



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



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DATE: January 25, 2018

ALL PLAN LETTER 18-003
SUPERSEDES 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 provide clarification of existing law for Medi-Cal managed care health plans (MCPs) regarding the imposition of administrative and financial sanctions. The Department of Health Care Services (DHCS) is authorized to impose administrative and financial sanctions on MCPs that violate applicable state and federal laws and regulations. DHCS may also impose sanctions on MCPs that violate their DHCS contract terms, including the requirement to comply with APLs, Policy Letters (PLs), and Duals Plan Letters (DPLs), (collectively, “Contractual Obligations”¹). This APL supersedes APL 15-014.

BACKGROUND:

MCPs 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 MCP to all delegated entities and subcontractors. DHCS may impose administrative and financial sanctions for non-compliance pursuant to, but not limited to, the following:

- Title 42 of the Code of Federal Regulations (CFR) Section 438.700 et seq.²
- California Welfare & Institutions Code (WIC) Section 14304³
- Title 22 of the California Code of Regulations (CCR) Section 53352⁴
- Title 28 of the CCR Section 1300.86⁵
- California Health & Safety Code (HSC) Section 100171⁶

¹ MCP contracts can be found at: <http://www.dhcs.ca.gov/provgovpart/Pages/MMCDBoilerplateContracts.aspx>;
APLs, PLs, and DPLs can be found at: <http://www.dhcs.ca.gov/formsandpubs/Pages/MgdCarePlanPolicyLtrs.aspx>

² [42 CFR 438.700 et seq.](#)

³ [WIC Section 14304](#)

⁴ [22 CCR Section 53352](#)

⁵ [28 CCR Section 1300.86](#)

⁶ [HSC Section 100171](#)

- Title 42 of the United States Code (USC), Chapter 7, Subchapter 19, Section 1396 et seq.⁷
- California Government Code (GOV) Sections 11505 and 11506⁸

REASONS FOR IMPOSING ADMINISTRATIVE AND FINANCIAL SANCTIONS:

Successful administration of the Medi-Cal program depends on a collaborative partnership between DHCS and MCPs. When an MCP or its subcontractor fails to meet Contractual Obligations or to comply with applicable state and federal laws and regulations, there is good cause to impose administrative and/or financial sanctions.^{9, 10} These failures include, but are not limited to, the following:^{11, 12}

1. Three repeated and uncorrected findings of serious medical audit deficiencies that have the potential to endanger patient care, as identified in medical audits conducted by DHCS.
2. In the case of the Quality Improvement System, repeated failure to achieve minimum performance levels, or receipt of a “Not Reported” designation on an External Accountability Set measure, after implementation of a Corrective Action Plan (CAP).
3. Failure to timely provide medically necessary covered services to a member.
4. Non-compliance with Contractual Obligations or applicable state and federal laws and regulations.
5. Accrual of claims that have not or will not be paid.

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

DHCS may impose any one or a combination of the following sanctions on an MCP:

1. Temporary Suspension Orders

Temporary suspension orders may include any one or combination of the following:¹³

⁷ [42 USC Chapter 7, Subchapter XIX](#)

⁸ GOV Sections [11505](#) and [11506](#)

⁹ WIC Section 14304

¹⁰ Pursuant to 42 CFR 438.700(a), DHCS may base sanctions on findings from onsite surveys, enrollee or other complaints, financial status, or any other source; this includes medical audits pursuant to WIC Section 14456.

¹¹ MCP contract Exhibit E, Attachment 2, Sanctions

¹² 42 CFR 438.702(b) provides DHCS the authority to impose sanctions under state laws or regulations that address areas of non-compliance in addition to those prescribed in federal authority.

