

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



MICHELLE BAASS
DIRECTOR



GAVIN NEWSOM
GOVERNOR

DATE: August 24, 2022

ALL PLAN LETTER 22-015
SUPERSEDES ALL PLAN LETTER 18-003

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: ENFORCEMENT ACTIONS: ADMINISTRATIVE AND MONETARY
SANCTIONS

PURPOSE:

The purpose of this All Plan Letter (APL) is to provide clarification to Medi-Cal managed care health plans (MCPs) of the Department of Health Care Services' (DHCS) policy regarding the imposition of administrative and monetary sanctions, which are among the enforcement actions DHCS may take to enforce compliance with MCP contractual provisions and applicable state and federal laws. This APL supersedes APL 18-003.

BACKGROUND:

DHCS must enforce compliance with contractual provisions of the DHCS Contracts with MCPs including the requirement to comply with APLs and Policy Letters (PLs) (collectively referred to as "Contractual Obligations")¹ as well as compliance with applicable state and federal laws and regulations, in accordance with its authority and obligations under state and federal law, and its authority under its Contracts with MCPs. DHCS is authorized to take enforcement actions, including imposing corrective action plans (CAPs), and imposing administrative and monetary sanctions on MCPs that violate applicable state and federal laws and regulations or violate their Contractual Obligations. MCPs are responsible for ensuring that they comply with all Contractual Obligations and applicable state and federal laws and regulations. MCPs must also ensure that all Subcontractors comply with all Contract requirements related to the delegated functions undertaken by each Subcontractor.² These requirements must be communicated by each MCP to all Subcontractors.

DHCS may impose administrative and monetary sanctions for non-compliance pursuant to, but not limited to, the following:

¹ See the MCP Contract for further details; APLs and PLs can be found at:
<http://www.dhcs.ca.gov/formsandpubs/Pages/MgdCarePlanPolicyLtrs.aspx>.

² For more information on Subcontractors (as well as Network Providers, which may qualify as Subcontractors in certain instances), including the definitions and applicable requirements, see APL 19-001, any subsequent APLs on this topic, and the MCP Contract.

- California Welfare & Institutions Code (WIC) section 14197.7.³
- Title 42 of the Code of Federal Regulations (CFR) section 438.700 et seq.⁴
- Title 42 of the United States Code (USC) section 1396a.⁵

POLICY:

SANCTION AUTHORITY UNDER WELFARE AND INSTITUTIONS CODE

When an MCP or its Subcontractors fail to meet Contractual Obligations or to comply with applicable state and federal laws and regulations, there is good cause to impose administrative and/or monetary sanctions in accordance with WIC section 14197.7(e).⁶

⁷ These reasons include, but are not limited to, the following:^{8, 9}

1. Failure to meet Contractual Obligations.¹⁰
2. Failure to meet quality metrics or benchmarks.¹¹
3. Failure to meet data quality and reporting requirements.¹²
4. Failure to demonstrate an adequate network to meet anticipated utilization in its service area.¹³
5. Failure to comply with state and federal regulations and laws.¹⁴
6. Failure to meet CAP requirements.¹⁵
7. Failure to comply with the California Medicaid State Plan or approved federal waivers.¹⁶
8. Failure to comply with network adequacy standards, including, but not limited to, time or distance, timely access, and provider-to-member ratio requirements

³ State law is searchable at: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>.

⁴ The CFR is searchable at: <https://www.ecfr.gov/>.

⁵ USC is searchable at: <https://uscode.house.gov/>.

⁶ WIC section 14197.7(e)(1), (2).

⁷ Pursuant to 42 CFR section 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.

⁸ MCP Contract Exhibit E, Sanctions.

⁹ 42 CFR section 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, which DHCS exercises pursuant to WIC section 14197.7.

¹⁰ WIC section 14197.7(e)(2).

¹¹ WIC section 14197.7(e)(4).

¹² WIC section 14197.7(e)(11).

¹³ WIC section 14197.7(e)(5).

¹⁴ WIC section 14197.7(e)(1).

¹⁵ WIC section 14197.7(e)(7).

¹⁶ WIC section 14197.7(e)(3).

pursuant to standards and formulae that are set forth in federal or state law, regulation, state plan or Contract, and that are posted in advance to DHCS' internet website.^{17, 18}

9. Failure to submit timely and accurate Network Provider data.¹⁹
10. Failure to provide adequate delivery of health care services.²⁰
11. Failure to meet operational standards, including the timely payment of claims.²¹
12. Failure to timely and accurately process grievances or appeals.²²

POLICIES TO ENFORCE COMPLIANCE

DHCS may take any one or a combination of the following enforcement actions, including imposing sanctions on an MCP, when the MCP fails to comply with Contractual Obligations or applicable state and federal laws and regulations.²³

1. Corrective Action Plans

When an MCP fails to comply with applicable federal and state laws and regulations, or meet Contractual Obligations, there is good cause to require a CAP from the MCP.²⁴ DHCS has the authority to require MCPs to develop and submit to DHCS for review and approval of the CAP to correct cited deficiencies.

