

## **W&I Code section 14304:**

**14304.** (a) The director shall terminate a contract with a prepaid health plan or a Medi-Cal managed health care plan if he or she finds that the standards prescribed in this chapter, the regulations, or the contract are not being complied with, that claims accrued or to accrue have not or will not be recompensed, or for other good cause shown. Good cause includes, but is not necessarily limited to, three repeated and uncorrected findings of serious deficiencies that have the potential to endanger patient care, as defined by the department in accordance with this section, identified in the medical audits conducted by the department. Except in the event that the director determines there is an immediate threat to the health of Medi-Cal beneficiaries enrolled in the plan, at the request of the plan, the department shall hold a public hearing to commence 30 days after notice of intent to terminate the contract has been received by the plan. The department shall present evidence at the hearing showing good cause for the termination. The department shall assign an administrative law judge who shall provide a written recommendation to the department on the termination of the contract within 30 days after conclusion of the hearing. Reasonable notice of the hearing shall be given to the plan, to Medi-Cal beneficiaries enrolled in the plan, and others who may be directly interested, including any other persons and organizations as the director may deem necessary. The notice shall state the effective date of, and the reason for, the termination.

(b) In lieu of contract termination specified in subdivision (a), the director shall have the power and authority to take one or more of the following sanctions against a contractor for noncompliance with the findings by the director as specified in subdivision (a):

(1) Suspend enrollment and marketing activities.

(2) Require the contractor to suspend or terminate contractor personnel or subcontractors.

(3) Impose civil penalties not to exceed ten thousand dollars (\$10,000) per violation pursuant to regulations adopted by the director. Unless imposed in error, penalties shall not be returned to the plan.

(4) Make one or more of the temporary suspension orders set out in subdivision (d).

(5) Take other appropriate action as determined necessary by the department. The director shall give reasonable notice of his or her intention to apply any of the sanctions authorized by this subdivision to the plan and others who may be directly interested, including any other persons and organizations as the director may deem necessary. The notice

shall include the effective date, the duration of, and the reason for each sanction proposed by the director.

(c) Notwithstanding subdivision (b), the director shall terminate a contract with a prepaid health plan which the United States Secretary of Health and Human Services has determined does not meet the requirements for participation in the medicaid program contained in Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(d) The department may make one or more of the following temporary suspension orders as an immediate sanction: temporarily suspend enrollment activities, temporarily suspend marketing activities, require the contractor temporarily to suspend specified personnel of the contractor, or require the contractor temporarily to suspend participation by a specified subcontractor. The temporary suspension orders must be effective no earlier than 20 days after the notice specified in subdivision (b). If the department issues a temporary suspension order as an immediate sanction, it shall notify the contractor of the nature and effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense filed by the contractor, the department shall within 15 days set the matter for hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice of hearing by the contractor. The hearing may be continued at the request of the contractor if a continuance is necessary to permit presentation of an adequate defense. The temporary suspension order shall remain in effect until the hearing is completed and the department has made a final determination on the merits. However, the temporary suspension order shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(e) A contractor may request a hearing in connection with any sanctions applied pursuant to subdivision (b), other than those contained in a temporary suspension order, within 15 working days after the notice of the effective date of the sanctions has been given, by sending a letter so stating to the address specified in the notice. The department shall stay implementation of the sanction upon receipt of the request for a hearing. Implementation of the sanction shall remain stayed until the effective date of the final decision of the department.

(f) Except as otherwise provided in this section, all hearings to review the imposition of sanctions, including temporary suspension orders, shall be

held pursuant to the procedures set forth in Section 100171 of the Health and Safety Code.

(g) The director may collect civil penalties by withholding the amount from capitation owed to the plan.

## Title 22 of the California Code of Regulations, Section 53872

### 53872. Civil Penalties.

(a) The Director may, except as provided in section 53873, impose one or more of the civil penalties specified in (b) upon a plan which fails to comply with the provisions of Article 2.7 of Chapter 7, Part 3, of Division 9 of the Welfare and Institutions Code, the provisions of this Chapter, or the terms of the plan contract.

(b) Civil penalties imposed by the Director shall be in the amounts specified below with respect to violation of any provision of:

- (1) Article 2, excluding section 53862.
  - (A) First violation: \$1,000.
  - (B) Second violation: \$5,000.
  - (C) Third and each subsequent violation: \$10,000.
- (2) Article 3.
  - (A) First violation: \$5,000.
  - (B) Second and each subsequent violation: \$10,000.
- (3) Section 53862.
  - (A) First violation: \$1,000, plus \$500 per day for each day that the item to be submitted is late, not to exceed \$10,000 total for each violation.
  - (B) Second and each subsequent violation: \$5,000, plus \$500 per day for each day that the item to be submitted is late, not to exceed \$10,000 total for each violation.
- (4) The contract, which is not specifically governed by regulation in this Chapter.
  - (A) First violation: \$5,000.
  - (B) Second and each subsequent violation: \$10,000.
- (5) Article 2.7, Chapter 7, Part 3, Division 9 of the Welfare and Institutions Code, which is not specifically addressed by regulations in this Chapter.

- (A) First violation: \$5,000.
- (B) Second and each subsequent violation: \$10,000.
- (c) The counting of violations for the purposes of this section shall:
  - (1) Be done without regard to contract term.
  - (2) Commence with violations occurring on or after the effective date of this section.
- (d) Imposition of penalties, under the provisions of subsection (a) shall follow administrative proceedings held in accordance with the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code.
- (e) The department shall issue a letter of noncompliance to a plan found by the administrative proceedings addressed in subsection (d) to be in violation of any provision of law, regulation or the contract. The letter of noncompliance shall include the violation, sanctions to be imposed and corrective action to be taken within stated time limits. Failure to comply with corrective actions within the time limits given shall be deemed to be subsequent violation for the purposes of subsection (c).

Code of Federal Regulation: 42 CFR, 438.704

TITLE 42--PUBLIC HEALTH

Sec. 438.704 Amounts of civil money penalties.

- (a) General rule. The limit on, or the maximum civil money penalty the State may impose varies depending on the nature of the MCO's or PCCM's action or failure to act, as provided in this section.
- (b) Specific limits.
  - (1) The limit is \$25,000 for each determination under the following paragraphs of Sec. 438.700:
    - (i) Paragraph (b)(1) (Failure to provide services).
    - (ii) Paragraph (b)(5) (Misrepresentation or false statements to enrollees, potential enrollees, or health care providers).
    - (iii) Paragraph (b)(6) (Failure to comply with physician incentive plan requirements).
    - (iv) Paragraph (c) (Marketing violations).

(2) The limit is \$100,000 for each determination under paragraph (b)(3) (discrimination) or (b)(4) (Misrepresentation or false statements to CMS or the State) of Sec. 438.700.

(3) The limit is \$15,000 for each recipient the State determines was not enrolled because of a discriminatory practice under paragraph (b)(3) of Sec. 438.700. (This is subject to the overall limit of \$100,000 under paragraph (b)(2) of this section).

(c) Specific amount. For premiums or charges in excess of the amounts permitted under the Medicaid program, the maximum amount of the penalty is \$25,000 or double the amount of the excess charges, whichever is greater. The State must deduct from the penalty the amount of overcharge and return it to the affected enrollees.