


County of Marin Behavioral Health and Recovery Services (BHRS)	POLICY NO. BHRS-83
	Next Review Date: November 2024
POLICY: <u>SELECTIVE PROVIDER CONTRACTING REQUIREMENTS</u> SUPERCEDES: BHRS-ADP-19 SELECTIVE PROVIDER CONTRACTING REQUIREMENTS	Date Reviewed/Revised: November 8, 2021
	By:  Jei Africa, PsyD Director, Marin County Behavioral Health and Recovery Services

POLICY: SELECTIVE PROVIDER CONTRACTING REQUIREMENTS

I. PURPOSE:

To comply with best practices and State and Federal regulation Marin County shall implement and maintain a selective provider contracting system to ensure a fair and transparent process is used to establish a sufficient provider network to meet client and community needs, set provider standards, and assure that clients have timely access to quality services.

II. REFERENCES:

Drug/ Medi-Cal Organized Delivery System (DMC-ODS) Waiver Standard Terms and Conditions (STCs)
DMC-ODS Intergovernmental Agreement
SABG Performance Contract
42 C.F.R. §§438.12(a)(1), 438.12(a)(2), 438.12(b)(1), and 438.214
MHSUDS Information Notice 19-018: Provider Selection Review Process

III. POLICY:

It is the policy of Marin County Division of Behavioral Health and Recovery Services (BHRS) to maintain selective provider contracting requirements for primary prevention and early intervention activities and for the delivery of substance use services to Medi-Cal beneficiaries and uninsured individuals. The selective provider contracting requirements establish standards for contract selection and retention, outline processes for contract denial and appeals, and identify applicable provider performance requirements.

All standards and procedures apply equally to all providers regardless of public, private, for-profit or non-profit status, and without regard to whether a provider treats persons who require high risk or specialized services. The County shall not discriminate in the selection, reimbursement, or indemnification of any provider who is acting within the scope of their license and/or certification.

IV. AUTHORITY/RESPONSIBILITY:

Contract Managers

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Alcohol and Drug Administrator
Behavioral Health Director

V. PROCEDURE:

The County shall be responsible for ensuring that benefits and services offered by the DMC-ODS, the State Plan, and Substance Abuse Prevention and Treatment Block Grant (SABG) and other funds for subsidized services are consistent with the SABG Performance Contract and DMC-ODS Intergovernmental Agreement with the California Department of Health Care Services (DHCS).

The following standards and procedures to ensure compliance have been established in the areas of selection and retention of providers, contract denial and appeal process, and provider service requirements.

A. SELECTION AND RETENTION OF PROVIDERS:

Services that will be provided by community-based providers and/or independent contractors shall be allocated via a competitive bid process, unless otherwise determined by the BHRS Director or County Alcohol and Drug Administrator and in alignment with the County Procurement requirements. Types of solicitations can include a Request for Proposal (RFP), a Request for Qualifications (RFQ), or a Request for Letters of Interest (RFI). During solicitation and selection, the following protocol will be applied:

1. In general, BHRS shall select providers for programs and services through a competitive solicitation process that allows for the selection to be made on an objective and fair basis. Although the term of the award may vary depending on funding source requirements and other factors, the typical contract award term is three years, with the potential to extend to up to five years, depending on contract performance and availability of funding. Despite the term of the award, annual renewals are contingent on successful contract performance, continued need for the service(s), availability of funding and other factors that the County may deem appropriate. In general, the competitive solicitation process for existing contracted services should take place at least every five years.
2. BHRS staff shall make every effort to treat all bidders, and potential bidders, in the same fashion unless otherwise outlined in the competitive bid documents. Unless otherwise noted in the solicitation documents, typically, the following will apply:
 - a) During a solicitation process contact regarding the specific subject of the solicitation between potential or actual applicant and County staff is restricted unless the solicitation authorizes a question and answer period and/or Bidder's

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Conference. During a question and answer period, to maintain a fair and impartial process, all questions regarding a solicitation must be submitted in writing via the County’s website and contain a contact name and address.

