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DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



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GOVERNOR

DATE: June 12, 2015

ALL PLAN LETTER 15-014

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: ADMINISTRATIVE AND FINANCIAL SANCTIONS

PURPOSE:

The purpose of this All Plan Letter (APL) is to remind Medi-Cal managed care health plans (MCPs) of existing law and policy that authorizes the Department of Health Care Services (DHCS) to impose administrative and financial sanctions on MCPs that violate applicable California Medi-Cal and federal Medicaid laws, the Knox-Keene Health Care Services Act of 1975 (Knox-Keene Act) standards,¹ or the terms of their MCP contracts with DHCS.

BACKGROUND:

The authority to impose administrative and financial sanctions is found in the following sections:

- Title 42 of the Code of Federal Regulations Sections (§§) 438.702, 438.704, and 438.730;
- Title 22 of the California Code of Regulations (CCR) § 53872;
- Title 22, CCR, § 53352;
- Welfare and Institutions (W&I) Code § 14304;
- W&I Code § 14456;
- Health and Safety (H&S) Code § 100171;
- Government Code (Gov. Code) §§ 11505 and 11506;
- Knox-Keene Act §1371.37;
- Title 28, CCR, §§ 1300.71, 1300.71.39, and 1300.86; and
- Title 42 United States Code § 1396a(a)(37).

MCPs are responsible for ensuring that their delegates comply with all applicable state and federal laws and regulations and other contract requirements as well as DHCS guidance, including APLs and Dual Plan Letters. DHCS's readiness review process

¹ The Department of Managed Health Care (DMHC) has independent authority, not affected by the APL, to issue penalties against violators of the Knox-Keene Act; including MCPs. DHCS will notify DMHC when an MCP violates a Knox-Keene Act standard.

includes a review of each MCP's delegation oversight. MCPs must receive prior approval from DHCS for each delegate.

GOOD CAUSE FOR IMPOSING ADMINISTRATIVE AND FINANCIAL SANCTIONS:

Successful administration of the Medi-Cal program requires a collaborative partnership between DHCS and MCPs. Collaboration includes the expectation that MCPs meet their contractual and programmatic requirements on an ongoing basis. When an MCP fails to meet contractual and/or programmatic requirements, DHCS has good cause to impose administrative and financial sanctions. Contractual and programmatic deficiencies justifying the imposition of administrative or financial sanctions include, but are not limited to, situations where the MCP has:

1. Three repeated and uncorrected serious medical audit deficiencies that have the potential to endanger patients;²
2. After an opportunity to comply with a Corrective Action Plan (CAP), continues to fail to achieve the required minimum performance levels;
3. After an opportunity to comply with a CAP, continues to receive a "Not Reported" designation on an External Accountability Set measure;
4. Failed to timely provide and arrange for medically necessary covered services to a member as required under the MCP contract, the Knox-Keene Act standards, or applicable State Medi-Cal and federal Medicaid laws;
5. Failed to comply with the MCP contract, the Knox-Keene Act standards, or State Medi-Cal and federal Medicaid laws; and/or
6. Engaged in unfair claims payment patterns in violation of the Knox-Keene Act § 1371.37.³

SANCTIONS FOR CONTRACTUAL AND PROGRAMMATIC DEFICIENCIES:

DHCS may impose any combination of the following temporary suspension orders, sanctions other than temporary suspension orders, and contract termination on an MCP. Except as otherwise provided in W&I Code §14304, all hearings to review the imposition of sanctions must be held pursuant to the procedures set forth in H&S Code §100171.

When determining the appropriate sanction, DHCS may consider the following non-exhaustive factors:⁴

1. The nature, scope, and gravity of the violation;
2. The good or bad faith of the MCP;
3. The willfulness of the violation;
4. The MCP's history of violations; and/or
5. Actual or potential member harm.

² See W&I Code §14456.

³ See also Title 28 California Code of Regulations Sections 1300.71 ("Claims Settlement Practices") and 1300.71.39 ("Unfair Billing Practices") and Title 42 USC Section 1396a(a)(37).

⁴ See Title 28 California Code of Regulation Section 1300.86.