¹³ MCP contract Exhibit E, Attachment 2, Sanctions

- a. Suspension of an MCP's new enrollment activities, including default enrollment.¹⁴
- b. Suspension of an MCP's marketing activities.¹⁵
- c. Requiring an MCP to temporarily suspend or terminate specified personnel and/or a specified subcontractor.¹⁶
- d. Appointment of temporary management by the DHCS Director if the MCP repeatedly violates Contractual Obligations or applicable state and federal laws or regulations.¹⁷
- e. Requiring MCPs to ensure that subcontractors cease certain activities, including referrals, assignment of eligible beneficiaries, and reporting, until DHCS determines that the MCP is in compliance with Contractual Obligations and applicable state and federal laws and regulations.¹⁸

2. Monetary Sanctions

- a. DHCS may impose civil monetary penalties in accordance with Title 42 CFR Section 438.704, as follows:
 - Up to \$25,000 for each determination of:¹⁹
 - Failing to provide medically necessary services that the MCP is required to provide, under law or under its DHCS contract, to a member covered under the contract.
 - Misrepresenting or falsifying information that is furnished to a member, eligible beneficiary, or health care provider.
 - Distributing directly, or indirectly through any agent or independent contractor, marketing materials that have not been approved by DHCS, or that contain false or materially misleading information.
 - Up to \$100,000 for each determination of:²⁰
 - Conducting any act of discrimination against a member on the basis of the member's health status or need for health care services. This includes termination of enrollment or refusal to reenroll an eligible beneficiary, except as permitted under the Medicaid program, or any practice that would reasonably be

¹⁴ WIC Section 14304(b)(1); WIC Section 14304(d); 42 CFR 438.702(a)(4)

¹⁵ WIC Section 14304(b)(1); WIC Section 14304(d)

¹⁶ WIC Section 14304(b)(2); WIC Section 14304(d)

¹⁷ 42 CFR 438.702(a)(2), citing 42 CFR 438.706. DHCS cannot delay the imposition of temporary management to provide a hearing before imposing this sanction. DHCS will not terminate temporary management until it determines that the MCP can ensure that the sanctioned behavior will not recur.

¹⁸ WIC Section 14304(b)(2); WIC Section 14304(d)

¹⁹ WIC Section 14304(b)(3)(A)(i)-(iii); 42 CFR 438.704(b)(1)

²⁰ WIC Section 14304(b)(3)(B)(i)-(ii); 42 CFR 438.704(b)(2)

- expected to discourage enrollment of eligible beneficiaries whose medical condition or history indicates a probable need for substantial future medical services.
- Misrepresenting or falsifying information furnished to the Centers for Medicare and Medicaid Services (CMS) or furnished to DHCS.
 - Up to \$15,000 for each eligible beneficiary that DHCS determines was not enrolled because of a discriminatory practice under WIC Section 14304(b)(3)(B)(i). This is subject to the overall limit of \$100,000 under WIC Section 14304(b)(3)(B).²¹
 - Up to \$25,000 or double the amount of excess charges, whichever is greater, for premiums or charges in excess of the amounts permitted under the Medicaid program. DHCS will deduct from the penalty the amount of overcharge and return the overcharge to the affected member(s).²²
- b. DHCS may also impose civil penalties if an MCP violates any federal or state statute or regulation, or any provision of its DHCS contract, as follows:²³
- Five thousand dollars (\$5,000) for the first violation.
 - Ten thousand dollars (\$10,000) for the second violation.
 - Up to twenty-five thousand dollars (\$25,000) for each subsequent violation.
- c. DHCS may also recommend that CMS impose a denial of payment sanction as specified in Title 42 CFR Section 438.730(e).²⁴

DHCS may collect civil penalties by withholding the amount from capitation payments owed to the MCP.²⁵

3. Contract Termination

DHCS may terminate a contract with an MCP for violating the standards prescribed in WIC Section 14304²⁶ or for failure to meet applicable requirements in Sections 1932, 1903(m), or 1905(t) of the Social Security Act.²⁷ In addition, DHCS will

²¹ WIC Section 14304(b)(3)(C); 42 CFR 438.704(b)(3)

²² 42 CFR 438.704(c)

²³ WIC Section 14304(b)(4)

²⁴ 42 CFR 438.730(a)

²⁵ WIC Section 14304(g)

²⁶ WIC Section 14304(a)

²⁷ 42 CFR 438.708

terminate a contract with an MCP 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.²⁸

Where applicable, DHCS will initiate the Phaseout Requirements prescribed in the DHCS contract for a contract termination.²⁹ 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.

