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Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

Date: August 19, 2022

Behavioral Health Information Notice No: 22-045
Supersedes [MHSUDS IN 18-024](#)

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: Enforcement Actions: Administrative and Monetary Sanctions and Contract Termination

PURPOSE: This Behavioral Health Information Notice (BHIN) provides clarification to Mental Health Plans (MHPs) and Drug Medi-Cal Organized Delivery System (DMC-ODS) counties of the Department of Health Care Services' (DHCS) policy regarding the imposition of administrative and monetary sanctions and contract terminations.

REFERENCE: California Welfare & Institutions Code (W&I) section 14197.7;
Title 42 of the United States Code (USC), Chapter 7, Subchapter 19,
section 1396 et seq.

BACKGROUND:

Under state and federal law DHCS must enforce compliance with the terms of the DHCS' contracts with MHPs and DMC-ODS counties, as well as ensure compliance with applicable state and federal laws and regulations, in accordance with its authority and obligations under state and federal requirements. DHCS is authorized to take enforcement actions, including imposing corrective action plans and imposing administrative and monetary sanctions on MHPs and DMC-ODS counties, hereafter referred to as Behavioral Health Plans (BHPs) that violate applicable state and federal

laws and regulations. DHCS may also impose corrective action plans and sanctions on BHPs that violate their DHCS contract terms, referred to as “Contractual Obligations,” or fail to comply with the state plan or approved waivers, or for good cause.

BHPs are responsible for ensuring that they and their subcontractors comply with all Contractual Obligations and applicable state and federal laws and regulations. These requirements must be communicated by each BHP to all subcontractors. DHCS may impose corrective action plans, administrative sanctions and monetary sanctions for non-compliance pursuant to, but not limited to, W&I section 14197.7.¹

This BHIN supersedes California Code of Regulations, Title 9, Sections 1810.323, 1810.380, Subsections (b), (c) and (d), and 1810.385. The Department (herein referred to as “DHCS”) as authority to implement and interpret W&I Section 14197.7 by bulletin.²

POLICY:

SANCTION AUTHORITY UNDER WELFARE AND INSTITUTIONS CODE

When a BHP or its subcontractors fail to meet Contractual Obligations, or fail to comply with applicable state and federal laws and regulations, or fail to comply with the state plan or approved waivers, or for good cause, DHCS may impose administrative and/or monetary sanctions.^{3 4}

POLICIES TO ENFORCE COMPLIANCE

DHCS may take any one or a combination of the following enforcement actions, including imposing sanctions on a BHP when the BHP fails to comply with Contractual Obligations or applicable state and federal laws and regulations or fails comply with the state plan or approved waivers, or for good cause.⁵

¹ State law is searchable at: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>

² W&I section 14197.7(r)(1).

³ W&I section 14197.7(a), (d), (e), and (j).

⁴ Pursuant to subdivision (b) of W&I section 14197.7, DHCS “may identify findings of noncompliance or good cause through any means, including, but not limited to, findings in audits, investigations, contract compliance reviews, quality improvement system monitoring, routine monitoring, facility site surveys, encounter and provider data submissions, grievances and appeals, network adequacy reviews, assessments of timely access requirements,”

⁵ W&I section 14197.7(d); W&I section 14197.7(e); 42 CFR section 438.700; 42 CFR section 438.702(b).

CORRECTIVE ACTION PLAN (CAP)

When a BHP fails to comply with applicable federal and state laws and regulations, or meet Contractual Obligations, or comply with the state plan or approved waivers, or for good cause DHCS may require a CAP from the BHP.⁶ DHCS has the authority to require BHPs to develop and submit to DHCS for review and approval a CAP to correct cited deficiencies.

In lieu of contract termination or requiring a CAP, DHCS may issue sanctions for the violations set forth in W&I section 14197.7.⁷ Sanctions may be imposed on a BHP together with a CAP, in lieu of a CAP, or if the BHP fails to meet CAP requirements.⁸ DHCS will consider the factor(s) set forth in W&I section 14197.7(g) when determining whether to impose a CAP prior to imposing sanctions, concurrently with sanctions or after imposing sanctions.

