



WILL LIGHTBOURNE
DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

DATE: March 3, 2021

ALL PLAN LETTER 21-003
SUPERSEDES ALL PLAN/POLICY LETTER 16-001

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: MEDI-CAL NETWORK PROVIDER AND SUBCONTRACTOR
TERMINATIONS

PURPOSE:

This All Plan Letter (APL) clarifies the obligations of Medi-Cal managed care health plans (MCPs) when terminating or initiating terminations of contractual relationships between MCPs, Network Providers, and Subcontractors. This APL also establishes MCPs' obligations to check exclusionary databases and terminate contracts with Network Providers and Subcontractors who have been suspended or excluded from participation in the Medi-Cal/Medicare programs.

BACKGROUND:

MCPs, Network Providers, and Subcontractors have the ability to terminate contracts with each other for a variety of business reasons.¹ Additionally, if the state or federal government suspends or excludes a Network Provider/Subcontractor from participation in the Medicaid/Medicare program, the MCP must terminate its contract with the Network Provider or Subcontractor dependent on the reason for the suspension as outlined in this APL.²

Federal and state law prohibit MCPs and their Network Providers and Subcontractors from employing, consulting, contracting, or maintaining a contract with any Network Provider/Subcontractor who is excluded from participating in the Medi-Cal Program.³

¹ For more information on Networks, Network Providers, and Subcontractors, including the definition and requirements applicable, see the MCP's contract with the Department of Health Care Services (DHCS), APL 19-001, or any superseding version of that APL. MCP boilerplate contracts are available at:

<https://www.dhcs.ca.gov/provgovpart/Pages/MMCDBoilerplateContracts.aspx>.

APLs can be found at: <https://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx>.

² MCPs are not obligated to terminate contracts with Network Providers and Subcontractors placed under a payment suspension. MCPs may continue the contractual relationship; however, MCPs may not pay the Network Provider/Subcontractor until the suspension is lifted.

³ Title 42, Code of Federal Regulations (CFR), section 438.610 and 438.214(d)(1). Part 438 of the CFR is searchable at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=3213fcc4e4ae29dc320151013239009b&mc=true&node=pt42.4.438&rgn=div5>.

Network Providers/Subcontractors may be suspended or excluded from participation in the Medi-Cal program when an individual or entity has:⁴

- Been convicted of a felony;
- Been convicted of a misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service;
- Been suspended from the federal Medicare or Medicaid programs for any reason; or
- Lost or surrendered a license, certificate, or approval to provide health care.

An MCP may contract with a Network Provider and/or Subcontractor that has been suspended or excluded from participation in the Medi-Cal program when the suspension and/or exclusion has been lifted.

POLICY:

MCPs must meet the notification and reporting requirements for terminations as outlined in this APL by determining the overall member impact due to the termination. For all terminations, the MCP must mail appropriate member notifications and remain accountable for all functions and responsibilities of the terminated Network Provider/Subcontractor to ensure that impacted members do not experience disruption in access to care. Further, the MCP must ensure compliance with network adequacy requirements, and comply with the requirements outlined below.^{5, 6, 7} Terminations can be initiated by an MCP, Network Provider, Subcontractor, or other contracted entities as necessary. Terminations impacting 2,000 or more members from the terminating Network Provider/Subcontractor, or that result in an MCP's non-compliance with any of the Annual Network Certification (ANC) components regardless of the number of members impacted are deemed significant for purposes of this APL and require additional DHCS reporting requirements.⁸ All other terminations that fall outside of the criteria above must be reported quarterly through the Network Provider template through the Quarterly Monitoring process.

⁴ Welfare and Institutions Code (WIC) sections 14043.6 and 14123. WIC is searchable at: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml.

⁵ Health and Safety Code (HSC) section 1367.

⁶ Title 22, California Code of Regulations (CCR), section 53853. The CCR is searchable at: <https://govt.westlaw.com/calregs/Search/Index>.

⁷ Medi-Cal Managed Care Contract, Exhibit A, Attachment 6.

⁸ See APL 20-003 or any superseding version of that APL for more information on ANC components.

MCP or Network Provider/Subcontractor Voluntary Contract Terminations

Whenever an MCP or Network Provider/Subcontractor voluntarily terminates a contract, the MCP must complete the following:

1. At least 60-days prior to the effective date of a voluntary contract termination, or immediately upon learning of the termination from the Network Provider/Subcontractor, provide DHCS with written notice of the termination, a Transition Plan, and Network Review Documents, as described in this APL.⁹
2. Provide notice to all impacted members as described in the “Member Notice” section of this APL;
3. Notify all affected directly contracted providers of the contract termination, as applicable; and
4. Coordinate care for impacted members as required by federal and state law, and the MCP’s contract with DHCS.

