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March 3, 2004

DMH LETTER NO.: 04-05

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: REQUIRED MENTAL HEALTH PLAN (MHP) BENEFICIARY RIGHTS
POLICIES

The purpose of this policy letter is to provide mental health plans (MHPs) with direction for developing written policies to implement the requirements of Title 42, Code of Federal Regulations (CFR) Part 438, Section 438.100, as published in the June 14, 2002 Federal Register (Vol. 67, No. 115), describing beneficiary rights.

BACKGROUND

As described in DMH Information Notice 03 –13, new Medicaid Managed Care (MMC) regulations were issued by the Centers for Medicare and Medicaid Services (CMS) on June 14, 2002 with a required implementation date of August 13, 2003. These regulations apply to the Medi-Cal mental health managed care program and create new procedural requirements that affect the Department of Mental Health (DMH) and MHPs. Under the new MMC regulations, MHPs are considered Prepaid Inpatient Health Plans (PIHPs) and are required to comply with MMC regulations that apply to PIHPs. The new MMC regulations supersede the regulations governing the Medi-Cal managed mental health care program (Title 9, California Code of Regulations (CCR), Division 1, Chapter 11) when there is a conflict.

The full text of all of the Title 42, CFR Sections cited in this letter can be accessed online, by section, at: http://www.access.gpo.gov/nara/cfr/waisidx_03/42cfr438_03.html.

BENEFICIARY RIGHTS

The Title 42, CFR, Section 438.100 beneficiary rights requiring written MHP policies are as follows; every beneficiary has the right to:

- Be treated with respect and with due consideration for his or her dignity and privacy;
- Receive information on available treatment options and alternatives, presented in a manner appropriate to his or her condition and ability to understand;

- Participate in decisions regarding his or her health care, including the right to refuse treatment;
- Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
- Request and receive a copy of his or her medical records, and request that they be amended or corrected;
- Receive information in accordance with Title 42, CFR, Section 438.10, which describes information requirements; and
- Be furnished health care services in accordance with Title 42, CFR, Sections 438.206 through 438.210, which cover requirements for availability of services, assurances of adequate capacity and services, coordination and continuity of care, and coverage and authorization of services.

NEW MHP REQUIREMENTS

MHPs must develop, implement, and maintain written policies that guarantee the beneficiary rights listed above. These policies must be maintained and/or updated as needed. MHPs must communicate these rights to their beneficiaries, employees, and providers and must ensure that beneficiaries' treatment is not adversely affected as a result of them exercising their rights. MHPs are not required to submit new policies to DMH for formal approval, however, new policies will be reviewed in future DMH reviews and External Quality Reviews (EQRs).

DMH ASSISTANCE WITH BENEFICIARY RIGHTS IMPLEMENTATION

Title 42, CFR, Section 438.10, referenced in the list above, describes specific MHP informing material requirements, including but not limited to required information content, format, distribution frequency, and language requirements. This section also requires that MHPs inform beneficiaries of their rights described in Title 42, CFR, Section 438.100 and in this letter; these rights must be included in MHPs' beneficiary brochures. MHP beneficiary brochures will need to be adapted to meet this and other new requirements of Title 42, CFR, Section 438.10. DMH is leading the effort to initially develop and produce these materials by hiring a contractor to create new beneficiary brochures for MHPs. DMH will update MHPs on this process as it progresses.

DMH CONTACTS

MHPs are encouraged to consult with DMH, as needed, to resolve any questions or concerns regarding this letter. Please contact your Medi-Cal contract manager in the County Operations Sections listed below:

DMH County Operations Medi-Cal Contract Managers

Bay Region

Ruth Walz (Regional Lead) (707) 252-3168
Contra Costa, San Francisco, San Mateo, Solano

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Sincerely,

(Original Signed By)

STEPHEN W. MAYBERG, Ph.D.

Director

cc: California Mental Health Planning Council
Chief, County Operations North
Chief, County Operations South