

DEPARTMENT OF HEALTH SERVICES

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March 10, 1997

Index: Medical Therapy  
Program

TO: All County California Children Services (CCS) Programs and State Children's Medical Services (CMS) Branch and Regional Offices Staff

SUBJECT: THE MEDICAL THERAPY PROGRAM (MTP): DISPUTE RESOLUTION THROUGH "EXPERT" PHYSICIAN

#### I. BACKGROUND

Implementation of the CCS administrative procedures (a.k.a. due process) known as "Resolution of Complaints and Appeals by CCS Clients or Applicants" required by California Code of Regulations (CCR), Title 22, Chapter 13 began in July 1992. Training sessions on this process were provided to county and regional CCS staff in May and June of that year. Following the initial training, Numbered Letter 22-0992, titled "Medical Therapy Unit (MTU) and Due Process" was issued to clarify the wording and intent of the regulation regarding administrative procedures for the MTP. That Numbered Letter stated that if the decision of the conference team relating to the frequency and duration of therapy services was not accepted by the family, there were two different methods of dispute resolution. One method required sending a Notice of Action (NOA) to the family either changing or denying the therapy services. As a result the family would have the right to appeal the decision. The other method was to have the family select one of three expert physicians who would evaluate the client and whose findings and recommendations were then binding on the family and the MTP. Additional clarification of the dispute resolution process has been made and now all disputes related to MTP therapy services must be resolved by the expert physician method.

The regulations governing the CCS administrative procedures contain an exception to the resolution of dispute by the appeal and fair hearing process. The exception is as follows: "A CCS applicant or client who disagrees with a decision of the designated CCS agency has the right to appeal that decision **except** when the service under dispute has been ordered or terminated by a CCS physician with responsibility for the medical supervision of the client. If the client or person legally authorized to decide for the client disagrees

with the CCS physician, the client shall be provided with names of three expert physicians from whom the client will choose one who will evaluate the child at CCS expense. The opinion of the expert physician shall be final. "(Section 42702, Title 22, CCR).

The purpose of this numbered letter is to provide the policy guidelines and procedures required to implement the expert physician process of dispute resolution. This dispute resolution process is solely for therapy services and, therefore, changes/denials for durable medical equipment (DME), orthotics, and prosthetics will continue to require an NOA

## II. POLICY GUIDELINES: MTP DISPUTE RESOLUTION OVERVIEW

- A. Based on the CCS right to appeal regulation (Section 42702), a CCS client has the right to appeal a decision by the CCS program when there is a change or denial except when the service under dispute is under the supervision of the CCS physician. In the general CCS program, the "CCS physician with responsibility for the medical supervision of the child" is the authorized CCS physician. However, in the MTP, the application of the regulation differs from the general CCS program. In the MTP, the conference physician has the responsibility for supervising all therapy services provided to MTU clients, even if he/she is not the physician who has written the prescription for an individual MTP client. Therefore, the MTC physician is responsible for the supervision of therapy services provided to MTP clients, including the oversight of prescriptions written by private physicians.
- B. Prescriptions for therapy submitted by private physicians are submitted to the conference team (orthopedist, pediatrician, and therapist) for review if the therapist, client, parent, or legal guardian feels the prescription is inappropriate. If the team agrees that the prescription is inappropriate, one of the conference physicians or the CCS medical consultant shall contact the prescribing physician and discuss the case. The conference team makes the final decision and notifies the family in writing.
- C. If the client, parent, or legal guardian disagrees with the decision of the conference team, he/she shall inform the therapy program staff of the disagreement.
- D. Upon receipt of notification of the disagreement from the client, parent or legal guardian, the MTP staff shall send a written notice to the client, parent, or legal

guardian informing them of the MTP dispute resolution process, per the CCR, Title 22, Section 42702 (a). The notice shall include information concerning:

1. The right to dispute resolution by an expert physician.
  2. The expert physician must be selected from the list of three physicians provided by the county.
  3. The findings of the expert physician on therapy services are final and are to be implemented by the MTP.
- E. Upon receipt of the opinion from the expert physician, CCS program staff shall notify the client of the findings and implement the expert physician's recommendation. (For a sample letter, please refer to Attachment No. 2.)

### III. IMPLEMENTATION PROCEDURES

- A. Upon verbal or written notification by a client, parent, or legal guardian that there is a disagreement with the therapy services to be provided by the MTP, the therapy staff shall document the date of notification and nature of disagreement in the therapy progress notes (a.k.a. running notes). The client, parent, or legal guardian shall be informed in writing of the MTP dispute resolution process.
- B. The therapy staff shall try to resolve the disagreement first through discussion of the therapy services in question with the prescribing physician and/or the client, parent or legal guardian. The client, parent, or legal guardian shall be informed that the MTC physician has medical oversight over all therapy services provided by the MTP and that unresolved disagreements over therapy services shall be referred to the MTC conference for possible resolutions.
- C. Unresolved disagreement must be reviewed in the MTC, therefore the client is to be scheduled for the next available MTC. The MTC physician shall review the therapy plan and the client's, parent's, or legal guardian's disagreement. Please note: the client is to be scheduled for a conference at the time the therapy staff learns of the disagreement, with or without written notification from the client, parent, or legal guardian. The client, parent, or legal guardian is to be informed at the time of the MTC appointment that if there continues to be a disagreement with

the therapy plan, after consultation with the MTC physician, the client, parent, or legal guardian is to inform the MTP in writing within five calendar days of the continued disagreement with the therapy plan.

