



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



EDMUND G. BROWN JR.
GOVERNOR

DATE: June 5, 2018

MHSUDS INFORMATION NOTICE NO.: 18-024

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS
CALIFORNIA STATE ASSOCIATION OF COUNTIES

SUBJECT: ADMINISTRATIVE AND FINANCIAL SANCTIONS

PURPOSE

The purpose of this Mental Health and Substance Use Disorder Services Information Notice (IN) is to provide clarification to Mental Health Plans (MHPs) of the Department of Health Care Services' (DHCS) policy regarding the imposition of administrative and financial sanctions.

BACKGROUND

MHPs are required to comply with all applicable federal and State laws, regulations, and the requirements specified in California's Medicaid State Plan, the 1915(b) Specialty Mental Health Services (SMHS) Waiver, and DHCS' contract with the MHP, and to ensure that MHP subcontractors and network providers comply with these requirements, as applicable.¹

Existing State law authorizes DHCS to impose administrative and financial sanctions when DHCS determines an MHP has failed to comply with requirements in federal or State statutes, regulations, California's Medicaid State Plan, the 1915(b) SMHS Waiver or

¹ Welf. & Inst. Code, § 14713, subd. (a)

the MHP contract.² DHCS may impose administrative and financial sanctions for one or more of the following reasons:

- Action or inaction by the MHP or the MHPs network provider that results in a threat to beneficiary health and safety;³
- Non-compliance with any applicable federal or State laws or regulations;⁴
- Non-compliance with the MHP contract, the 1915(b) SMHS Waiver, or any specified Special Terms and Conditions;⁵
- Non-compliance with MHP reporting requirements including, but not limited to, cost reports, Performance Outcomes System data, network adequacy, and other areas specified in federal and State laws and/or the MHP contract;⁶
- Not providing or arranging for medically necessary covered SMHS in a timely manner;⁷
- Repeated and uncorrected findings of non-compliance;⁸ and/or,
- Lack of achievement in meeting DHCS' performance standards including but not limited to, access, and/or quality review requirements.⁹

FACTORS DHCS MAY CONSIDER WHEN IMPOSING SANCTIONS

DHCS may impose sanctions including, but not limited to, fines, penalties, withholding of payments, special requirements, probationary or corrective actions, or any other actions deemed necessary to promptly ensure contract and performance compliance.¹⁰ The imposition of sanctions is part of DHCS' enhanced monitoring framework, which constitutes a continuum of corrective actions ranging from training and technical assistance to administrative and financial sanctions. The framework is designed to improve MHP performance and compliance.

² Welf. & Inst. Code, § 14712, subd. (e) and § 14713, subd. (a); Cal. Code Regs, tit. 9, § 1810.380, subd. (b) and § 1810.385. Note that California Code of Regulations, title 9, sections 1810.380 and 1810.385 implement Welfare and Institutions Code section 14712, subdivision (e), and it provides additional authority where these regulations are cited throughout this IN. For purposes of brevity some citations to Welfare and Institutions Code section 14712(e) have been omitted.

³ Welf. & Inst. Code, §14714, subd. (d); Cal. Code Regs. tit. 9, § 1810.323, subd. (b)

⁴ Cal. Code Regs. tit. 9, § 1810.380, subd. (b) and §1810.385, subds. (a),(b). In 2016 CMS amended the federal managed care regulations, which govern MHPs. The California regulations applicable to SMHS in title 9 have not yet been amended to reflect these new federal requirements.

⁵ Cal. Code Regs. tit. 9, § 1810.380, subd. (b) and §1810.385, subds. (a),(b)

⁶ Cal. Code Regs. tit. 9, §1810.380, subd. (b) and § 1810.385, subds. (a),(b)

⁷ Cal. Code Regs. tit. 9, § 1810.380, subd. (b) and § 1810.385, subds. (a),(b)

⁸ Cal. Code Regs. tit. 9, §1810.380, subd. (b) and § 1810.385

⁹ Welf. & Inst. Code, § 14707.5; Cal. Code Regs, tit. 9, § 1810.380, subd. (b) and § 1810.385, subds. (a),(b)

¹⁰ Welf. & Inst. Code, § 14712, subd. (e)

When determining the appropriate administrative and/or financial sanction, DHCS may consider factors including, but not limited to, the following:

- The nature, scope, and gravity of the violation;
- The MHP's history of violations;
- The willfulness of the violation;
- The nature and extent to which the MHP cooperated with DHCS' investigation of the violation;
- The nature and extent to which the MHP aggravated or mitigated any injury or damage caused by the violation;
- The nature and extent to which the MHP took corrective action to ensure the violation did not recur; and/or
- Whether the violation was an isolated incident.