1. TEMPORARY WITHHOLD OF FUNDS

DHCS may temporarily withhold federal financial participation and 1991 and 2011 realignment payments from a BHP if DHCS determines that the BHP has violated state or federal law, the state plan, an approved waiver, or a Contractual Obligation. DHCS will withhold amounts it deems necessary to ensure that the BHP promptly corrects the violation. DHCS will release the funds when it determines that the BHP has come into compliance.⁹

2. MONETARY SANCTIONS

- a. DHCS may impose monetary sanctions on the BHP pursuant to subdivisions (e) and (f) of W&I section 14197.7.
 - 1) The bases for imposition of administrative and/or monetary sanctions include, but are not limited to, the following:¹⁰
 - A. Failure to meet Contractual Obligations.¹¹
 - B. Failure to meet data quality and reporting requirements.¹²

⁶ W&I section 14197.7(a), (d)

⁷ W&I section 14197.7(a), (d)

⁸ W&I section 14197.7(d), (e)

⁹ W&I section 14197.7(o)(1)

¹⁰ W&I section 14197.7(e)

¹¹ W&I section 14197.7(e)(2)

¹² W&I section 14197.7(e)(11)

- C. Failure to comply with network adequacy standards, including, but not limited to, time or distance, timely access, and provider-to-beneficiary ratio requirements pursuant to standards and formulae that are set forth in federal or state law, regulation, state plan or contract, and that are posted in advance to DHCS' internet website.¹³
 - D. Failure to demonstrate that the BHP has an adequate network to meet anticipated utilization.¹⁴
 - E. Failure to submit timely and accurate network provider data.¹⁵
 - F. Violation of state or federal regulations or laws.¹⁶
 - G. Failure to meet CAP requirements.¹⁷
 - H. Failure to meet quality benchmarks.¹⁸
- 2) DHCS may impose sanctions of up to \$25,000 per violation for a first violation, up to \$50,000 for a second violation, and up to \$100,000 for each subsequent violation.¹⁹
 - 3) For a deficiency that impacts beneficiaries, each beneficiary impacted constitutes a separate violation.²⁰
 - 4) Sanction amounts may be separately and independently assessed for each day the BHP fails to correct an identified deficiency.²¹
- b. DHCS may also impose monetary sanctions in accordance with the dollar amounts and violations specified in Title 42 CFR section 438.704, as follows:²²
- 1) Up to \$25,000 for each determination of:²³
 - Failing to provide medically necessary services that the BHP is required to provide, under law or under its DHCS contract, to a beneficiary covered under the contract.
 - Misrepresenting or falsifying information that is furnished to a beneficiary, or health care provider.

¹³ W&I section 14197.7(e)(6)

¹⁴ W&I section 14197.7(e)(5)

¹⁵ W&I section 14197.7(e)(8)

¹⁶ W&I section 14197.7(e)(1)

¹⁷ W&I section 14197.7(e)(7)

¹⁸ W&I section 14197.7(e)(4); This policy will be developed in a future BHIN

¹⁹ W&I section 14197.7(f)(1)

²⁰ W&I section 14197.7(f)(1)(A), (B), (C)

²¹ W&I section 14197.7(f)(1)

²² W&I section 14197.7(d)(6)

²³ W&I section 14197.7(d)(6)(A); 42 CFR section 438.704(b)(1)

- 2) Up to \$100,000 for each determination of:²⁴
 - Conducting any act of discrimination against a member on the basis of the member's health status or need for health care services.
 - Misrepresenting or falsifying information furnished to the Centers for Medicare and Medicaid Services (CMS) or furnished to DHCS.

c. Other applicable rules.

- 1) DHCS is more likely to impose monetary sanctions on a BHP if the BHP's violation may result in beneficiary harm.
- 2) DHCS will consider the factor(s) set forth in W&I section 14197.7(g) (see FACTORS DHCS WILL CONSIDER WHEN IMPOSING SANCTIONS section below) when determining the amount of a monetary sanction.
- 3) DHCS may offset the amount of a monetary sanction from the distribution to a BHP from the Behavioral Health Subaccount of the Local Revenue Fund 2011, Mental Health Subaccount, the Mental Health Equity Subaccount, the Vehicle License Collection Account of the Local Revenue Fund, or the Mental Health Account.²⁵ DHCS shall not offset more than 25 percent of the total amount of the funds distributed from the applicable account or accounts that are attributable to the BHPs County in a given month.²⁶ Monetary sanctions imposed via offset from one of the listed realigned accounts are redistributed to non-sanctioned counties based on each county's share.²⁷ Alternatively, DHCS may collect the monetary section by receiving a check. The mechanism in which the monetary sanction is collected from a BHP will be decided and communicated by DHCS.