MCPs are required to complete CAPs within the timeframe specified in the Notice of Corrective Action from DHCS. MCPs are required to provide a monthly status update to DHCS and provide supporting documentation until the CAP is closed. Monthly CAP updates must demonstrate action steps the MCP will undertake to correct the deficiency(ies).

DHCS may require or impose a CAP on an MCP and/or impose other enforcement actions for the violations set forth in WIC section 14197.7(a) and outlined below. For example, sanctions may be imposed on an MCP together with a CAP, in lieu of a CAP, or if the MCP fails to meet CAP requirements.²⁵ The

¹⁷ WIC section 14197.7(e)(6).

¹⁸ DHCS will consider an MCP's alternative access standards when determining if an MCP failed to comply with network adequacy standards. For additional information on alternative access standards, see APL 21-006 and any subsequent iterations on this topic.

¹⁹ WIC section 14197.7(e)(8).

²⁰ WIC section 14197.7(e)(9).

²¹ WIC section 14197.7(e)(10).

²² WIC section 14197.7(e)(12).

²³ WIC section 14197.7(d); WIC section 14197.7(e); 42 CFR section 438.700; 42 CFR section 438.702(b).

²⁴ WIC Section 14197.7(a).

²⁵ WIC section 14197.7(d), (e).

factor(s) set forth in WIC section 14197.7(g) will be considered by DHCS when determining whether a preceding, concurrent, or subsequent CAP is appropriate when taking enforcement actions, including imposing a sanction.

2. Monetary Sanctions

- a. Monetary sanctions may be imposed on an MCP for violations set forth in WIC section 14197.7(d) and (e), especially for any violation resulting in potential Member harm. The factor(s) set forth in WIC section 14197.7(g) will be considered by DHCS when determining the amount of the monetary sanction.
- b. DHCS may impose monetary sanctions in accordance with WIC section 14197.7(e) and Title 42 CFR section 438.704, and collect monetary sanctions by withholding the amount from capitation payments owed to the MCP or require a check or wire from the MCP. The mechanism in which the monetary sanction is collected from an MCP will be decided and communicated by DHCS.
 - i. For a deficiency that impacts Members, each Member impacted constitutes a separate sanctionable violation.²⁶
 - ii. Sanction amounts under WIC section 14197.7(e) are to be determined by applying the factors set forth at WIC section 14197.7(g), listed below. DHCS may impose sanctions of up to \$25,000 per violation for the first violation of the conduct set forth at WIC 14197.7(f), up to \$50,000 for the second violation, and up to \$100,000 for each subsequent violation.²⁷
 - iii. Sanction amounts under WIC section 14197.7(f) may be separately and independently assessed for each day the MCP fails to correct an identified deficiency.²⁸
- c. DHCS may also impose monetary sanctions in accordance with WIC section 14197.7(d)(6) and Title 42 CFR section 438.704, and collect monetary sanctions by withholding the amount from capitation payments owed to the MCP, or require a check or wire from the MCP:

²⁶ WIC section 14197.7(f)(1).

²⁷ WIC section 14197.7(f)(1)(A), (B), (C).

²⁸ WIC section 14197.7(f)(1).

- i. Up to \$25,000 for each determination of:²⁹
 - Failing to provide medically necessary services that the MCP is required to provide, under law or under its 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.
- ii. Up to \$100,000 for each determination of:³⁰
 - 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 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.
- iii. Up to \$15,000 for each eligible beneficiary that DHCS determines was not enrolled because of a discriminatory practice under WIC section 14197.7(d)(6)(B)(i). This is subject to the overall limit of \$100,000 under WIC section 14197.7(d)(6)(B).³¹
- iv. 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).³²

²⁹ WIC section 14197.7(d)(6)(A); 42 CFR section 438.704(b)(1).

³⁰ WIC section 14197.7(d)(6)(B); 42 CFR section 438.704(b)(2).

³¹ WIC section 14197.7(d)(6)(C).

³² 42 CFR section 438.704(c).

