



Ohio Administrative Code

Rule 5160-26-10 Managed care: sanctions and provider agreement actions.

Effective: July 18, 2022

(A) This rule does not apply to the single pharmacy benefit manager as defined in rule 5160-26-01 of the Administrative Code.

(B) If the MCO fails to fulfill its duties and obligations under 42 C.F.R. Part 438 (October 1, 2021), 42 U.S.C. 1396b(m) (as in effect July 1, 2022), 42 U.S.C. 1396u-2 (as in effect July 1, 2022), agency 5160 of the Administrative Code, or the MCO provider agreement, ODM will provide timely written notification to the MCO identifying the violations or deficiencies, and may impose corrective actions or any of the following sanctions in addition to or instead of any actions or sanctions specified in the provider agreement:

(1) ODM may require corrective action plans (CAPs) in accordance with the following:

(a) If requested by ODM, the MCO must submit, within the specified time frame, a proposed CAP for each cited violation or deficiency.

(b) The CAP must contain the proposed correction date, describe the manner in which each violation or deficiency will be resolved, and address all items specified in the ODM notification.

(c) The CAP must be reviewed and approved by ODM.

(d) Following the approval of the CAP, ODM will monitor the correction process until all violations or deficiencies are corrected to the satisfaction of ODM.

(e) If the MCO fails to submit an approvable CAP within the ODM-specified time frames, ODM may impose an ODM-developed CAP, sanctions, or both.

(f) If ODM has already determined the specific action that must be implemented by the MCO, ODM may require the MCO to comply with an ODM-developed or directed CAP.



(g) Failure by the MCO to successfully complete the correction process and correct the violations or deficiencies to the satisfaction of ODM may lead to the imposition of any or all of the sanctions listed in paragraph (B)(2) of this rule.

(2) Sanctions that may be imposed on the MCO by ODM include but are not limited to the following:

(a) Suspension of the enrollment of the MCO's members.

(b) Disenrollment of the MCO's members.

(c) Prohibition or reduction of the MCO's voluntary assignments.

(d) Prohibition or reduction of the MCO's involuntary assignments.

(e) Granting the MCO's members the right to terminate without cause and notifying the affected members of their right to disenroll.

(f) Retention by ODM of the MCO's premium payments or a portion thereof until the violations or deficiencies are corrected.

(g) Imposition of financial sanctions.

(C) ODM will select sanction(s) specified in paragraph (B)(2) of this rule based on a pattern of repeated violations or deficiencies, the severity of the cited violations or deficiencies, the failure of the MCO to meet the requirements of an approved CAP, or all these factors.

(D) The sanctions in paragraph (B)(2) of this rule are subject to reconsideration by ODM as specified in Chapter 5160-70 of the Administrative Code, with the exception that the involuntary assignments referenced in paragraph (B)(2)(d) of this rule are not subject to reconsideration.

(E) Regardless of any other sanction that may be imposed, ODM may impose temporary



management on any MCO that has repeatedly failed to meet substantive requirements in 42 U.S.C. 1396b(m) (as in effect July 1, 2022), 42 U.S.C. 1396 u-2 (as in effect July 1, 2022) or 42 C.F.R. Part 438 subpart I (October 1, 2021). Such temporary management shall be imposed in accordance with the following:

- (1) The MCO must pay the costs of a temporary manager for performing the duties of a temporary manager as determined by ODM.
- (2) The MCO is solely responsible for any costs or liabilities incurred on behalf of the MCO when temporary management is imposed by ODM.
- (3) The imposition of temporary management is not subject to the appeals process provided under Chapter 119. of the Revised Code; however, the MCO may request that the director for the medicaid program reconsider this action. ODM will not delay imposition of temporary management to provide reconsideration prior to imposing this sanction.
- (4) Unless the director for the medicaid program determines through the reconsideration process that temporary management should not have been imposed, the temporary management will remain in place until such time as ODM determines that the MCO can ensure that the sanctioned behavior will not recur.
- (5) Regardless of the imposition of temporary management, the MCO retains the right to appeal any proposed termination or nonrenewal of its provider agreement under Chapter 119. of the Revised Code. The MCO also retains the right to initiate the sale of the MCO or its assets.
- (6) If temporary management is imposed, ODM will notify the MCO's members that such action has occurred and inform them that they therefore have the right to terminate their membership in the MCO without cause. Termination of the MCO's membership without cause is not subject to the appeals process provided under Chapter 119. of the Revised Code; however, the MCO may request that the director for the medicaid program reconsider this action. ODM will not delay the notification to the MCO's membership to provide reconsideration prior to imposing this sanction.
- (F) ODM will provide the MCO with written notice before imposing any sanction. The notice will