TEMPORARY SUSPENSION ORDERS:

DHCS must provide a minimum of 20 calendar days advance notice before a temporary suspension order goes into effect. DHCS must also serve the MCP with an accusation when providing notice of the temporary suspension order. The notice must be in writing and include the effective date, duration, and reason for the sanction. DHCS must also provide reasonable notice of the temporary suspension order to others who may be interested, including other persons and organizations as the director of DHCS may deem necessary.

Temporary suspension orders may include any combination of the following:

Suspension of the MCP's:

1. Enrollment activities;
2. Marketing activities;
3. Specified personnel; and/or
4. Specified subcontractor.

Pursuant to Gov. Code §§ 11505 and 11506, the MCP has the right to appeal a temporary suspension order by submitting a Notice of Defense (NOD) within 15 calendar days after receipt of the accusation notice from DHCS. Upon timely receipt of an NOD, DHCS must within 15 calendar days set the matter for hearing that must be held as soon as possible, but not later than 30 calendar days after the MCP receives the notice of hearing from DHCS. The MCP may request to have the hearing continued if a continuance is necessary for it to present an adequate defense. The temporary suspension order shall remain in effect until the hearing is completed and DHCS has made a final determination on the merits. However, the temporary suspension order shall 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.

SANCTIONS OTHER THAN TEMPORARY SUSPENSION ORDERS:

DHCS must provide a minimum of 30 calendar days advance notice of its intent to apply sanctions outlined in W&I Code §14304(b) to the MCP. The notice must be in writing and include the effective date, duration, and reason for the sanction. DHCS must also provide reasonable notice of the sanction to others who may be interested, including other persons and organizations as the director of DHCS may deem necessary. Sanctions, other than temporary suspension orders, must not go into effect until after DHCS issues a final decision.

Sanctions may include, but are not limited to, any combination of the following:

1. Requiring the MCP to suspend or terminate personnel or subcontractors;
2. Imposition of a monetary penalties not exceeding \$10,000 per violation;⁵
3. Granting enrollees the right to terminate enrollment without cause and notifying affected enrollees of their right to disenroll;
4. Suspending capitation payments for members enrolled after the effective date of the sanction;
5. Appointing temporary MCP management;
6. Suspending the MCP's marketing activities; and/or
7. Suspending additional MCP enrollment;

The MCP may request a hearing in connection with these sanctions, other than temporary suspension orders, by sending a letter to the address specified in the sanction notice within 15 working days after receipt of that notice. Upon receipt of a hearing request, DHCS must not implement the sanction until the effective date of DHCS's final decision.

CONTRACT TERMINATION:

For contract termination, DHCS must provide the MCP with reasonable written notice, not less than 60 calendar days, in advance of termination. Notice of contract termination must also be provided to Medi-Cal members enrolled in the MCP and others who may be directly interested, including other persons and organizations as the director of DHCS may deem necessary. The contract termination notice must state the effective date and reasons for the termination. When applicable, DHCS will initiate the Phase-Out Requirements prescribed in Exhibit E, Attachment 2 of the MCP contract, for a contract termination. If DHCS determines that there is an immediate threat to the health of members assigned to the MCP, DHCS is authorized to immediately terminate the MCP contract.

Upon an MCP's request,⁶ DHCS must hold a public hearing commencing 30 calendar days after the MCP has received notice of DHCS's intent to terminate the contract. Within 30 calendar days after the conclusion of the hearing, the Administrative Law Judge (ALJ) must provide a written determination regarding the appropriateness of the sanctions. Within 30 calendar days of receiving the ALJ's determination, DHCS must issue its final determination.

⁵ Additionally, MCPs may be subject to a monetary penalty of \$2,500 per day for each violation of MCP Contract requirements not performed in accordance with Exhibit A, Attachment 4, Quality Improvement System, provision 10. Site Review, Paragraph D. Corrective Actions. MCPs are also subject to a monetary penalty of \$500 per day for each day a reporting requirement violation is submitted late pursuant to Title 22, CCR, § 53872(b)(3).

⁶ Pursuant to Title 22, CCR § 53352(d), an MCP must make its request for a hearing directly to the Office of Administrative Hearings (OAH) no later than five days after receipt of notice of intent to terminate in order to allow OAH sufficient time to arrange for a hearing.

If you have any questions, please contact your Managed Care Operations Division contract manager.

Sincerely,

Original Signed by Sarah C. Brooks

Sarah Brooks, Chief
Managed Care Quality & Monitoring Division
Department of Health Care Services