

112209 O3
Attachment 10 – Liquidated Damages

Failed Deliverable	Liquidated Damage
Readiness Review	MLTC will conduct a formal review of the MCO's readiness to implement all required services described in this RFP. Should the MCO fail the review, MLTC may assess damages of ten thousand dollars (\$10,000.00) for each calendar day until such time as MLTC certifies that the MCO has met all readiness requirements.
Date of Implementation	Should the MCO fail to begin full operations on the contract start date, and should MLTC determine that the MCO is responsible for the delay, MLTC may assess damages of ten thousand dollars (\$10,000.00) per calendar day for each day beyond the contract start date that the MCO fails to begin full operations.
Timely Reports and Data Delivery Requirements	All reports and data required by the contract must be produced in the format and media approved by MLTC and submitted by the due dates required by MLTC. If the data is incomplete, incorrect, or untimely, MLTC may assess a liquidated damage of ten thousand dollars (\$10,000.00) for each calendar day that a report or data delivery is late. This includes reports with less than the required copies, or reports that are not in the approved format.
Network Performance Requirement	<p>The MCO must have a contracted provider network in place and submit the required attestation of network sufficiency ninety (90) calendar days prior to the contract start a date.</p> <p>A liquidated damage of ten thousand dollars (\$10,000.00) must be assessed, at MLTC' discretion, per calendar day for each day that the provider network is not adequate to meet the service needs of the covered populations as described in Section V.I. Provider Network and the attestation of network sufficiency has not been received.</p>
Employment of Key Personnel	The MCO must meet all key personnel requirements specified in Section V.D.2. Employment of Key Personnel of this RFP. MLTC may assess a liquidated damage of one thousand dollars (\$1,000) per day, per position, for each day after the thirty (30) allowed calendar days that a key position remains unfilled by a qualified person approved by MLTC.
Excessive Reversals on Appeal	If the MCO exceeds ten percent (10%) of member appeals overturned upon final appeal over a twelve (12) month period (January- December or the first twelve (12) months that the contract is in effect), a liquidated damage of twenty-five thousand dollars (\$25,000) may be imposed for every additional overturned appeal. This liquidated damage may also be assessed for each occurrence in which the MCO does not provide the medical services or requirements set forth in an administrative decision by MLTC or a State Fair Hearing.

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Excessive Reversals on State Fair Hearings	<p>If more than ten percent (10%) of the MCO decisions on member appeal are overturned by the State Fair Hearing process, the MCO may be assessed a liquidated damage of twenty-five thousand dollars (\$25,000) per reversal exceeding ten percent (10%) in a calendar year.</p>
Marketing and Member Education Violations	<p>Whenever MLTC, in its discretion, determines the MCO or any of its agents, subcontractors, volunteers, or providers has engaged in any unfair, deceptive, or prohibited marketing or member education practices in connection with proposing, offering, selling, soliciting, or providing any health care services, MLTC may take one or more of the remedial actions specified in Section IV.V Contract Non-Compliance including Liquidated Damages.</p> <p>i. Unfair, deceptive, or prohibited marketing practices shall include, but are not limited to:</p> <p>a) Failing to secure written approval before distributing marketing or member materials;</p> <p>b) Engaging in, encouraging, or facilitating prohibited marketing by a provider;</p> <p>c) Directly marketing to members or potential members;</p> <p>d) Failing to meet time requirements for communication with new members (e.g., distribution of welcome packets or welcome calls);</p> <p>e) Failing to provide interpretation services or make materials available in required languages;</p> <p>f) Engaging in any of the prohibited marketing or member education practices detailed in this contract;</p> <p>g) Making false or misleading verbal or written statements, visual descriptions, advertisements, or other representations of any kind that have the capacity, tendency, or effect of deceiving or misleading MCO members or potential members about any health care services, the MCO, or any health care provider.</p> <p>h) Representing that an MCO or network provider offers any service, benefit, access to care, or choice that it does not offer;</p> <p>i) Representing that an MCO or health care provider has any status, certification, qualification, sponsorship, affiliation, or licensure that it does not possess;</p> <p>j) Failing to state a material fact if the failure deceives</p>

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	<p>or tends to deceive;</p> <p>k) Offering any kickback, bribe, award, or benefit to any Medicaid enrollee as an inducement to select, or to refrain from selecting, any health care service, MCO, or health care provider;</p> <p>l) Using any device or artifice in advertising an MCO or soliciting Medicaid enrollees that misrepresent that solicitor’s profession, status, affiliation, or mission; and</p> <p>m) Using the Medicaid member’s or another person’s information that is confidential, privileged, or which cannot be disclosed to or obtained by the user without violating a State or Federal law, including:</p> <ol style="list-style-type: none"> 1) Medical records information; or 2) Information that identifies the member as a recipient of any government-sponsored or mandated health coverage program <p>ii. If MLTC determines that the MCO or its subcontractor(s) has marketed to a member, and as a result, the member has enrolled in the MCO, MLTC may impose the following sanctions:</p> <ol style="list-style-type: none"> a) The MCO will be required to send a letter to each member, notifying the member of the violation and of the member’s right to select another MCO. The member’s disenrollment will be on the earliest effective date allowed. b) MLTC will recoup any payments made to the MCO on behalf of the member(s), if the member disenrolls. c) The MCO will be assessed an additional five thousand dollars (\$5,000) per member. <p>iii. If MLTC determines that the MCO has violated any of the marketing or outreach requirements outlined in the contract, the MCO may be subject to damages up to ten thousand dollars (\$10,000) per violation.</p>
Ongoing and Ad Hoc Reporting	MLTC may assess a liquidated damage of five thousand dollars (\$5,000) for each calendar day that a report is late, inaccurate, includes less than the required copies, or is not in the approved format.