describe any reconsideration or appeal rights that are available to the MCO.

(G) Regardless of whether ODM imposes a sanction, the MCO shall initiate corrective action for any MCO program violations or deficiencies as soon as they are identified by either the MCO or ODM.

(H) The following provisions apply in the event ODM decides to terminate, nonrenew, deny, or amend the MCO provider agreement.

(1) ODM may terminate, nonrenew, deny, or amend the MCO provider agreement if at any time ODM determines that continuation or assumption of a provider agreement is not in the best interest of recipients or the state of Ohio. For the purposes of this rule, an amendment to the MCO provider agreement is defined as, and limited to, the elimination of one or more service areas included in the MCO's current provider agreement. The phrase "not in the best interest" includes, but is not limited to, the following:

(a) The MCO's delivery system does not assure adequate access to services for its members.

(b) The MCO's delivery system does not assure the availability of all services covered under the provider agreement.

(c) The MCO fails to provide all medically-necessary covered services.

(d) The MCO fails to provide proper assurances of financial solvency.

(e) The number of members enrolled in the MCO's service area is not sufficient to ensure the effective or efficient delivery of services to members.

(f) The MCO fails to comply with any of the following:

(i) Chapter 5160-26, 5160-58, or 5160-59 of the Administrative Code;

(ii) The MCO provider agreement;



(iii) The applicable requirements in 42 U.S.C. 1396b(m) (as in effect July 1, 2022) or 42 U.S.C. 1396u-2 (as in effect July 1, 2022);

(iv) 42 C.F.R. Part 438 (October 1, 2021).

(2) If ODM has proposed termination, nonrenewal, denial, or amendment of the MCO's provider agreement, ODM may notify the MCO's members of this proposed action and inform the members of their right to immediately disenroll from the MCO without cause.

(3) If ODM determines that the termination, nonrenewal, or denial of a provider agreement is warranted:

(a) ODM will provide notice, at a minimum, forty-five days prior to the effective date of the proposed action;

(b) The action will be in accordance with and subject to Chapter 5160-70 of the Administrative Code; and

(c) The action will be effective at the end of the last day of a calendar month.

(4) If ODM determines that the amendment of a provider agreement is warranted, the proposed action is subject to reconsideration pursuant to Chapter 5160-70 of the Administrative Code.

(5) Notwithstanding the preceding paragraphs of this rule, ODM may terminate the MCO's provider agreement effective on the last day of the calendar month in which any of the following occur:

(a) The determination by ODM that the loss or reduction of federal or state funding has reduced funding to a level which is insufficient to maintain the activities or services agreed to in the provider agreement;

(b) The exclusion from participation of the MCO in a program administered under Title XVIII, XIX, or XX of the Social Security Act due to criminal conviction or the imposition of civil monetary



penalties in accordance with 42 C.F.R. Part 455 subpart B (October 1, 2021), 42 C.F.R. Part 1002 subpart A (October 1, 2021), and rule 5160-1-17.3 of the Administrative Code;

(c) The suspension, revocation, or nonrenewal of ODM's authority to operate the program under the state plan or waivers of certain federal regulations granted by CMS or congress;

(d) The suspension, revocation, or nonrenewal of the MCO's certificate of authority or license.

(e) The exclusion of the MCO from participation in accordance with 42 C.F.R. 438.808 (October 1, 2021).

(6) If the MCO's provider agreement is amended, terminated, denied, or nonrenewed for any reason including procurement, the MCO is required to fulfill all duties and obligations under agency 5160 of the Administrative Code, as applicable, and the MCO provider agreement.