3. TEMPORARY SUSPENSION OR TERMINATION OF BHP PERSONNEL OR CONTRACTORS

The DHCS Director has the authority to require a BHP to temporarily suspend or terminate specified personnel and/or specified subcontractors for findings of noncompliance of Contractual Obligations and applicable state and federal laws and regulations, or for other good cause.²⁸

²⁴ W&I section 14197.7(d)(6)(B); 42 CFR section 438.704(b)(2)

²⁵ W&I section 14197.7(n)(2),(3)

²⁶ W&I section 14197.7(q)(2)

²⁷ W&I section 14197.7(q)(2)

monetary sanction is collected from a BHP will be decided and communicated by DHCS.

²⁸ W&I section 14197.7(d)(2),(3), (j)(1)(C),(D)

4. CONTRACT TERMINATION

DHCS may terminate a contract with a BHP for failure to comply with contract requirements, state or federal law or regulations, or the state plan or approved waivers, or for other good cause.²⁹ In addition, DHCS will terminate a contract with a BHP that the United States Secretary of Health and Human Services has determined does not meet the requirements for participation in the Medicaid program, as contained in Subchapter 19 (commencing with section 1396) of Chapter 7 of Title 42 of the USC.^{30 31}

Where applicable, DHCS will follow the BHP contract termination or cancellation provisions.³² If DHCS determines that there is an immediate threat to the health of beneficiaries, DHCS is authorized to immediately terminate the BHP contract.³³

FACTORS DHCS WILL CONSIDER WHEN IMPOSING SANCTIONS

DHCS will consider whether contractual violations warrant a CAP or other forms of enforcement action, including non-monetary and monetary sanctions. When determining the appropriate sanction and the assessment of monetary sanctions, DHCS will consider the following non-exhaustive factors:³⁴

1. The nature, scope, and gravity of the violation, including potential harm or impact on beneficiaries.
2. The good or bad faith of the BHP.
3. The BHP's history of violations.
4. The willfulness of the violation.
5. The nature and extent to which the BHP cooperated with DHCS' investigation.
6. The nature and extent to which the BHP aggravated or mitigated any injury or damage caused by the violation.
7. The nature and extent to which the BHP has taken corrective action to ensure the violation will not recur.
8. The financial status of the BHP, including whether the sanction will affect the ability of the BHP to come into compliance.
9. The financial cost of the health care service that was denied, delayed, or modified.
10. Whether the violation is an isolated incident.

²⁹ W&I section 14197.7(a).

³⁰ W&I section 14197.7(i)

³¹ For rules specific to termination of MHP contracts see also W&I § 14712(c)(3), 14714(b), (d); MHP contract.

³² See [MHP Contract](#); [DMC-ODS Contract](#)

³³ W&I § 14197.7(a),(c)

³⁴ W&I section 14197.7(g)

11. The amount of the penalty necessary to deter similar violations in the future.
12. Any other mitigating factors presented by the BHP.

NOTICE OF SANCTIONS:

In the event of a sanction, except when there is an immediate risk to the health of beneficiaries, DHCS will provide the affected BHP with reasonable notice of DHCS' intent to impose a sanction. DHCS, at its discretion, may alert other persons and organizations that may be impacted or interested in the BHP's sanction. All sanction notices will be in writing and will include the effective date, duration of, and reason for each sanction proposed, as well as the BHPs appeal rights.³⁵

A BHP may request to meet and confer with DHCS regarding a proposed sanction. DHCS will grant all requests submitted within two business days of a BHPs receipt of notice of intent to impose sanctions.³⁶

To temporarily suspend BHP personnel or subcontractors or to temporarily withhold funds, DHCS will notify the affected BHP of DHCS' intent to impose a temporary suspension order or temporary withhold, and specify the nature and effective date of the temporary suspension or temporary withhold, a minimum of 30 calendar days before the order goes into effect.³⁷

For monetary sanctions, DHCS will provide the affected BHP a minimum of 30 calendar days' notice. In the event that a BHP requests a hearing in connection with a monetary sanction, the sanction will not go into effect until after DHCS issues a final decision.

