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DATE: October 4, 2021

ALL PLAN LETTER 21-013
SUPERSEDES ALL PLAN LETTER 15-007

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: DISPUTE RESOLUTION PROCESS BETWEEN MENTAL HEALTH PLANS AND MEDI-CAL MANAGED CARE HEALTH PLANS

PURPOSE:

The purpose of this All Plan Letter (APL) is to provide guidance to Medi-Cal managed care health plans (MCPs) on how to submit a service delivery dispute to the Department of Health Care Services (DHCS) when the dispute cannot be resolved at the local level with a Mental Health Plan (MHP). Guidance to MHPs is provided in Behavioral Health Information Notice (BHIN) No: 21-034.¹

BACKGROUND:

MCPs are contractually required to provide and cover all medically necessary services for members, with the exception of those services that are carved out of the MCP's contract. However, even for carved-out services, MCPs remain contractually responsible for providing Comprehensive Case Management, including coordination of care, to ensure the provision of all medically necessary services, whether those services are delivered within or outside of the MCP's provider network. Comprehensive case management for medically necessary services, including both basic and complex case management, is described in MCP contracts.²

POLICY:

MCPs must enter into a Memorandum of Understanding (MOU) with the MHP in each of the counties where the MCP operates.³ The MOU must include a process for resolving disputes between the MHP and the MCP that includes a means for beneficiaries to receive medically necessary services, including specialty mental health services (SMHS) and prescription drugs, while the dispute is being resolved.⁴ If an MCP and MHP have a dispute that they are unable to resolve regarding the obligations of the

¹ 2021 BHINs are searchable at <https://www.dhcs.ca.gov/formsandpubs/Pages/2021-MHSUDS-BH-Information-Notices.aspx>.

² Exhibit A, Attachment 11, Case Management and Coordination of Care. MCP boilerplate contracts are available at: <https://www.dhcs.ca.gov/provgovpart/Pages/MMCDBoilerplateContracts.aspx>.

³ Exhibit A, Attachment 12, Local Health Department Coordination.

⁴ Title 9, CCR, section 1810.370.

MCP or MHP under their respective contracts with DHCS, state laws and/or the MCP - MHP MOU, the parties are required to submit the dispute to the state for resolution as described below. DHCS encourages both MCPs and MHPs to attempt to resolve all disputes collegially, effectively, and at the local level before submitting the dispute to the state for resolution. The local resolution policy should be exhausted within the below prescribed timeframes before filing the dispute with the state.

PROVISION OF SERVICES DURING DISPUTE RESOLUTION PROCESS

State law requires that the provision of medically necessary services must not be delayed during the pendency of a dispute between an MHP and MCP and sets forth rules for determining financial responsibility for services provided to a member during that period.⁵ In addition, MCPs are contractually responsible for the provision of case management and care coordination for all medically necessary services a member needs, including those services that are the subject of a dispute between an MCP and MHP. The MCP is responsible for working with MHPs in order to ensure that there is no duplication of SMHS, for which MHPs also provide case management.

ROUTINE DISPUTE RESOLUTION PROCESS:

Regardless of MOU status, MCPs and MHPs must complete the plan level dispute resolution process within 15 business days of identifying the dispute. Within three business days after a failure to resolve the dispute during that timeframe, either the MHP or the MCP must submit a written "Request for Resolution" to DHCS. If the MCP submits the Request for Resolution it must be signed by the MCP's Chief Executive Officer (CEO) or the CEO's designee. The Request for Resolution must include:

1. A summary of the disputed issue(s) and a statement of the desired remedies, including any disputed services that have been or are expected to be delivered to the member by either the MCP or the MHP and the expected rate of payment for each type of service;
2. A history of the attempts to resolve the issue(s) with the MHP;
3. Justification for the MCP's desired remedy; and
4. Any additional documentation that the MCP deems relevant to resolve the disputed issue(s), if applicable.

The Request for Resolution must be submitted via secure email to MCQMD@dhcs.ca.gov.

Within three business days of receipt of a Request for Resolution from an MCP, DHCS will forward a copy of the Request for Resolution to the Director of the affiliated MHP via secure email ("Notification"). The MHP will have three business days from the receipt of

⁵ Title 9, CCR, section 1850.525.