- b) Neither county staff nor applicant shall discuss questions or answer questions, or provide or solicit information, opinion, interpretation, or advocate or lobby except through the authorized question and answer protocol.
3. BHRS will utilize the Equity RFP template, include equity-focused question(s) in the Applicant Capability section and include at least one individual with lived experience from the target population in the RFP review committee.
 4. BHRS staff shall seek to broadly advise potential bidders of the upcoming selection process and the opportunity to compete for Marin County BHRS contracts. All solicitations shall be posted on the Department’s public website.
 5. An applicant may not be recommended for funding, regardless of the merits of the application submitted, if it has a history of contract non-compliance with the requirements of Marin County Department of Health and Human Services (“HHS”) or other funding source or poor past or current contract performance with any HHS or other funding source. The applicant may be given a provisional award with the stipulation that special terms and conditions regarding the areas of concern will be a part of the contract.

The County requires all funded treatment programs to receive Alcohol and Drug Certification and/or licensing from the California Department of Health Care Services, as applicable. Certification must remain current and in good standing. In order to be selected as a Medi-Cal provider, the program must be certified and considered in good standing by the State of California to provide Drug/ Medi-Cal services. They must also possess the applicable Level of Care designation(s).

No provider or their employee(s) shall be disqualified or ineligible for the award of contracts by any Federal agency. BHRS staff shall check the County-identified debarment websites for all agencies and individuals prior to contract approval and debarment certification shall be included in contract agreements.

B. CONTRACT DENIAL AND APPEAL/PROTEST PROCESS:

In the event that an applicant has been denied the opportunity to contract with the County of Marin, Division of BHRS for substance use services, the contractor has the opportunity to appeal if they meet appeal criteria outlined in the solicitation documents. Unless

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otherwise noted in the solicitation documents, should an applicant not accept the decision in the Notice of Intent to Award, the following appeal process may be exercised:

1. Within five calendar days of the issuance of a notice of intent to award the contract, any Applicant that has submitted a proposal may submit a written notice of protest. The notice of protest must include a written statement specifying in detail each and every ground asserted for the protest. The protest must be signed by an individual authorized to represent the Applicant, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the Applicant must specify facts and evidence sufficient for the County to determine the validity of the protest.
2. Delivery of Protest: All protests must be submitted in writing and received by 5:00pm PST within five days of the date of the Notice of Intent to Award by email or by mail to the address noted in the solicitation. If a protest is mailed via U.S. Mail, it must be postmarked within 5 calendar days of the notice issuance. The Applicant bears the risk of non-delivery.
3. The protest will be forwarded, through the appropriate administrative channels, to the Director of the Marin County Department of Health and Human Services, or designee. The Department Director or designee may review the original RFP Application(s), the public notice, the Request for Application document, and the scoring instruments of the Application review committee, and any other document deemed appropriate. The Department Director or designee will provide a written response to the protest, including any action that will be taken, if applicable, within 30 calendar days. The decision of the Department Director or designee shall be final.

For DMC-ODS Waiver contracts, the additional procedures apply:

To ensure that Marin County DMC-ODS is complying with the State and Intergovernmental Agreement and Title 42, Code of Federal Regulations, section 438.214, denied applicants may request that DHCS determine whether the County Plan has: 1) Failed to award a sufficient number of provider contracts and/or utilized inappropriate fiscal limitations when establishing its network of providers for its DMC-ODS; or 2) Failed to adhere to its established provider selection criteria when awarding DMC-ODS provider contracts.

1. If the County does not render a decision within 30 Calendar days after the protest was filed, the protest shall be deemed denied and the provider may appeal the failure to DHCS.

