional standards and qualifications, including licensure, credentialing, and privileging?
- Require the DCO and its personnel to cooperate in Purchasing Entity's clinical quality and compliance activities?

Does the agreement contain provisions related to the billing of third parties and collection of cost-sharing from consumers, such as terms that:

- Describe how the CCBHC's policies and procedures related to billing of third parties and consumers, including the sliding fee discount program, will apply?
- Describe how consumer fees and cost-sharing will be collected and (if the obligation for such collection is contractually delegated to the DCO) transmitted to the CCBHC?

Does the agreement contain provisions related to billing of the CCBHC and payment to the DCO, such as terms that:

- Provide terms and mechanisms for billing and payment, such as invoice procedures and deadlines?
- Specify in advance the compensation for the services (or a fixed methodology by which the compensation will be established)?
- Set the compensation at a commercially reasonable amount which is consistent with fair market value, and does not vary based on the volume or value of referrals or business generated (directly or indirectly) between the parties?
- Allow the CCBHC to withhold or deny payment for services rendered in breach of a material term of the agreement, including but not limited to all statutes, rules, regulations, and standards of any and all governmental authorities and regulatory and accreditation bodies relating to the provision of services?



Does the agreement contain provisions related to recordkeeping and reporting, such as terms that:

- Require the DCO to prepare medical records consistent with CCBHC's standards?
- Require the DCO to furnish to the CCBHC programmatic and/or financial reports pertaining to the services provided under the agreement, as deemed necessary by the CCBHC for monitoring and oversight and compliance with the requirements for reporting related to the Uniform Reporting System (URS)?
- Require the contractor to retain and provide access to such records and reports?

Does the agreement contain provisions related to confidentiality and consumer privacy, such as terms that:

- Prohibit disclosure of any business, financial, or other proprietary information, which is directly or indirectly related to the CCBHC and obtained as a result of services performed under the agreement, unless the CCBHC gives prior written authorization for the disclosure or the disclosure is required by law (consistent with all applicable state and federal laws and regulations, as well as the CCBHC's policies, regarding the use and disclosure of confidential and proprietary information)?
- Prohibit the unauthorized use or disclosure of consumer's protected health information consistent with all applicable federal and state laws, including the requirements of the Health Insurance Portability and Accountability Act, as well as the CCBHC's policies regarding the confidentiality and privacy of consumer information?

Does the agreement contain reasonable and specific provisions related to the term of the agreement, such as terms that:

- Identify the term of the agreement, which should not be less than one year?
- Provide that any option to renew is conditioned on:
 - the satisfaction of the CCBHC with the performance of services?
 - the availability of grant funds, as applicable?
 - the successful renegotiation of key terms?

Does the agreement contain reasonable and specific provisions related to the termination of the agreement, such as terms that give the CCBHC the right to terminate in the event that:

- The DCO:
 - Materially breaches any of the agreement's terms and conditions?
 - Loses its license or other certifications necessary to perform services



- under the agreement?
- Fails to maintain insurance?
- Is listed on, or becomes listed on, the government-wide exclusions in the System for Award Management (SAM), the Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE), and applicable state exclusion lists?
- The CCBHC:
 - Determines that continuation could jeopardize the health, safety, and/or welfare of the CCBHC's consumers?

Does the agreement contain additional protections for the CCBHC related to "Excluded Parties," such as provisions that:

- Obligate the DCO to notify the CCBHC in the event that an action or claim has arisen that has resulted or could result in the revocation, suspension, or termination of the license or necessary certification of any of its personnel performing services under the agreement? If so, does the agreement give the CCBHC the right to request removal/suspension of such individual until such action or claim has been resolved?
- Require the DCO to furnish to the CCBHC attestations on a regular basis that the DCO has checked the SAM, OIG LEIE, and applicable state exclusion lists to ensure that neither it, nor its staff furnishing services on the CCBHC's behalf, are listed?
- Require the DCO to immediately inform the CCBHC if it becomes aware that it or one of its staff furnishing services on the CCBHC's behalf is listed on an exclusions database?

Does the agreement contain additional protections for the CCBHC related to compliance with applicable laws and guidance, such as provisions that:

- Require the DCO to comply with all applicable state and federal laws and guidance, including but not limited to the Protecting Access to Medicare Act § 223, Pub. L. No. 113-93, and implementing guidance and all requirements of Medicaid, Medicare, or any other applicable federal or state health care programs?
- Provide for penalties for failure to comply with applicable state and federal laws and guidance, including but not limited to the Protecting Access to Medicare Act, Pub. L. No. 113-93 and implementing guidance and all requirements of Medicaid, Medicare or any other applicable federal or state health care programs?

Does the agreement contain additional protections for the CCBHC, such as provisions that:

- Identify the independent contractor relationship of the parties and appropriately allocate the parties' obligations with respect to insurance and/or indemnification?
- Provide for adequate indemnification of the CCBHC should the DCO fail to comply with applicable laws or standards?