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<p>Encounter Data</p>	<p>Ten thousand dollars (\$10,000) per calendar day for each day after the due date that the monthly encounter data has not been received in the format and per specifications required by MLTC.</p> <p>Ten thousand dollars (\$10,000) per calendar day for each day encounter data is received after the due date, for failure to correct and resubmit encounter data that was originally returned to the MCO for correction because submission data was in excess of the five percent (5%) error rate threshold, until acceptance of the data.</p> <p>Ten thousand dollars (\$10,000) per return of re-submission of encounter data that was returned to the MCO, as submission data was in excess of the five percent (5%) error rate threshold, for correction and was rejected for the second time.</p> <p>Ten thousand dollars (\$10,000) per calendar day for inability to reconcile financial statement of medical expenses paid with the total dollars submitted through encounter data for that quarter within ten percent (10%) for 2024 and five percent (5%) for 2025.</p> <p>Ten thousand dollars (\$10,000) per occurrence of medical record review by MLTC or its designee where the MCO or its provider(s) denotes provision of services which were not submitted in the encounter data regardless of whether or not the provider was paid for the service that was documented.</p>
<p>Claims Processing</p>	<p>Ninety percent (90%) of all clean claims must be paid within fifteen (15) business days of the date of receipt. If not met, MCO is subject to Ten thousand dollars (\$10,000) for each month that an MCO's claims performance percentages by claim type fall below the performance standard.</p> <p>Ninety-nine percent (99%) of all clean claims must be paid within sixty (60) calendar days of the date of receipt. If not met, MCO is subject to ten thousand dollars (\$10,000) for each month that an MCO's claims performance percentages by claim type fall below the performance standard.</p>
<p>Pharmacy Claims Processing</p>	<p>Ninety percent (90%) of all clean claims must be paid within seven (7) calendar days of the date of receipt. If not met, MCO is subject to ten thousand dollars (\$10,000) for each month that an MCO's claims performance percentages by claim type fall below the performance standard.</p> <p>Ninety-nine percent (99%) of all clean claims must be paid within fourteen (14) calendar days of the date of receipt. If not met, MCO is subject to ten thousand dollars (\$10,000) for each month that an MCO's claims performance percentages by claim type fall below the performance standard.</p>

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PCP Assignment	Ten thousand dollars (\$10,000) per calendar day for failure to assign a PCP within one month of the effective date of enrollment until the assignment is made.
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Member Services	Ten thousand dollars (\$10,000) per calendar day for failure to provide member services functions from 8 a.m. to 5 p.m. central time, Monday through Friday, to address nonemergency issues encountered by members, and twenty-four (24) hours a day, seven (7) days a week to address emergency issues encountered by members.
Provider Services	Ten thousand dollars (\$10,000) per calendar day for failure to furnish provider services functions from 7 a.m. to 8 p.m. central time, Monday through Friday, to address nonemergency issues encountered by members, and twenty-four (24) hours a day, seven (7) days a week to address emergency issues encountered by members and for failure to handle emergent provider issues on a twenty-four (24) hours a day, seven (7) days a week basis.
Data Breach	Should the MCO fail to protect Medicaid data in accordance with the terms of this contract or any applicable law, MLTC may assess damages of ten thousand dollars (\$10,000) per calendar day for each day the MCO remains in breach.
Prohibited Affiliations	Ten thousand dollars (\$10,000) per calendar day for failure to not contract with providers that the state has determined have been terminated from the Medicare, Medicaid or CHIP programs pursuant to 42 CFR 455.101. [Section 1932(d)(5) of the Act]
Intermediate Sanctions	
Per 42 CFR 438.704(b)(1): A maximum of twenty-five thousand dollars (\$25,000) for each determination of failure to provide services; misrepresentation or false statements to enrollees, potential enrollees or health care providers; failure to comply with physician incentive plan requirements; marketing violations.	
Per 42 CFR 438.704(b)(2): A maximum of one hundred thousand dollars (\$100,000) for each determination of discrimination; misrepresentation or false statements to CMS or the State or any such action or inaction that the State deems a violation that merits a fine consistent with this section.	
Per 42 CFR 438.704(b)(3): A maximum of fifteen thousand dollars (\$15,000) for each member the State determines was not enrolled because of a discriminatory practice (subject to the one hundred thousand dollars (\$100,000) for overall limit above) or any such action or inaction that the State deems a violation that merits a fine consistent with this section.	
Per 42 CFR 438.704(c): A maximum of twenty-five thousand dollars (\$25,000) or double the amount of the excess charges, (whichever is greater) for charging premiums or charges in excess of the amounts permitted under the Medicaid program; or any such action or inaction that the State deems a violation that merits a fine consistent with this section. The State must deduct from the liquidated damage the amount of overcharge and return it to the affected enrollee(s).	