Contract Terminations Resulting from a Network Provider/Subcontractor’s Exclusion from Participation in the Medi-Cal Program

As part of MCPs’ monitoring and oversight responsibilities, MCPs are required to review exclusionary databases on a regular basis, and at least monthly, and take appropriate action in connection with the exclusion as set forth in Attachment A of this APL. Upon discovery that a Network Provider/Subcontractor has been excluded or suspended from the Medi-Cal program, MCPs must take the following steps:

1. Immediately, or within 10 calendar days of learning of a Network Provider/Subcontractor’s exclusionary status, provide DHCS with written notice of the termination, submit a Transition Plan, and Network Review Documents as described in this APL.¹⁰
2. Immediately, or within 10 calendar days of learning of a Network Provider/Subcontractor’s exclusionary status, suspend payment to the excluded

⁹ This requirement applies only to terminations that are deemed significant for purposes of this APL (i.e.; impacting 2,000 or more members from the terminating Network Provider/Subcontractor, or that result in an MCP’s non-compliance with any of the ANC components regardless of the number of members impacted).

¹⁰ This requirement applies only to terminations of Network Providers/Subcontractors that impact 2,000 or more members or result in an MCP’s non-compliance with one or more of the ANC components regardless of the number of members impacted.

Network Provider/Subcontractor for all Medi-Cal services provided after the effective date of the exclusion;

3. Immediately, or within 10 calendar days of learning of a Network Provider/Subcontractor's exclusionary status, notify all affected directly contracted providers, as applicable;
4. Provide notice to all impacted members as described in the "Member Notice" section of this APL;
5. Coordinate care for impacted members as required by federal and state law, and the MCP's contract with DHCS; and
6. Report to DHCS program integrity information related to fraud, waste and abuse allegations, including any contract terminations, as described in the "Monitoring, Oversight, and Reporting" section of this APL, MCP contract with DHCS, and as further required by DHCS.^{11, 12}

Member Notices

Regardless of the number of members impacted, MCPs are required to provide written notice to all impacted members informing them of the contract termination either 30 calendar days prior to the effective date of the contract termination or 15 calendar days after receipt or issuance of the termination notice, whichever is later, unless directed by DHCS.^{13,14} If an MCP is notified of a contract termination less than 30 days prior to the effective date of the termination, the MCP must immediately notify all impacted members of the termination.

Adjustments to previously approved member notice templates must be submitted to DHCS for approval prior to sending the notice to members. If an MCP does not have prior DHCS approval on a member notice template, the MCP must submit the notice for DHCS review and approval no later than 60 days prior to the effective date of the termination. MCPs may use a DHCS-approved member notice template regardless of the number of members impacted by the termination. However, if there are any changes

¹¹ For terminations that are due to fraud or waste and abuse allegations, the MCP must notify its DHCS contract manager and DHCS' Audits and Investigations Division as outlined in APL 15-026.

¹² See APL 15-023.

¹³ For contract terminations that impact less than 2,000 members, MCPs may choose to use a standard member notice template that has been previously approved by DHCS, if no changes have been made since that approval.

¹⁴ 42 CFR, section 438.10(f).

from the approved template, MCPs must submit the member notice to DHCS 60 days prior to the effective date of the termination for review and approval prior to mailing the notice.

Member notices must include, at a minimum, the information outlined below:

- Effective date of the contract termination;
- A description of how the contract termination will impact the member's access to covered services, if applicable;
- Name of the terminating/terminated Network Provider/Subcontractor;
- Name of the new Network Provider/Subcontractor that the member is being assigned to, if applicable;
- Member rights information on how to request a new provider if the member elects to change from the provider the MCP reassigned them to;¹⁵
- If applicable, the name of another hospital the member will be assigned to or can access in the service area;
- All language required by HSC section 1373.65, including the member's continuity of care (C.O.C.) rights to the terminating/terminated Network Provider/Subcontractor, unless the Network Provider/Subcontractor has been excluded from participating in the Medi-Cal Program (exception: member notices for County Organized Health System plans may omit non-applicable requirements from the notice); and
- Language providing the member with the MCP's Member Services telephone number and the toll-free telephone number of DHCS' Office of the Ombudsman.

