



MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

DATE: December 22, 2022

TO: All Medicare Advantage Organizations and Network-based Private Fee-For Service Plans, and 1876 Cost Plans

FROM: Kathryn A. Coleman, Director

SUBJECT: Updated Contract Year 2024 Medicare Advantage Applicant Network Adequacy and Letter of Intent Submission Operational Instructions

To implement the Contract Year 2023 Medicare Advantage and Part D Final Rule ([CMS-4192-F](#)) that requires Medicare Advantage (MA) applicants to demonstrate compliance with network adequacy standards as part of the application process (42 CFR § [422.116\(a\)\(1\)\(ii\)](#)), the Centers for Medicare & Medicaid Services (CMS) has updated the Medicare Advantage and Section 1876 Cost Plan Network Adequacy Guidance on CMS.gov. In addition, application processes are being updated as described in this memo to incorporate review of an applicant's network consistent with the final rule.

The final rule provides applicants a 10-percentage point credit towards the percentage of beneficiaries residing within the required time and distance standards during the application evaluation. (42 CFR § 422.116(d)(7)) The credit will be automatically applied in the Health Plan Management System (HPMS) to applicants' network reviews. The credit only applies during the application process and MA organizations must comply with requirements for network adequacy and access to services beginning January 1 of the contract year.

The final rule also permits applicants to use a Letter of Intent (LOI) to contract, signed by both the applicant and the provider or facility with which the applicant has started or intends to negotiate, in lieu of a signed contract at the time of application and for the duration of the application review, to meet network standards. (42 CFR § 422.116(d)(7)). The regulation requires applicants to notify CMS of their use of LOIs to meet network standards in lieu of a signed contract and to submit copies upon request and in the form and manner directed by CMS. This memo provides instructions for notifying CMS of an applicant's intent to use one or more LOIs and submitting the LOIs as necessary to meet minimum network requirements in § 422.116. This means that organizations should only include providers with LOIs on their Health Service Delivery (HSD) tables that are necessary to meet the minimum standards.

CMS reminds applicants that there are regulatory obligations in 42 CFR §§ 422.200 through 422.224 concerning the network of contracted providers and other requirements in 42 CFR Part 422 concerning enrollee access and MA organization oversight and responsibility for contracted

first tier, downstream and related entities, including providers; these other requirements are not addressed in this guidance.

IMPORTANT: As part of submitting the Part C application through HPMS, applicants will be directed to submit their provider networks in the Network Management Module (NMM) in HPMS. CMS encourages applicants to prepare and submit HSD tables before the application deadline to help them determine ahead of the application submission deadline whether there are any errors in their tables to correct before clicking final submit. This will help applicants determine more quickly whether to prepare Exception Requests in response to network deficiencies.

Initial Submission

Once the initial application submission process begins, applicants must submit HSD tables that contain only providers with which they have a contract. Applicants will be able to view the results of the automated network adequacy review via the Automated Criteria Check (ACC) report after this initial submission. Network failures will be noted in the deficiency notices issued to applicants after CMS' review.

Response to Deficiency Notice

When responding to the deficiency notice, applicants that will utilize LOIs must resubmit their HSD tables and notify CMS of their use of one or more LOI(s) as follows:

- (1) Applicants must mark "Y" in the indicated column on the HSD table to notify CMS of the use of LOIs (note: If an applicant marks "Y" in the initial application submission, they will receive an error). An LOI must be uploaded into the NMM in HPMS for each county specialty combination where the applicant has indicated the use of an LOI on their HSD table. LOIs are submitted at the provider level and the applicant must submit an LOI for each individual provider. Group practice LOIs are acceptable, but must still be submitted for each individual NPI indicated on the HSD table. Please review the forthcoming Network Management Plan User Guide in the NMM for specific upload instructions.
- (2) Applicants must provide a one-page LOI in PDF format for each NPI identified in each county specialty combination, listed on the provider or facility table, for which the applicant wishes to use an LOI in lieu of a contract. A compliant LOI must be on the Medicare Advantage Organization's (MAO) letterhead and include signatures from the MAO and the provider or facility;

CMS will review LOI submissions to ensure they comply with the content requirements in § 422.116(d)(7). Submissions to address or resolve issues in the deficiency notice will be reviewed by CMS.

Response to Notice of Intent to Deny

If a network is not adequate and does not meet the standards in § 422.116, either because of non-compliant LOI(s) or other deficiencies in the network, and CMS intends to deny the application, CMS will notify the applicant using a Notice of Intent to Deny (NOID) (§ 422.502(c)(2)), which may also identify other deficiencies in the application. Applicants will have the opportunity to

correct deficiencies identified in the NOID. New or revised LOI submissions that cure these deficiencies must be submitted in HPMS using the same process described above for responding to the deficiency notice, and must:

- a. Include the corrected LOI(s) and all previously submitted LOIs that comply with § 422.116(d)(7) in a single ZIP file.
- b. Upload the ZIP file in the NMM in HPMS.

Per § 422.502(c)(2)(ii), the applicant will have 10 days from the NOID to respond in writing to correct deficiencies in the application. CMS will not consider an LOI that does not comply with 422.116(d)(7) and the applicant must exclude non-compliant LOIs in the applicant's network submission in response to the NOID so that CMS may evaluate whether the submitted provider network complies with § 422.116. If an applicant includes a non-compliant LOI (as part of the network submission) in response to the NOID, the application may be denied. CMS will not consider non-compliant LOIs in CMS's evaluation of the applicant's network.

Letter of Intent Format

Per § 422.116(d)(7), an LOI must include (1) signatures of both the applicant and the provider and (2) a statement that the applicant and the provider have started negotiation or intend to negotiate for the provider to participate in the applicant's network of contracted providers. CMS suggests the following for a one-page LOI on company letterhead:

[Applicant name] [contract number] ("the Applicant") and [[Provider name and NPI number] ("the Provider") intend to negotiate or have begun negotiation for the Provider to participate beginning on or before January 1, 20xx in the Applicant's network of contracted providers.

Provider/Facility Signatory Printed Name:
Provider/Facility Signatory Signature:
Provider/Facility Signatory Signature Date:

MAO Signatory Printed Name:
MAO Signatory Signature:
MAO Signatory Signature Date:

Files that are too large may not be able to be uploaded with your submission in HPMS (the upload file should be one zip file not to exceed 500MB).

At the beginning of the applicable contract year, the 10-percentage point credit will no longer apply and the use of LOIs will not be permitted. If the application is approved, the MAO must be in full compliance with network standards by January 1. If an applicant uses an LOI, they will be required to participate in the triennial network review during the first contract year they are operational.

Once issued, additional guidance on the LOI submission will be located in the NMM Plan User Guide online at: [HPMS | Monitoring | Network Management | Documentation | Guidance | User Guide](#)

Updated Medicare Advantage and Section 1876 Cost Plan Network Adequacy Guidance is now available online under “Downloads” at: <https://www.cms.gov/Medicare/Medicare-Advantage/MedicareAdvantageApps/index>

CMS will be offering training on the Part C applications, which will include the network review, on January 4, 2023 at 3:30pm EST.

Questions regarding these updates or content related to network adequacy may be submitted to <https://dmao.lmi.org>. Select Network Adequacy from the Category drop-down. For technical questions, please contact the HPMS Help Desk at either hpms@cms.hhs.gov or 1- 800-220-2028.