DHCS will decide which factors to consider on a case-by-case basis.

TYPES OF SANCTIONS FOR FAILURE TO COMPLY WITH APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS OR CONTRACTUAL OBLIGATIONS

If DHCS determines that an MHP is out of compliance with applicable federal or State laws or regulations, or the terms of the MHP contract, DHCS may take any or all of the following actions:¹¹

- (1) Require the MHP to develop a plan of correction;
- (2) Withhold all or a portion of payments due to the MHP;
- (3) Impose civil penalties (i.e., financial sanctions) pursuant to Title 9 California Code of Regulations, Section 1810.385;
- (4) Terminate the MHP contract pursuant to Title 9 California Code of Regulations, Section 1810.323; and/or
- (5) Other actions DHCS deems necessary to ensure contract and regulatory compliance.

FINANCIAL SANCTIONS

DHCS may impose financial sanctions upon MHPs, in specified amounts, as follows:¹²

- A. Violations of federal and State laws pertaining to beneficiary rights and notification requirements.
 - 1) First violation: \$1,000.

¹¹ Cal. Code Regs, tit. 9, § 1810.380, subd. (b)

¹² Cal. Code Regs, tit. 9, § 1810.385, subd. (a)

- 2) Second and each subsequent violations: \$5,000.
- B. Violations of federal and State laws and/or any other regulation or contract provision establishing a timeframe for action.¹³
 - 1) First violation: \$500, plus \$25 per day for each day that the item is late.
 - 2) Second and each subsequent violation: \$500, plus \$25 per day for each day that the item is late.
- C. Violations of any provision of Title 9 California Code of Regulations, Chapter 11 that is not specifically addressed in Section 1810.385.¹⁴
 - 1) First violation: \$500.
 - 2) Second violation: \$1,000.
 - 3) Third and each subsequent violations: \$5,000.
- D. Violations of any provision of the MHP contract.^{15 16}
 - 1) First violation: \$500.
 - 2) Second and each subsequent violations: \$1,000.
- E. Violations of any provision of Sections 14712 through 14721, and 14680 through 14685 of the Welfare and Institutions Code, not otherwise specified in this IN.¹⁷
 - 1) First violation: \$1,000.
 - 2) Second and each subsequent violations: \$1,000.
- F. Failure to comply with corrective actions within the time limits as required in DHCS' written notice of non-compliance shall be deemed a subsequent violation in the applicable areas above.¹⁸

PROCESS FOR IMPOSING FINANCIAL SANCTIONS

Pursuant to Welfare and Institutions Code Section 14712, subsection (e), DHCS may collect civil penalties by withholding the penalty amount from either of the following:

- 1) Funds from the Mental Health Subaccount, the Mental Health Equity Subaccount, the Vehicle License Collection Account of the Local Revenue Fund, and funds from the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011; or
- 2) Any other mental health realignment funds from which the Controller is authorized to make distributions to the counties if the funds described in paragraph (1) are insufficient for the purposes described.

¹³ Cal. Code Regs, tit. 9, § 1810.385, subd. (b)(2)

¹⁴ Cal. Code Regs, tit. 9, § 1810.385, subd. (b)(3)

¹⁵ Cal. Code Regs, tit. 9, § 1810.385, subd. (b)(4)

¹⁶ The Medicaid managed care regulations applicable to the MHPs are in the Mental Health Plan contract effective July 1, 2017 and DHCS may impose sanctions for failure to comply with those regulations.

¹⁷ Cal. Code Regs, tit. 9, § 1810.385, subd. (b)

¹⁸ Cal. Code Regs, tit. 9, §1810.380, subd. (c) and § 1810.385, subd. (c)

NOTICE OF SANCTIONS

In the event that DHCS elects to impose administrative or financial sanctions upon an MHP, DHCS will notify the MHP in writing within 30 days of its determination. All written notifications to the MHP regarding the imposition of administrative and financial sanctions will include the following:¹⁹

- A description of the violation;
- A description of any corrective action required and the time limits for compliance;
- A description of the proposed administrative and/or financial sanctions, including the effective date, duration of, and reason for each sanction proposed; and
- Information about the MHPs appeal rights.