If a contract is successfully renegotiated with a Network Provider/Subcontractor before the effective date of the contract termination, and member notices were already mailed out, the MCP must mail another notice to inform members that the contract is not being terminated. MCPs may submit a template notice for DHCS approval and must include, at a minimum:

- An explanation that an agreement has been reached with the Network Provider/Subcontractor;
- An explanation of the member's option to remain with, or change Network Providers;
- All language required by HSC section 1373.65; and¹⁶
- The MCP's Member Services telephone number and the toll-free telephone number of DHCS' Office of the Ombudsman.

¹⁵ If reassignment occurs, the notice must include information on how the member can request to change the newly assigned Network Provider/Subcontractor and a referral to the provider directory.

¹⁶ This requirement is only applicable to Knox-Keene licensed MCPs.

MCPs may use a previously approved template notice if no changes were made. If the MCP has made changes to a previously approved template, or does not have an approved template on file, the MCP must immediately submit a notice to DHCS for review and approval prior to mailing the notice to members.

Transition Plan

In order for DHCS to evaluate the member impact of a proposed contract termination, the MCP must submit to DHCS a Transition Plan addressing how it intends to continue to provide covered services to impacted members. In the event of continued contract negotiations, the MCP must submit an updated Transition Plan each time the MCP notifies DHCS of the contract extension. The Transition Plan must include the information outlined below. MCPs may also choose to submit a narrative in lieu of an updated Transition Plan to provide an update of the negotiation.

General Information

- The name of the terminating/terminated Network Provider/Subcontractor;
- The proposed effective date of the contract termination;
- The reason for the contract termination;
- The date the member notice will be mailed; and
- A description of administrative actions, which includes: notifying call center staff about the contract termination, removing the terminated Network Provider/Subcontractor from the auto-assignment system, and ceasing payments for terminated or suspended Network Providers/Subcontractors.

Member Impact

- The number of members impacted by the terminating/terminated Network Provider/Subcontractor;
- A “crosswalk” showing the number of members and the names of the new Network Providers/Subcontractors to which the members will be reassigned within time or distance standards;¹⁷
- The number of members that must be reassigned to new Network Providers/Subcontractors and continue to have access to another Network Provider/Subcontractor within time or distance standards; and
- The number of members that will be reassigned to a Network Provider/Subcontractor that is outside of time or distance standards and cannot retain access through another Network Provider/Subcontractor within time or distance standards.

¹⁷ See APL 20-003 or any superseding version of that APL for ANC components.

Hospital and Facility Information (if applicable)

- If applicable, a list of specialty services available at the terminating hospital that are not available at other hospitals within time or distance standards;
- If applicable, a list of contracted hospitals that the MCP could contract with or are contracted with within time or distance standards of the terminating hospital;
- If applicable, the number of members who will need to change Primary Care Providers (PCPs) due to the terminating hospital having a primary care clinic, or having a PCP with admitting privileges only at the terminating hospital; and
- If applicable, the number of members who will need to change specialists due to the terminating hospital having a specialty care clinic or group, or having specialists with admitting privileges only at the terminating hospital.

Block Transfer Filing

Knox-Keene licensed MCPs that submitted a Block Transfer Filing (BTF) to Department of Managed Health Care (DMHC) are not relieved of their obligations to comply with the requirements set forth in this APL. Additionally, MCPs must also submit a copy of the BTF to DHCS along with the member notice and applicable documentation outlined in this APL.

Additional Submission Requirements for Contract Terminations Deemed Significant

As part of the contract termination process, MCPs must submit documentation outlined in this APL to DHCS for terminations deemed to be significant (i.e.; impacting 2,000 or more members or that results in an MCP's non-compliance with any of the ANC components regardless of the number of members impacted). MCPs do not need DHCS approval to voluntarily terminate contracts that meet this criteria. However, DHCS reserves the right to accept or request additional information to be included in the Transition Plan in connection with the contract termination, as well as require MCPs to put in place member protections to ensure continued access to care for their members.

Documentation for voluntary contract terminations that are deemed significant must be submitted to DHCS at least 60-days prior to the effective date of the contract termination, and must include a copy of the member notice, Transition Plan, and other applicable supporting network documentation, including but not limited to, accessibility analyses and alternative access requests as outlined in APL 20-003, or any superseding APL.¹⁸

¹⁸ Knox-Keene licensed MCPs are required to also submit a copy of the BTF that was submitted to DMHC for informational purposes.

Network Review Documents

MCPs must submit Network Review Documents to DHCS if, as a result of the contract termination, the MCP is unable to comply with any of the ANC components. MCPs must refer to APL 20-003 or any superseding APL for the required documentation, submission components, and further instructions.¹⁹

DHCS will provide assistance to all MCPs throughout the contract termination process. All submissions, communications, and MCP updates must be sent to the MCP's Managed Care Operations Division (MCOD) Contract Manager.