- d. DHCS may also recommend that CMS impose a denial of payment sanction as specified in Title 42 CFR section 438.730(e).³³

3. Non-monetary or Administrative Sanctions

a. Temporary Suspension Orders

Temporary suspension orders may include any one or combination of the following:³⁴

- Suspension of an MCP's new enrollment activities, including default enrollment.³⁵
- Suspension of an MCP's marketing activities.³⁶
- Requiring an MCP to temporarily suspend specified personnel and/or a specified Subcontractor.³⁷
- 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.³⁸

b. MCP Personnel Termination

The DHCS Director has the authority to require an MCP to terminate specified personnel and/or a specified Subcontractor for findings of noncompliance of Contractual Obligations and applicable state and federal laws and regulations, or for other good cause.³⁹

c. Imposition of Temporary Management

DHCS may impose temporary management consistent with the requirements set forth in Title 42 CFR section 438.706.⁴⁰ DHCS may impose temporary management upon a finding of any of the following:⁴¹

³³ 42 CFR section 438.730(a).

³⁴ WIC section 14197.7(d)(3) and (j); MCP Contract Exhibit E, Sanctions.

³⁵ WIC section 14197.7(d)(1); WIC section 14197.7(d)(5); WIC section 14197.7(j)(1)(A); 42 CFR section 438.702(a)(4).

³⁶ WIC section 14197.7(d)(1); WIC section 14197.7(j)(1)(B).

³⁷ WIC section 14197.7(d)(2); WIC section 14197.7(j)(1)(C).

³⁸ MCP Contract, Exhibit E, Sanctions.

³⁹ WIC section 14197.7(d)(2).

⁴⁰ WIC section 14197.7(d)(4).

⁴¹ 42 CFR section 438.706(a).

- Continuous egregious conduct by the MCP, including but not limited to conduct that is described in Title 42 CFR section 438.700, or that is contrary to any requirements of sections 1903(m) and 1932 of the Social Security Act (42 USC section 1396b(m); 42 USC section 1396u-2).
- There is serious risk to Members' health.⁴²
- Temporary management is necessary to ensure the health of the MCP's Members (i) while improvements are made to remedy the MCP's sanctionable violations or (ii) until there is an orderly termination or reorganization of the MCP.

Additionally, DHCS must impose temporary management if it finds that the MCP has repeatedly failed to meet the substantive requirements in sections 1903(m) and 1932 of the Social Security Act (42 USC section 1396b(m); 42 USC section 1396u-2), the requirements of Title 42 CFR Part 438, Subpart I, or has repeatedly engaged in sanctionable conduct under WIC section 14197.7(e). Pursuant to this sanction, DHCS must also grant Members the right to terminate enrollment without cause, as described in 42 CFR section 438.702(a)(3), and notify the affected Members of their right to terminate enrollment.⁴³

DHCS will not terminate temporary management until it determines that the MCP can ensure that the sanctioned behavior will not recur.⁴⁴

4. Contract Termination

DHCS may terminate a Contract with an MCP for violating the standards prescribed in WIC section 14197.7 or for failure to meet applicable requirements

⁴² Serious risk to Members' health includes situations that may involve the risk of unnecessary treatment, prolonged treatment, lack of treatment, incorrect treatment, medical complication, premature discharge, physiological or anatomical impairment, disability, or death. 42 CFR section 1004.1(b).

⁴³ 42 CFR section 438.706(b); see 42 CFR sections 438.700, 438.702 (which provides state agencies with authority to impose additional sanctions that address areas of noncompliance specified in section 438.800); WIC section 14197.7(e). Additionally, separate and apart from the requirement in 42 CFR section 438.706(b), DHCS may grant Members the right to terminate enrollment without cause and notify said Members of their right to disenroll as a sanction for violations under 42 CFR section 438.700 and pursuant to authority granted by 42 CFR section 702(b). See 42 CFR section 702(a)(3).

⁴⁴ 42 CFR section 438.706(d).

in sections 1932, 1903(m), or 1905(t) of the Social Security Act.⁴⁵ In addition, DHCS will 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.⁴⁶

Where applicable, DHCS will initiate the Phaseout Requirements prescribed in the DHCS Contract for a Contract termination.⁴⁷ 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.⁴⁸

FACTORS DHCS WILL CONSIDER WHEN TAKING ENFORCEMENT ACTION

DHCS will consider whether contractual violations warrant a CAP or other forms of enforcement action including non-monetary and monetary sanctions. When determining the appropriate enforcement action including the assessment of monetary sanctions, DHCS will consider the following non-exhaustive factors:⁴⁹

1. The nature, scope, and gravity of the violation, including potential harm or impact on beneficiaries.
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, including whether the sanction will affect the ability of the MCP to come into compliance.
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.

⁴⁵ WIC section 14197.7(a); 42 CFR section 438.708; Title XIX of the SSA is searchable at: https://www.ssa.gov/OP_Home/ssact/title19/1900.htm.

⁴⁶ WIC section 14197.7(i).

⁴⁷ MCP Contract Exhibit E, Phaseout Requirements.

⁴⁸ The Contract termination reasons outlined in this APL are separate and apart from the natural end of a Contract term, which are subject to the terms of the Contract including all Phaseout Requirements.

