

## CHECKLIST

### DELEGATED CREDENTIALING AGREEMENTS

NCQA STANDARDS	DESCRIPTION	YES/NO
CR 8, Element A.1	The written delegation document is mutually agreed upon.	
CR 8, Element A.2	The written delegation document describes the delegated activities and the responsibilities of the insurer and the delegated entity.	
CR 8, Element A.3	The written delegation document requires at least semiannual reporting of the delegated entity to the insurer.	
CR 8, Element A.4	The written delegation document describes the process by which the insurer evaluates the delegated entity's performance.	
CR 8, Element A.5	The written delegation document specifies that the organization retains the right to approve, suspend, and terminate individual practitioners, providers, and sites (even if the organization delegates decision making).	
CR 8, Element A.6	The written delegation document describes the remedies available to the insurer if the delegated entity does not fulfill its obligations, including revocation of the delegation agreement.	
CR 8, Element B.1	If the delegation agreement includes the use of protected health information ("PHI") by the delegated entity, the delegation document also includes a provision setting forth the allowed uses of PHI.	
CR 8, Element B.2	If the delegation agreement includes the use of PHI by the delegated entity, the delegation document also includes a provision describing delegate safeguards to protect the information from inappropriate use or further disclosure.	
CR 8, Element B.3	If the delegation agreement includes the use of PHI by the delegated entity, the delegation document also includes a provision that the delegate will ensure that sub-delegates have similar safeguards.	
CR 8, Element B.4	If the delegation agreement includes the use of PHI by the delegated entity, the delegation document also includes a provision that the	

	delegate will provide individuals with access to their PHI.	
CR 8, Element B.5	If the delegation agreement includes the use of PHI by the delegated entity, the delegation document also includes a provision that the delegate will inform the insurer if inappropriate uses of the information occur.	
CR 8, Element B.6	If the delegation agreement includes the use of PHI by the delegated entity, the delegation document also includes a provision that the delegate will ensure that PHI is returned, destroyed, or protected if the delegation agreement ends.	
CR 8, Element C	For new delegation agreements initiated in the look-back period, the insurer evaluated delegate capacity to meet NCQA requirements before delegation began.	
CR 8, Element D.1	For delegation agreements in effect for 12 months or longer, the insurer annually reviews its delegate's credentialing policies and procedures.	
CR 8, Element D.2	For delegation agreements in effect for 12 months or longer, the insurer annually audits the credentialing and re-credentialing files against NCQA standards for each year that delegation has been in effect.	
CR 8, Element D.3	For delegation agreements in effect for 12 months or longer, the insurer annually evaluates delegate performance against NCQA standards for delegated activities.	
CR 8, Element D.4	For delegation agreements in effect for 12 months or longer, the insurer semiannually evaluates regular reports, as specified in Element A.	
CR 8, Element E	For delegation agreements that have been in effect for more than 12 months, at least once in each of the past 2 years, the insurer identified and followed up on opportunities for improvement, if applicable.	

OTHER KEY ELEMENTS	DESCRIPTION	YES/NO
<b>Scope</b>	The Agreement should generally limit its scope to delegated credentialing activities. In accordance with NCQA Standard CR 8, Element A, the delegated activities must be mutually agreed upon before delegation begins, in a dated, binding document or other communication between the insurer and the delegated entity. CR 8 requires the delegation agreement to describe all delegated CR activities.	
<b>Term</b>	The Agreement should clearly define its term. One year is common. It is also common for the Agreement to renew automatically. Note that NCQA Standard CR 8, Element D applies to delegation agreements in effect for 12 months or longer.	
<b>NCQA Standards</b>	The Agreement will require _____ Clinically Integrated Network (“CIN”) to perform all delegated credentialing activities in compliance with the NCQA Standards.	
<b>Responsibilities</b>	NCQA Standard CR 8, Element A requires the written delegation agreement to describe the delegated activities and the responsibilities of the insurer and the delegated entity. These delegated activities must be described in “detailed language.” It is permissible to include a general statement in the agreement addressing those functions that are retained by the insurer.	
<b>Periodic Reports</b>	CIN will be required to make periodic reports to the insurer. NCQA Standard CR 8, Element A requires at least semiannual reporting. The agreement must specify the information reported by the delegate about delegated activities. In addition, the agreement must specify how, and to whom, information is reported.	
<b>Pre-delegation Evaluation</b>	The agreement may include a provision explaining that the insurer evaluated CIN’s ability to meet the NCQA requirements before delegation began.	
<b>Monitoring and Evaluation</b>	NCQA Standard CR 8, Element A requires the written delegation document to describe the	

	process by which the insurer will monitor and evaluate CIN's performance.	
<b>Audits</b>	The insurer is required to conduct annual audits of the credentialing and re-credentialing files whenever a delegation agreement remains in effect for 12 months or longer. In addition, the insurer is required to annually evaluate the delegate's performance against the NCQA standards. Agreements may require CIN to permit the NCQA, CMS, or other governmental authorities to conduct audits of the delegated credentialing activities. This provision may survive the termination of the Agreement for a period of seven years (or longer if required by law).	
<b>Site Visits</b>	The Agreement may allow the insurer to make site visits to audit all documents related to delegated credentialing activities.	
<b>Record Retention</b>	CIN may be required to retain records relating to delegated credentialing activities for a period of seven years (or longer if required by law).	
<b>Adverse Actions</b>	The Agreement may require CIN to notify the insurer of any litigation brought against CIN involving the delegated credentialing activities, or of any investigations initiated or conducted by governmental agencies.	
<b>Right to Approve Practitioners</b>	The insurer must retain the right to approve, suspend, and terminate individual practitioners, providers, and sites in situations where it has delegated decision making.	
<b>Remedies</b>	NCQA Standard CR 8, Element A requires the written delegation agreement to describe the remedies available to the insurer if the delegated entity does not fulfill its obligations. At minimum, the delegation agreement must specify those circumstances that will result in revocation of the agreement (see Termination, below).	
<b>Termination</b>	The Agreement should include provisions regarding termination for cause and termination without cause. Termination without cause may require notice to be given 60 to 120 days in advance, with 60 days being more common.	