California Department of Public Health Initiated Facility Decertifications and Suspensions

The California Department of Public Health (CDPH) is responsible for decertifying or suspending licensed Long-Term Care (LTC) facilities.²⁰ CDPH is responsible for the transition of members residing in the LTC facility in cases of immediate decertifications; however, MCPs must work with the facility to ensure that members continue to receive medically necessary covered services.

Additionally, DHCS encourages MCPs to include language in their contracts with Network Providers/Subcontractors to require Network Providers/Subcontractors, including LTC facilities to notify the MCP upon receiving a decertification notification from CDPH.

Upon discovery of an LTC facility decertification or suspension, the MCP must terminate its contract with the facility, and take the following steps outlined below:

1. Immediately notify DHCS of the contract termination with the LTC facility due to decertification or suspension.²¹
2. Within five business days of receiving a final notification of an LTC facility decertification, submit a Transition Plan and Network Review Documents as described in this APL.²²

¹⁹ MCPs are responsible for assessing the impact of the contract termination to its Network and must submit an alternative access standard request if the MCP will no longer be compliant with time or distance standards in accordance with APL 20-003 or any superseding APL.

²⁰ Facility types include Skilled Nursing Facilities (SNFs), Intermediate Care Facilities, Congregate Living Health Facilities, Nursing Facilities, and Pediatric Day and Respite Facilities.

²¹ While DHCS does not approve or deny an MCP's contract termination with an LTC facility, MCPs must seek and receive DHCS approval for member notifications for impacted members.

²² This requirement applies only if the LTC contract termination is a result of a facility decertification.

3. Immediately suspend payment to the decertified or suspended LTC facility for all Medi-Cal services provided after the effective date of the exclusion;
4. Immediately notify all affected directly contracted providers of the decertified or suspended LTC facility;
5. Provide notice to all impacted members as described in the “Member Notice” section below; and
6. Coordinate care for impacted members as required by federal and state law, and the MCP’s contract with DHCS.

A. Transition Plan

The MCP must submit a Transition Plan to DHCS for approval, regardless of the number of members impacted, and at a minimum must include:

- A timeline for prompt transition of impacted members no sooner than 30 days after notification of the decertification, unless the member wishes to move sooner;
- A timeline for the MCP case manager to contact and speak with all impacted members;
- A process to consult with the LTC Ombudsman and other related entities, as appropriate;
- A process to work with impacted members, guardians, conservators, or personal representatives, as applicable, regarding the transition and the member’s options or choices;
- A process for the review of all impacted members’ medical records, including a process for communication with members’ providers as appropriate; and
- A plan of action to ensure that members’ personal belongings are transitioned to the members’ new providers in a timely manner.

B. Member Notices

Attachment B of this APL provides a template notice that may be used by MCPs to notify members of the contract termination unless otherwise approved by DHCS. MCPs may also choose to create their own notice for informing members of a contract termination that occurs as a result of the facility’s decertification as long as DHCS has reviewed and approved the notice before the MCP issues the notice. MCPs must provide the notice to members within five days of receiving notification of the closure or effective date of the termination, and at a minimum must include the following information:

- The effective date of the contract termination;
- The name of the LTC facility;
- The reason for the decertification;
- A description of how the decertification will impact the member's access to covered services;
- All language required by HSC and the Knox-Keene Act (for Knox-Keene licensed plans);²³
- Language providing the member with the MCP's Member Services telephone number and the toll-free telephone number of DHCS' Office of the Ombudsman for questions or concerns;
- A description of how the MCP will maintain the ability to provide covered services to impacted members; and
- The date the member notice will be mailed.

If the facility is residential and remains open, members must have at least 30 days post-notice to transition to a new facility, with the following exceptions:²⁴

- The safety of a member in a facility (e.g., SNF) is endangered;
- The health of a member in a facility is endangered;
- A member's health improves sufficiently so that the member no longer requires the services provided by the facility;
- A member's urgent medical needs require an immediate transfer or discharge;
- A member has not resided in a facility for 30 days or more;
- A member, their guardian, conservator, or personal representative has requested a transition to another facility; or
- A facility closes or is no longer operational.

Members may choose to not transition to a new facility; however, they may be responsible for the costs of the services provided by the terminated or decertified facility, and must be informed of this if they choose not to transition.