⁴⁹ WIC section 14197.7(g).

12. Any other mitigating factors presented by the MCP.

NOTIFICATION AND APPEALS RIGHTS

In the event of an administrative or monetary sanction, DHCS will provide the affected MCP with reasonable notice of DHCS' intent to impose the sanction. DHCS, at its discretion, may alert other persons and organizations that may be impacted or interested in the MCP's sanction. All sanction notices will be in writing and will include the effective date, duration of, and reason for each sanction proposed, as well as any appeal rights that the MCP has.^{50, 51} The MCP may request to meet and confer regarding the proposed sanction(s) if the request is in writing and provided to DHCS' Managed Care Operations Division (MCO) contract manager within two business days of receipt of the notice.⁵²

1. Temporary Suspension Orders

For temporary suspension orders, DHCS will notify the affected MCP of DHCS' intent to impose a temporary suspension order a minimum of 30 calendar days before the order goes into effect.⁵³

- a. **Filing a Notice of Appeal.** An MCP has the right to appeal a temporary suspension order issued as an immediate sanction by filing a written appeal with DHCS within 30 calendar days from the date the MCP receives notice of the order.
- b. **Setting the Appeal for Hearing.** No later than 15 calendar days after receiving the written appeal, 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.
- c. **Final Determination.** 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.⁵⁴

⁵⁰ WIC section 14197.7(h).

⁵¹ 42 CFR section 438.710.

⁵² WIC section 14197.7(h).

⁵³ WIC section 14197.7(j)(2).

⁵⁴ WIC section 14197.7(k).

2. Temporary Management

For temporary management, DHCS will notify the affected MCP of DHCS' intent to impose a temporary management a minimum of 30 calendar days before it goes into effect.

- a. **Filing a Notice of Appeal.** To request a hearing in connection with the imposition of temporary management, an 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 business days from the date the MCP receives the notice of sanction.⁵⁵
- b. **No Stay of Sanction.** DHCS will not stay or otherwise delay the imposition of temporary management pending a hearing.⁵⁶ DHCS is not permitted to terminate temporary management until DHCS has determined that the MCP can ensure the sanctioned behavior will not recur.⁵⁷

3. All Other Sanctions (including monetary sanctions)

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.

- a. **Filing a Notice of Appeal.** To request a hearing in connection with any other sanctions, an 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 business days from the date the MCP receives the notice of sanction.⁵⁸
- b. **Staying Implementation of Monetary Sanctions.** DHCS will stay the collection of monetary sanctions upon receipt of an MCP's timely submitted written request for a hearing. The request for a hearing must be sent within 15 business days from the date the MCP receives the notice of sanction. Implementation of the sanction will remain stayed until the effective date of DHCS' final decision.⁵⁹

⁵⁵ WIC section 14197.7(l)(1); see also WIC section 14197.7(d)(4) and 42 CFR section 438.706.

⁵⁶ 42 CFR section 438.706(c).

⁵⁷ 42 CFR section 438.706(d).

⁵⁸ WIC section 14197.7(l).

⁵⁹ WIC section 14197.7(l)(1).

4. Contract Termination

Before terminating an MCP Contract, DHCS is required to provide the affected MCP with a minimum of 60 calendar days' notice.⁶⁰ Notice of Contract termination will also be provided to Members enrolled in the MCP.

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, that 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 a written recommendation to DHCS regarding the termination of the Contract within 30 days after the conclusion of the hearing.⁶¹

5. Conduct of Hearings

Except as otherwise provided in WIC section 14197.7, hearings to review the imposition of sanctions, including temporary suspension orders, follow the procedures set forth in Health and Safety Code (HSC) section 100171 and in the MCP's Contract with DHCS.⁶² Generally, such hearings must be conducted pursuant to the administrative adjudication provisions of the Administrative Procedure Act and the MCP's Contract with DHCS.⁶³

If the requirements contained in this APL, including any updates or revisions to this APL, necessitate a change in an MCP's contractually required policies and procedures (P&Ps), the MCP must submit its updated P&Ps to its MCO 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 MCO 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 PLs.⁶⁴ These requirements must be communicated by each MCP to all Subcontractors and Network Providers.

⁶⁰ MCP Contract Exhibit E, Termination Provisions.

⁶¹ WIC section 14197.7(c).

⁶² WIC section 14197.7(m); MCP Contract.

⁶³ HSC section 100171(a).

⁶⁴ For more information on Subcontractors and Network Providers, including the definitions and applicable requirements, see APL 19-001, and any subsequent APLs on this topic.

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

Sincerely,

Original Signed by Dana Durham

Dana Durham, Chief
Managed Care Quality and Monitoring Division