	<p>Check to see whether the insurer is ever allowed to terminate the Agreement immediately, and if so, under what circumstances immediate termination is justified. Bankruptcy, loss of insurance, and loss of licensure are common justifications for immediate termination.</p> <p>See that Termination provisions address both parties (i.e., the provisions explain how CIN can terminate and explain how the insurer can terminate).</p>	
<b>Return of Information</b>	The Agreement may require CIN to return all confidential information to the insurer upon termination of the Agreement. CIN should consider including language that covers scenarios where returning certain kinds of information or records is not practical or feasible.	
<b>Material Breach</b>	Some Agreements may include a definition of material breach. If a definition is present in the Agreement, check to ensure that it is not drafted in an overly broad manner. Ideally, the Agreement will give CIN time to correct any material breach (see Correcting Deficiencies, below).	
<b>Insurance</b>	The Agreement will usually require the parties to possess certain amounts of insurance. Some Agreements will say “consistent with industry standards.” Others may specify dollar amounts, such as \$1,000,000 per incident / \$3,000,000 aggregate per year. If CIN wishes to self-insure, it could modify this provision to reflect that, and consider providing the insurer with a letter from its actuary certifying that the self-insurance program is appropriately funded.	
<b>Correcting Deficiencies</b>	<p>The Agreement should give CIN time to cure any deficiencies that are discovered by the insurer. Thirty days is typical.</p> <p>In addition, the insurer should have an obligation to give notice to CIN if it identifies any deficiencies in the delegated credentialing activities.</p>	
<b>Opportunities for</b>	Under the NCQA standards, the insurance	

<b>Improvement</b>	company is required to identify and follow up on opportunities for improvement with regard to delegation agreements that have been in effect for more than 12 months.	
<b>Indemnification</b>	<p>Agreements will customarily address indemnification.</p> <p>A unilateral indemnification provision may be reasonable under the circumstances, since the insurer is simply delegating its credentialing activities to CIN and is not undertaking any substantial obligations on its own. However, if the insurer insists on a unilateral indemnification provision, CIN should consider negotiating to limit indemnification as much as possible. For example, CIN might limit indemnification to situations involving “willful misconduct.”</p>	
<b>Litigation</b>	An Agreement may include a provision relating to the oversight of litigation. For example, a “litigation” provision might give the insurer the power to conduct, direct, or settle any and all litigation arising out of the delegated credentialing activities. If CIN has agreed to indemnify the insurance company, CIN may want to bargain for control over the conduct of the litigation.	
<b>Release and Authorization</b>	The Agreement may require CIN to obtain Release and Authorization agreements from Providers. CIN should check to see whether this will cause any problems with Providers who are already under contract or working at its facilities. Consider including language clarifying that CIN is not guaranteeing that such agreements will be enforceable in a court of law. Courts may not enforce Release and Authorization provisions if they feel the provisions are overly broad or contrary to public policy. State laws vary on this issue.	
<b>Limitations of the Agreement</b>	The Agreement should explain that CIN and the insurer are separate and independent entities. It should include a provision explaining that this arrangement does not create a partnership, joint venture, or employee-employer relationship, or	

	prevent either party from engaging in any other lawful business or activity.	
<b>Entire Agreement</b>	Agreements will customarily include a clause stating: “this Agreement constitutes the entire understandings of the parties and supersedes any and all other written or oral agreements.” CIN should make sure that these are written in a way that will not accidentally override other contractual arrangements CIN may have with the insurer.	
<b>Severability</b>	A severability clause should be included.	

<b>Assignment, Delegation, and Successors</b>	Agreements commonly include clauses relating to assignment and delegation. Also, there are certain kinds of oversight activities that the insurer cannot delegate to other entities. <i>See, e.g.,</i> CR 8, Element C.	
<b>Waiver</b>	Waiver provisions may be included. These ensure that a failure to insist on strict performance of certain contractual obligations does not inadvertently waive rights under the contract.	
<b>Regulatory Compliance</b>	Agreements will customarily require CIN to comply with all applicable laws and regulations. CIN should check to ensure that this clause is not drafted too broadly – the regulatory compliance provisions should only apply to laws that are relevant to delegated credentialing activities. For example, a minor zoning violation by CIN should not automatically constitute a breach of the Agreement.	
<b>Counterparts</b>	Agreements often contain a clause allowing them to be executed in various counterparts, each of which is considered an original for all purposes.	
<b>Notice</b>	Agreements commonly contain notice provisions specifying how and where to give notice.	
<b>Confidentiality</b>	The Agreement should include confidentiality provisions. If PHI will be exchanged as part of the delegated credentialing Agreement, then the Agreement must comply with the factors of NCQA CR 8, Element B (listed above).	
<b>Intellectual Property</b>	The Agreement may contain provisions relating to intellectual property law. CIN should ensure that these are not overly broad and will not unreasonably prohibit them from using certain credentialing practices in the future.	
<b>Governing Law</b>	Governing law provisions are common. CIN should ensure that the governing law and/or venue is acceptable.	
<b>Force Majeure</b>	Some agreements include force majeure provisions that excuse non-performance due to certain acts, such as riots, disasters, or epidemics.	