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2. After the County’s appeal process has been exhausted a provider may appeal to DHCS if it believes that the County erroneously rejected the provider’s solicitation for a contract. A provider may appeal to DHCS, following an unsuccessful contract protest, if the provider meets all objective qualifications and it has reason to believe the County has an inadequate network of providers to meet beneficiary need and the provider can demonstrate it is capable of providing high quality services under current rates, and:
 - a. It can demonstrate arbitrary or inappropriate county fiscal limitations; or
 - b. It can demonstrate that the contract was denied for reasons unrelated to the quality of the provider or network adequacy.

3. Prior to requesting a DHCS review, the applicant must notify Marin DMC-ODS of its intent to request a DHCS review via certified mail, facsimile, or personal delivery within thirty calendar days from the date of the Marin DMC-ODS appeal decision. The notice must be accompanied by a Proof of Service. The applicant must request a DHCS review by completing and electronically submitting the DMC-ODS Provider Selection Review Form (Review Form) along with the required supporting documents to ODSSubmissions@dhcs.ca.gov within thirty calendar days from the date of the County Plan’s appeal decision. The Review Form can be found on the DHCS website at http://www.dhcs.ca.gov/provgovpart/Pages/County_Resources.aspx.
 - a. The required supporting documents listed on the Review Form include the following: 1. Proof of Service to the County Plan; 2. County Plan’s solicitation document; 3. Applicant’s response to the County Plan’s solicitation document; 4. The County Plan’s written decision not to contract; 5. Documentation submitted for purposes of the County Plan level appeal; 6. Decision from County Plan level appeal; and 7. Evidence demonstrating the County Plan’s failure to adhere to its provider selection process or inadequacies in the County Plan’s provider network.

4. Marin DMC-ODS shall have ten working days from the date set forth on the applicant’s Proof of Service to submit a written response, with supporting documents, to the applicant via certified mail, facsimile, or personal delivery and to DHCS via email to ODSSubmissions@dhcs.ca.gov. The County Plan’s response shall include:
 - a. The qualification and selection procedures set forth in its solicitation documents;
 - b. Current data pertaining to the number of providers within the County Plan, the capacity of those providers, and the number of beneficiaries served in the County Plan including any anticipated change in need and the rationale for the change; and
 - c. The basis for asserting the applicant should not have an awarded contract based upon the County Plan’s solicitation procedures.

5. Within ten calendar days of receiving the County’s written response to the applicant’s request for review, DHCS shall set a date for a facilitated discussion with the parties to

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discuss their respective positions set forth in the review documentation. Following the facilitated discussion, DHCS shall review the evidence provided and determine whether sufficient evidence was presented to demonstrate that the County Plan: 1) Failed to award a sufficient number of provider contracts and/or utilized inappropriate fiscal limitations when establishing its network of providers for its DMC-ODS; or Failed to adhere to its established provider selection criteria when awarding DMC-ODS provider contracts. If DHCS determines sufficient evidence was presented to substantiate either of the above deficiencies, DHCS will require the County Plan to submit a Corrective Action Plan (CAP).

C. PROVIDER PERFORMANCE AND SERVICE REQUIREMENTS:

Providers will be required to meet contracted requirements, including but not limited to:

1. Adhere to the PPSDS and CalOMS Treatment reporting requirements [BHRS-68: CalOMS Data Collection Policy and BHRS-70: Primary Prevention Policy].
2. As applicable, collect and report data related to the access, timeliness, quality and integration of services measures in the BHRS Quality Improvement Plan;
3. Participate in a mid-year self-audit and site visit and annual fiscal monitoring.
4. Participate in program evaluation and quality improvement activities and submit progress and annual program evaluation reports.
5. Have sound accounting and fiscal practices including financial record keeping.
6. Perform and participate in all necessary audits, including allowing County staff to have access to and review all applicable financial, personnel and other related documentation of service delivery upon request.
7. Comply with funding source requirements and meet quality assurance standards outlined by the County.
8. Supply cost report data and submit reimbursement back to the County for funds claimed and advanced to the provider for non-allowable costs as outlined in the contract with the County or as required by SABG and Drug/Medi-Cal Program.
9. Provide culturally responsive services and ensure that policies, procedures, and practices are consistent with the principles outlined and are embedded in the organizational structure, as well as being upheld in day-to-day operations.