Notification to submit a response to the MCP's Request for Resolution and to provide any relevant documents to support the MHP's position. If the MHP fails to respond, DHCS will render a decision on the disputed issue(s) based on the documentation submitted by the MCP. Conversely, if the MHP submits a Request for Resolution to DHCS, DHCS will forward a copy of the Request for Resolution to the affiliated MCP, within three business days of receipt. The MCP will have three business days to respond and provide relevant documents.

If an MHP requests a rate of payment in its Request for Resolution, and the MHP prevails, the requested rate shall be deemed correct, unless the MCP disputes the rate of payment in its response. If the MCP fails to respond, DHCS will render a decision on the disputed issue(s) based on the documentation submitted by the MHP. Conversely, if an MCP requests a rate of payment in its Request for Resolution, and the MCP prevails, the requested rate shall be deemed correct, unless the MHP disputes the rate of payment in its response. If the MHP fails to respond, DHCS will render a decision on the disputed issue(s) based on the documentation submitted by the MCP.

At its discretion, DHCS may allow representatives of the MCP and MHP the opportunity to present oral arguments.

The Managed Care Quality and Monitoring Division and the Medi-Cal Behavioral Health Division will make a joint recommendation to DHCS' Director, or the Director's designee, based on their review of the submitted documentation; the applicable statutory, regulatory, and contractual obligations of the MCP and the MHP; and any oral arguments presented.

Within 20 business days from the third business day after the Notification date, DHCS will communicate the final decision via secure email to the MCP's CEO (or the CEO's designee, if the designee submitted the Request for Resolution) and the MHP's Director (or the Director's designee, if the designee submitted the Request for Resolution). DHCS' decision will state the reasons for the decision, the determination of rates of payment (if the rates of payment were disputed), and any actions the MCP and MHP are required to take to implement the decision.⁶ Any such action required from either the MCP or the MHP must be taken no later than the next business day following the date of the decision.

EXPEDITED DISPUTE RESOLUTION PROCESS

The MCP and MHP may seek to enter into an expedited dispute resolution process if a member has not received a disputed service(s) and the MCP and/or MHP determine

⁶ Title 9, CCR, sections 1850.530(c) and 1850.505(d)(1)

that the Routine Dispute Resolution Process timeframe would result in serious jeopardy to the member's life, health, or ability to attain, maintain, or regain maximum function.

Under this expedited process, the MCP and MHP will have one business day after identification of a dispute to attempt to resolve the dispute at the plan level. Within one business day after a failure to resolve the dispute in that timeframe, both plans will separately submit a Request for Resolution to DHCS, as set out above, including an affirmation of the stated jeopardy to the member.

If the MHP fails to submit a Request for Resolution, DHCS will render a decision on the disputed issue(s) based on the documentation submitted by the MCP. Conversely, if the MCP fails to submit a Request for Resolution, DHCS will render a decision on the disputed issue(s) based on the documentation submitted by the MHP.

DHCS will provide a decision no later than one business day following DHCS' receipt of Request for Resolution from both parties and affirmation of the stated jeopardy to the member.

FINANCIAL LIABILITY

If DHCS' decision includes a finding that the unsuccessful party is financially liable to the other party for services, the MCP or MHP is required to comply with the requirements in Title 9, California Code of Regulations (CCR), section 1850.530.⁷ If necessary, DHCS will enforce the decision, including withholding funds to meet any financial liability.

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 (P&Ps), the MCP must submit its updated P&Ps to its Managed Care Operations Division (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

⁷ CCRs are searchable at: <https://govt.westlaw.com/calregs/Search/Index>.

requirements, and other DHCS guidance, including APLs and Policy Letters.⁸ These requirements must be communicated by each MCP to all subcontractors and network providers.

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

Sincerely,

Original signed by Bambi Cisneros

Bambi Cisneros, Acting Chief
Managed Care Quality and Monitoring Division

⁸ For more information on subcontractors and network providers, including the definition and requirements applicable, see APL 19-001 and any subsequent APLs on this topic. APLs are available at: <https://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx>.