- D. Upon receipt of the written disagreement with the MTC, the MTP shall within five calendar days, inform the client, parent, or legal guardian of their right to dispute resolution by an expert physician.
- E. The county shall identify physicians that have expertise in the management of physical disabilities which shall include pediatric orthopaedists and/or pediatric physiatrists and provide a list of the physicians to the family. (For a definition of "expert" and timelines for the process, please see Attachment No. 1.)
- F. Notification sent by the MTP shall state that the client, parent, or legal guardian has 20 calendar days to select one of three expert physicians to see the client and to inform the MTP of the physician selected so that the evaluation may be authorized by the CCS program.
- G. When the family has selected the expert physician, the independent county or regional office designee is responsible to contact the expert physician selected by the family and inform him/her that:
  - (1) The physician's expertise is requested because the family has disagreed with the level and/or frequency of the therapy services to be provided by the MTP.
  - (2) The CCS program is requesting an evaluation of the referred client's need for therapy services and will need a written report of the physician's findings.
  - (3) The report of findings should summarize the client's clinical findings, current functional level, rehabilitation potential, and how the recommended therapy will improve or ameliorate the client's physical disability.
  - (4) The expert physician findings are a binding opinion on the type and level of therapy services to be provided through the MTP for the clients.

- (5) If active therapy is being recommended, the expert physician is to identify frequency, duration, and functional goals.
  - (6) The expert physician has the right to request from CCS the MTP generated medical and therapy reports.
  - (7) Inform the expert physician that he/she is not being requested to assume the medical management of the child. If therapy is recommended, the physician providing ongoing care will be requested to write the prescription.
- H. If the client, parent, or legal guardian does not respond within 20 calendar days, a second notice shall be sent within five calendar days with the same information as in F above, giving another 20 calendar days.
- I. If the client, parent, or legal guardian does not respond within 20 calendar days from the date of the record notice, a final notice shall be sent within five calendar days stating that no further action can be taken to resolve the dispute of therapy services because the client, parent, or legal guardian has failed to select an expert physician to resolve the dispute relating to therapy services.
- J. The MTP therapy staff have five calendar days upon receipt of the expert physician's findings and recommendations to request the required therapy prescriptions to implement the recommendations. If the MTP physician or the private physician refuses to write the prescription for the recommended therapy, the county program medical consultant (or the regional office medical consultant for the dependent counties) shall follow the guidelines identified in the attached Numbered Letter 42-1194, "Implementation of Expert Opinion on Level of Service in the Medical Therapy Program."
- K. Issues in dispute resolution that fall outside of these general procedures shall be discussed with the county or regional office medical consultant.

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If you have any questions, please contact your regional office medical consultant *or* therapy consultant.

**ORIGINAL SIGNED BY**

Maridee A. Gregory, M.D., Chief  
Children's Medical Services

Enclosure

#### IV EXPERT EVALUATION IN LIEU OF FORMAL APPEAL (42702a)

The due process regulations introduce a significant change in the resolution of conflict due to a termination or modification of a current service/benefit being provided to an active CCS client when the recommendation for termination or modification is made by the treating CCS panel physician. In lieu of a resolution by a formal appeal, the following process shall be followed: "If the client or person legally authorized to decide for the client disagree with the CCS physician, the client shall be provided with names of three expert physicians from whom the client will choose one who will evaluate the child at CCS expense. The opinion of the expert physician shall be final." (Section 42702a)

This provision has a particular impact on termination or modification of services being provided in the MTU. Section 4.4.2/H.2b provided for a consultation by an expert but the final decision was left to the conference team and the CCS program medical consultant. The due process system delegates the final decision to the expert consultant, with no subsequent recourse to an appeal.

An "expert" physician is defined in these regulations (Section 42708, a2) as one with a "specialty that encompasses the client's medical condition and/or services at issue and who is not a CCS employer or under consultation contract with CCS." Title 22, Section 41516 defines an expert thus: "...one who is board certified in his/her specialty and has faculty appointment at an accredited medical school." The latter definition is to be used. However, when such experts are not readily available, the former and broader definition may be used.

(PLEASE NOTE: There is also a provision in these regulations for an evaluation by an expert physician for the purpose of determining whether previously authorized services should continue or be resumed during the time an appeal or Fair Hearing is under active consideration. This is discussed under Continuation, Section VII, below and is not to be confused with this particular provision.)

No timelines for the actions are specified in the regulations. However, timelines for the use of "experts" in determining continuation of services are believed to be applicable and they are incorporated into the process, outlined as follows:

Appeal (re disagreement with the decision of the treating CCS panel physician) received.

↓ 5 calendar days

CCS provides client with names of three (3) experts

↓ 5 calendar days

Client/legal guardian selects one of the three experts.

↓ 5 calendar days

CCS authorizes an evaluation by the expert selected.

↓ 5 calendar days

Expert submits report; CCS accepts decision.

Sample Letter:

Attachment #2

County of  
Department of

Mr. and Mrs.  
Address  
City, State, Zip Code

Re: Their Child  
DOB:

Dear Mr. and Mrs:

This letter is in regard to the evaluation by Dr. Expert Physician on January 1, 2001. Dr. Physician's medical report has been received and reviewed. Her recommendations are: "physical therapy (PT) three times a week for the next 3-6 months with the goal of standing pivot transfers with minimal assist. If your child does not achieve the goal in three to six months then your child does not require an active PT program, but should have yearly evaluations for three years."

Based on the above, your child will be re-evaluated in physical therapy to determine his present level of function and to establish goals. His physical therapy program will be instituted for three times per week with a re-evaluation in three to six months. The purpose of the re-evaluation is to determine how your child has benefited from the prescribed treatment program and how your child's ongoing therapy needs can be met.

As you were previously informed in following the Resolution of Conflict Procedure, the expert's opinion is final and binding to both CCS and the applicant.

If you have other questions or concerns, please contact this office.

Sincerely,

CCS Medical Consultant  
California Children  
Services Phone Number

cc: Chart  
MTU  
File