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10. For SABG and other non-Medi-Cal funds included in the Marin County contract agreement, services shall be for Marin County residents only, unless otherwise specified in the contract.
11. Ensure staff has not been excluded/suspended or sanctioned from federal or state Medicare or Medicaid services.
12. Adhere to Contract Exhibit I: Substance Use Disorder Services all other applicable policies and procedures outlined in the Contractor Manual, Practice Guidelines and BHRS Policies and Procedures posted at www.MarinBHRS.org.

All treatment providers are also required to adhere to the following:

1. Adhere to applicable performance standards outlined in the BHRS Quality Improvement Plan and as required by DHCS and/or CMS.
2. Professional staff must be licensed, registered, certified, or recognized under California State scope of practice statutes. Professional staff shall provide services within their individual scope of practice and receive supervision required under their scope of practice laws. Non-professional staff shall receive appropriate on-site orientation and training prior to performing assigned duties. Non-professional staff will be supervised by professional and/or administrative staff. Professional and non-professional staff are required to have appropriate experience and any necessary training at the time of hiring.
3. Establish procedures to ensure medical attention for emergency and crisis medical conditions are provided immediately.
4. Meet the established ASAM criteria for each contracted level of care and ensure that the staff making level of care recommendations is trained in the ASAM criteria prior to providing services. Residential treatment providers shall receive an ASAM or DHCS Level of Care designation(s) from DHCS prior to claiming for services.
5. Implement at least two of the following Evidenced Based Practices (EBPs) for each modality of services, and assess fidelity to said EBPs: Motivational Interviewing, Cognitive Behavioral Therapy, Relapse Prevention, Trauma Informed Treatment and Psycho-education.
6. Have procedures for linkage/integration for clients requiring medication assisted treatment. Provider staff will regularly communicate with physicians of clients who are

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prescribed these medications unless the client refuses to consent to sign a 42 CFR, Part 2 compliant release of information for this purpose.

7. Provide linkage to—and participate in care coordination and collaborative treatment planning with—physical health and mental health services, as applicable, for clients, unless the client refuses to consent to sign 42 CFR, Part 2 compliant releases of information for these purposes.
8. Make translation services available for clients, as needed.

All Drug/Medi-Cal Providers are also required to adhere to the following:

1. Adhere to provisions outlined in Policy BHRS-73 Drug/Medi-Cal Service Provision, including, but not limited to, Medi-Cal certification, access, quality, documentation, staffing and other requirements, as applicable.
2. Have a Medical Director who is enrolled with DHCS under applicable State regulations, has been screened in accordance with 42 CFR 455.450(a) as a “limited” categorical risk; and has signed a Medicaid provider agreement with DHCS as required by 42 CFR 431.107 if providing Medi-Cal services.
3. Ensure that no persons eligible for Medi-Cal services will be placed on waiting lists for such services due to budgetary constraints.
4. Ensure that for State Plan Drug/Medi-Cal benefits, Marin County-operated and contracted providers will serve Medi-Cal beneficiaries regardless of the County of origin. For Marin County DMC-ODS Waiver benefits, Marin County-operated and contracted providers will only serve Marin County Medi-Cal beneficiaries.
5. Participate in annual DMC-ODS training on applicable County, State and Federal regulation.

D. MONITORING AND AUDITING:

The County will monitor compliance with these and other contract terms and conditions at least annually via a Self-Audit and onsite monitoring review. Providers found to be non-compliant will be provided technical assistance and required to complete and submit a Corrective Action Plan, as applicable. Refer to Policy BHRS-24 Monitoring for additional requirements.