Before terminating a BHP contract, DHCS will provide the affected BHP with a minimum of 60 calendar days' notice. Notice of contract termination will also be provided to members enrolled in the BHP.

APPEAL RIGHTS FOR DMC-ODS:

Except as otherwise provided below, hearings to review the imposition of sanctions, including temporary suspension orders, follow the procedures set forth in Health and Safety Code section 100171.³⁸ Generally, such hearings must be conducted pursuant to the administrative adjudication provisions of the Administrative Procedure Act.³⁹

³⁵ W&I section 14197.7(c),(h),(l)(2)

³⁶ W&I section 14197.7(h)

³⁷ W&I section 14197.7(j)(2)

³⁸ W&I section 14197.7(m).

³⁹ HSC section 100171(a).

1. Temporary Suspension Orders/Temporary Withholding of Funds

A DMC-ODS has the right to appeal a temporary suspension order or the temporary withholding of funds by filing a written appeal with DHCS within 30 calendar days from the date of the BHP's receipt of the notice of the order.

No later than 15 calendar days after receiving the written appeal, DHCS will set the matter for hearing. The hearing must be held as soon as possible, but not later than 30 calendar days after the DMC-ODS receives the notice of hearing. The DMC-ODS may request a continuance if the DMC-ODS needs more time to prepare an adequate defense.

The temporary suspension order will remain in effect until the hearing is completed and DHCS has made a final determination on the merits. However, the temporary suspension order will be deemed vacated if DHCS fails to make a final determination on the merits within 60 calendar days after the original hearing has been completed. DHCS will stay imposition of a temporary withhold until the hearing is completed and has made a final determination on the merits.⁴⁰

2. Contract Termination

For contract terminations, except in cases where DHCS determines there is an immediate threat to the health of beneficiaries receiving services from the DMC-ODS, DHCS will, at the request of a DMC-ODS, hold a public hearing. The hearing will commence 30 calendar days after the DMC-ODS has received notice of DHCS' intent to terminate the DMC-ODS's contract. 30 calendar days after the conclusion of the hearing, an administrative law judge will provide a written recommendation to DHCS regarding the termination of the contract.⁴¹

3. All Other Sanctions

To request a hearing in connection with any other sanctions, a DMC-ODS must send its request in writing to the address specified in the sanction notice. The request for a hearing must be sent within 15 working days after the notice of the effective date of the sanction was given. DHCS will stay implementation of a sanction, other than for a sanction contained in a temporary suspension order, upon receipt of a DMC-ODS's timely submitted written request for a hearing.

⁴⁰ W&I section 14197.7(k)

⁴¹ W&I section 14197.7(c)

Implementation of the sanction will remain stayed until the effective date of DHCS' final decision.⁴²

APPEAL RIGHTS FOR MENTAL HEALTH PLANS:

DHCS shall provide MHPs the opportunity to directly appeal monetary sanctions, temporary suspensions, or termination of BHP personnel or contractors, and contract termination actions in accordance with procedures that are similar to those described in Article 1.5 (commencing with Section 51016) of Chapter 3 of Subdivision 1 of Division 3 of Title 22 of the California Code of Regulations, until DHCS promulgates new regulations for a progressive appeals process.⁴³

A MHP may appeal the imposition of a temporary withhold pursuant to Subdivision (l)(2) or Subdivision (o)(2) of W&I section 14197.7. DHCS will stay imposition of a temporary withhold until the hearing is completed and has made a final determination on the merits.⁴⁴

If you have any questions regarding this BHIN, please contact County Support at Countysupport@dhcs.ca.gov.

Sincerely,

Original signed by

Ivan Bhardwaj, Acting Chief
Medi-Cal Behavioral Health Division

⁴² W&I section 14197.7(l)(1)

⁴³ W&I sections 14197.7(l)(2); 14718(b)(4)(B)

⁴⁴ W&I sections 14197.7(k), (o)(2)