In addition to the listed sanctions, DHCS is also authorized to take any other appropriate action that DHCS determines to be necessary.³⁰

FACTORS DHCS MAY CONSIDER WHEN IMPOSING SANCTIONS:

When determining the appropriate sanction and the assessment of monetary penalties, DHCS may consider the following non-exhaustive factors:³¹

1. The nature, scope, and gravity of the violation.
2. The good or bad faith of the MCP.
3. The MCP's history of violations.
4. The willfulness of the violation.
5. The nature and extent to which the MCP cooperated with DHCS' investigation.
6. The nature and extent to which the MCP aggravated or mitigated any injury or damage caused by the violation.
7. The nature and extent to which the MCP has taken corrective action to ensure the violation will not recur.
8. The financial status of the MCP.
9. The financial cost of the health care service that was denied, delayed, or modified.
10. Whether the violation is an isolated incident.
11. The amount of the penalty necessary to deter similar violations in the future.

NOTICE OF SANCTIONS:

In the event of a sanction, DHCS will provide the affected MCP 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 MCP's sanction. All

²⁸ WIC Section 14304(c)

²⁹ MCP contract Exhibit E, Attachment 2, Phaseout Requirements

³⁰ WIC Section 14304(b)

³¹ 28 CCR 1300.86

sanction notices will be in writing and will include the effective date, duration of, and reason for each sanction proposed,³² as well as any appeal rights that the MCP has.³³

For temporary suspension orders, DHCS will notify the affected MCP of DHCS' intent to impose a temporary suspension order a minimum of 20 calendar days before the order goes into effect.³⁴

For monetary sanctions, DHCS will provide the affected MCP a minimum of 30 calendar days' notice. In the event that an MCP 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 an MCP contract, DHCS will provide the affected MCP with a minimum of 60 calendar days' notice.³⁵ Notice of contract termination will also be provided to members enrolled in the MCP.

APPEAL RIGHTS:

An MCP has the right to appeal a temporary suspension order issued as an immediate sanction by submitting a Notice of Defense (NOD) within 30 working days of receiving notice of the order. No later than 15 calendar days after receiving an NOD, 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 MCP receives the notice of hearing. The MCP may request a continuance if the MCP 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.³⁶

An MCP may request a hearing in connection with any sanctions, other than sanctions contained in a temporary suspension order. To request a hearing, the MCP 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 an MCP's timely submitted written request for a hearing. Implementation of the sanction will remain stayed until the effective date of DHCS' final decision.³⁷

³² WIC Section 14304(b)(6)

³³ 42 CFR 438.710(a)(2)

³⁴ WIC Section 14304(d)

³⁵ MCP contract Exhibit E, Attachment 2, Termination for Cause and Other Terminations

³⁶ WIC Section 14304(d)

³⁷ WIC Section 14304(e)

For contract terminations, except in cases where DHCS determines there is an immediate threat to the health of members enrolled in the MCP, DHCS will, at the request of an MCP, hold a public hearing, which will commence 30 calendar days after an MCP has received notice of DHCS' intent to terminate the MCP's contract. For the hearing, DHCS will assign an administrative law judge to provide, within 30 days after the conclusion of the hearing, a written recommendation to DHCS regarding the termination of the contract.

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

Sincerely,

Original signed by Nathan Nau

Nathan Nau, Chief
Managed Care Quality and Monitoring Division
Department of Health Care Services