The aforementioned requirements pertaining to federal and/or state-initiated suspensions, decertifications, and exclusions from the Medi-Cal program are applicable across all the various provider types, unless listed as an exception to the 30-day stay requirement.

²³ HSC section 1373.65

²⁴ 42 CFR section 438.15(c)(4)(ii)

In the case of an immediate closure of a provider by CDPH, CDPH is responsible for the transition of all affected members residing in the facility. MCPs are responsible for tracking the transition of impacted members and coordinating care as needed.

Member Access and Protections

MCPs are required to allow the following protections to ensure continued access and avoid disruption in care for members impacted by Network Provider/Subcontractor terminations.

Continuity of Care

MCPs are responsible for authorizing C.O.C. to Network Providers/Subcontractors whose contracts with the MCP have been terminated. MCPs are exempt from authorizing C.O.C. if the provider was terminated for exclusionary reasons related to a medical disciplinary action, fraud, abuse, or other conduct that prohibits the provider from participating in the Medi-Cal program.²⁵ MCPs must reference APL 18-008 or any superseding APL for more information about C.O.C.

Out-of-Network Access

MCPs are responsible for ensuring the safe transition of members to new Network Providers/Subcontractors when a contract termination occurs. When a Network Provider Agreement or Subcontractor Agreement is terminated effective immediately and if there are no in-network Network Providers/Subcontractors available for members to be reassigned to, MCPs must allow out-of-network access and/or make the MCP's entire network available to impacted members to ensure that the members do not experience a disruption in care.

Payments and Rates

MCPs that pay suspended or decertified providers for services provided after the provider exclusion date must not include those payments in the MCP's rate development template. MCPs may include contract provisions in their contracts with Network Providers and Subcontractors stating that services provided to Medi-Cal members after the provider has been decertified, suspended, or excluded from the Medi-Cal program are not eligible to receive state or federal reimbursement (i.e.; Medi-Cal funding) and may not be collected from the member. Network Providers/Subcontractors placed on payment suspension are eligible to remain contracted with the MCP; however, the MCP must ensure that the Network Provider/Subcontractor does not receive reimbursement for services provided to

²⁵ HSC section 1373.96

members until the payment suspension has been lifted and the provider is not seeking payment from members.²⁶

Monitoring, Oversight, and Reporting

MCPs are responsible for monitoring and overseeing all Network Providers and Subcontractors and may be required to submit quarterly reports on contract terminations as requested by DHCS. MCPs may be required to provide updates and reports on contract termination statuses as frequently as needed, including but not limited to information on C.O.C. and out-of-network access when terminations occur. This additional reporting does not relieve the MCP of its obligations to comply with all reporting requirements as set forth in the MCP contract, including the Quarterly Network Provider report detailing all provider additions and deletions to its provider network.

Additionally, MCPs must report all contract terminations to DHCS in the Quarterly Provider Network Report as set forth in the MCP contract.²⁷

If the requirements contained in this APL, including any updates or revisions to this APL, necessitate a change in an MCP's policies and procedures, the MCP must submit its updated policies and procedures (P&P) to its MCOD contract manager within 90 days of the release of this APL. If an MCP determines that no changes to its P&Ps are necessary, the MCP must submit an email confirmation to its MCOD contract manager within 90 days of the release of this APL, stating that the MCP's P&Ps have been reviewed and no changes are necessary. The email confirmation must include the title of this APL as well as the applicable APL release date in the subject line.

MCPs are responsible for ensuring that their Subcontractors and Network Providers comply with all applicable state and federal laws and regulations, contract requirements, and other DHCS guidance, including APLs and Policy Letters. These requirements must be communicated by each MCP to all Subcontractors and Network Providers.

Failure to notify DHCS, members, and directly contracted providers, as applicable, of terminations as outlined in this APL may result in a notice of deficiency requiring the MCPs to submit a corrective action plan. If actions taken do not permanently address the deficiency, DHCS may also impose monetary sanctions on the MCP.

²⁶ Per WIC 14019.4, California health care providers who are not enrolled in Medi-Cal are prohibited from billing a Medi-Cal member or beneficiary to the extent the Medi-Cal member has provided their insurance information or other proof of Medi-Cal eligibility in attempting to obtain the service.

²⁷ Medi-Cal Managed Care Contract, Exhibit A, Attachment 6.

ALL PLAN LETTER 21-003
Page 13

If you have any questions regarding this APL, please contact your MCOD Contract Manager.

Sincerely,

Original Signed by Nathan Nau

Nathan Nau, Chief
Managed Care Quality and Monitoring Division