



July 2, 2004

DMH LETTER NO.: 04-08

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

SUBJECT: MEDI-CAL REQUIREMENTS FOR POLICIES AND
PROCEDURES REGARDING ADVANCE DIRECTIVES

The Department of Mental Health (DMH) is issuing this policy letter to provide mental health plans (MHPs) with direction for developing written policies and procedures to meet the requirements of Title 42, Code of Federal Regulations (CFR), Section 438.6(i)(1), (3), and (4), Section 422.128, and Section 489.100 (Enclosure 1). DMH/MHP contracts require that the written policies and procedures must be in place by May 31, 2004.

BACKGROUND

As described in DMH Information Notice No. 03-13, new federal 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 managed mental health care program and create new procedural requirements that affect DMH and MHPs. Under the MMC regulations, MHPs are considered Prepaid Inpatient Health Plans (PIHPs) and are required to comply with MMC regulations that apply to PIHPs.

The MMC regulations supersede the regulations governing the Medi-Cal managed mental health care program (Title 9, California Code of Regulations, Division 1, Chapter 11) when there is a conflict. One provision of the final rule, Title 42, CFR, Section 438.6(i)(1), requires MHPs to develop and maintain written policies and procedures for advance directives that include the provisions of Title 42, CFR, Section 422.128, to provide all adult beneficiaries with information regarding the MHP's policies on advance directives and to update any written materials to reflect changes in state laws governing advance directives as soon as possible but no later than 90 days after the effective date of the change.

California law defines an advance directive as either an oral or written individual health care instruction or a power of attorney. The federal regulations, however, only require that policies, procedures and information for beneficiaries address written advance directives, consistent with Title 42, CFR, Section 422.128, which defines an advance directive as a written instruction such as a living will or durable power of attorney for health care recognized under State law.

NEW REQUIREMENTS

MHPs are required to develop and maintain written policies and procedures to:

- Provide written information to the beneficiary when the beneficiary first receives a specialty mental health service from the MHP or its subcontracting providers, including but not limited to an assessment to determine whether medical necessity criteria is met. The information on advance directives must describe the beneficiaries' rights under California law governing advance directives, which is found in the Probate Code, Sections 4600-4678; 4695-4698; and 4735-4736 (Enclosure 2). These rights include the right to make decisions concerning treatment, including the right to accept or refuse treatment, and the right to formulate, at the beneficiary's option, advance directives.
- Document in a prominent part of the beneficiary's current record whether or not the beneficiary has executed an advance directive.
- Ensure that the provision of care is not conditioned on whether or not beneficiaries have executed an advance directive and that beneficiaries are not otherwise discriminated against based on whether or not they have executed an advance directive.
- Provide for the education of staff and contract providers concerning its policies and procedures on advance directives.
- Provide for community education regarding advance directives that may include rights under California law to make decisions concerning treatment, including the right to accept or refuse treatment and the right to formulate, at the beneficiary's option, advance directives (either directly or in concert with other providers or entities). Separate community education may be developed and used at the discretion of the MHP. The same written materials are not required for all settings, but the material should define what constitutes an advance directive, emphasizing that an advance directive is designed to enhance the beneficiaries' control over their treatment, and describing the applicable California state law. MHPs must document their community education efforts.

- Inform beneficiaries that complaints concerning noncompliance with the advance directive requirements may be filed with Department of Health Services, Licensing and Certification Division, by calling 1-800-236-9747 or by mail at P.O. Box 997413, Sacramento, California 95899-1413.

MHPs are not required to submit new policies and procedures to DMH for formal review or approval; however, policies and procedures are subject to review by DMH.

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 below:

DMH County Operations Medi-Cal Contract Managers

Bay/Central Region

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Sincerely,

(Original Signed by)

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosures

cc: California Mental Health Planning Council
Chief, County Operations Section