MHP CONTRACT TERMINATION

DHCS is authorized to terminate its contract with an MHP and shall deliver written notice of termination within the following timeframes:

- Immediately, if DHCS identifies an immediate and significant threat to the health and safety of Medi-Cal beneficiaries as a result of action or inaction by the MHP;²⁰
- At least 60 calendar days prior to the effective date of termination if the MHP does not meet the requirements for participation in the Medicaid program, as provided in Title 19 of the Social Security Act;²¹
- At least 90 calendar days prior to the effective date of termination for non-compliance with the requirements of laws, regulations, or terms of the contract;²² or
- At least 180 calendar days prior to the effective date of termination if it is determined that the contract is no longer in the best interest of the State.²³

The written notice of termination shall include the effective date and reason for the termination.²⁴ DHCS shall provide the written notice to the MHP, and to other entities as deemed necessary.²⁵

In the event that the DHCS' contract with an MHP is terminated for any cause, DHCS will work with the Department of Finance and the Controller to sequester funds from the

¹⁹ Cal. Code Regs, tit. 9, §1810.380, subd. (c)

²⁰ Cal. Code Regs, tit. 9, §1810.323, subd. (b)

²¹ Cal. Code Regs, tit. 9, §1810.323, subd. (c)

²² Cal. Code Regs, tit. 9, §1810.323, subd. (d)

²³ Cal. Code Regs, tit. 9, §§1810.323, subds. (a),(e) and (f)

²⁴ Cal. Code Regs, tit. 9, §1810.323, subd. (h)

²⁵ Cal. Code Regs, tit. 9, §1810.323, subd. (g)

county that is unable or unwilling to contract in accordance with Section 30027.10 of the Government Code.²⁶

Prior to the termination of the MHP contract, and upon request by DHCS, the MHP is required to assist the State in the orderly transfer of beneficiaries' mental health care. In doing so, the MHP is required to make available to DHCS copies of medical records, patient files, and any other pertinent information, including information maintained by any subcontractor DHCS deems necessary for efficient case management of beneficiaries.²⁷

APPEAL RIGHTS – FINANCIAL AND ADMINISTRATIVE SANCTIONS

An MHP may appeal the imposition of administrative and financial sanctions by submitting a written appeal to DHCS within 15 business days of the receipt of the sanctions notice. The appeal must set forth relevant facts and arguments. DHCS shall grant or deny the appeal in whole or in part within 30 calendar days after receipt of the MHPs appeal. DHCS shall suspend any proposed administrative and/or financial sanction until it acts on the MHPs appeal.²⁸

APPEAL RIGHTS – CONTRACT TERMINATION

An MHP may appeal DHCS' decision to terminate the MHP contract by submitting a written appeal within 15 business days after the date of receipt of the notice of termination. The appeal must set forth relevant facts and arguments. DHCS shall grant or deny the appeal within 30 calendar days after receipt of the appeal. In granting an appeal, DHCS may impose other administrative or financial sanctions on the MHP. The MHP may not appeal such sanctions to DHCS. Except for terminations pursuant to Title 9 California Code of Regulations, Section 1810.323(b), DHCS shall suspend the contract termination date until it acts on the MHPs appeal.²⁹

For contract terminations, the MHP may request a public hearing by the Office of Administrative Hearings and Appeals to allow DHCS to show cause for the termination. The MHP must submit its request for a public hearing directly to the Office of Administrative Hearings and Appeals no later than five business days after receipt of the termination notice.³⁰

Within 30 calendar days after the conclusion of the hearing, the Office of Administrative Hearings and Appeals will provide DHCS with written recommendations concerning the

²⁶ Welf. & Inst. Code, § 14712, subd. (d)

²⁷ Cal. Code Regs, tit. 9, §1810.323, subd. (j)

²⁸ Cal. Code Regs, tit. 9, § 1810.380, subd. (d)

²⁹ Cal. Code Regs, tit. 9, § 1810.325, subd. (a)

³⁰ Cal. Code Regs, tit. 9, § 1810.325, subd. (b)

termination of the contract.³¹ DHCS shall grant or deny the appeal within 30 calendar days after receipt of the recommendations of the Office of Administrative Hearings and Appeals. In granting an appeal, DHCS may impose other administrative or financial sanctions on the MHP; the MHP may not appeal such sanctions to DHCS or the Office of Administrative Hearings and Appeals. Except for terminations pursuant to the Title 9 California Code of Regulations, Section 1810.323(b), DHCS shall suspend the contract termination date until it acts on the MHP's appeal.³²

Questions regarding the content of this IN may be directed to DHCS' Mental Health Services Division's County Support Unit. A current list of County Support Liaison assignments can be found at

<http://www.dhcs.ca.gov/services/MH/Pages/CountySupportUnit.aspx>.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services

³¹ Cal. Code Regs, tit. 9, § 1810.325, subd. (c)

³² Cal. Code Regs. tit. 9, § 1810.325, subd. (c)