



JENNIFER KENT
DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

April 8, 2019

Dawan Utecht
Mental Health Director
Fresno County Department of Behavioral Health
4411 East Kings Canyon
Fresno, California 93702

SUBJECT: NOTICE OF IMPOSITION OF FINANCIAL SANCTIONS FOR FAILURE TO COMPLY WITH CORRECTIVE ACTION PLAN FOR NETWORK ADEQUACY

Dear Ms. Utecht:

The Department of Health Care Services (DHCS) is imposing financial sanctions for Fresno County Mental Health Plan's (MHP) failure to comply with network adequacy standards as specified in the MHP's September 2018 corrective action plan (CAP).

Per the MHP contract, the County is required to demonstrate that it has the capacity to serve the expected enrollment in its service area in accordance with the network adequacy standards developed by DHCS as required by departmental guidance and regulations. (MHP Contract, Exhibit A, Attachment 8, section 5.A., p. 3 of 11; 42 C.F.R., § 438.207, subd. (a); Welfare & Institutions Code §§ 14197 and 14197.1.) The MHP must also demonstrate that it offers an appropriate range of specialty mental health services (SMHS) that are adequate for the anticipated number of beneficiaries for the service area, and that the MHP maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of beneficiaries in the service area. (MHP Contract, Exhibit A, Attachment 8, section 5.B., p. 3 of 11; 42 C.F.R., § 438.207, subd. (b).)

On September 21, 2018, DHCS issued to the Fresno County MHP a written notice of non-compliance and CAP, which specified that the MHP needed to add 252 full-time equivalent children/youth providers to its outpatient SMHS provider network to meet network adequacy requirements. The CAP specified a deadline of December 31, 2018, for the MHP to complete corrective actions. The MHP has failed to timely complete corrective actions and remains out-of-compliance with the September 21, 2018, CAP. Based upon the January 2019 data submission, the MHP is deficient by 54.01 full-time equivalent children/youth outpatient SMHS providers.

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DHCS has the authority to impose administrative and financial sanctions when it determines an MHP has failed to comply with requirements in federal or state statutes, regulations, or the terms of the MHP contract. (Welfare & Institutions Code, § 14712, subd. (e), and § 14713, subd. (a); California Code of Regulations (CCR), tit. 9, § 1810.380, subd. (b) and § 1810.385.)

DHCS is therefore imposing financial sanctions for Fresno County MHP's failure to comply with obligations under the MHP Contract and the terms of the CAP. Pursuant to CCR, title 9, section 1810.380, subdivision (b)(2), DHCS is authorized to withhold all or a portion of payments due to the MHP from DHCS. On June 8, 2019, DHCS will begin withholding payments due to the MHP in the amount of \$2,182,885.20, on a monthly basis, until the MHP comes into compliance. The monthly withhold amount is equal to 50 percent of the monthly average of Federal Financial Participation payments made to the MHP during Fiscal Year 2017/18. DHCS will release the withheld funds when it determines the MHP has come into compliance.

Fresno County MHP may appeal DHCS' decision to impose a withhold by requesting a formal hearing at the Office of Administrative Hearings and Appeals (OAHA) pursuant to the procedures set forth in CCR, title 22, section 51016 et seq.¹ To request a formal hearing the MHP must file a written request for a formal hearing with OAHA within 60 calendar days from the date of receipt of this notice. DHCS will not stay the imposition of a withhold pending the outcome of a formal hearing and will proceed with a monthly withhold beginning June 2019.

The MHP shall submit its request for a formal hearing to the following address:

**Department of Health Care Services
Office of Administrative Hearings and Appeals
3831 North Freeway Boulevard, Suite 200
Sacramento, CA 95834
(916) 322-5603**

Please also send an electronic copy of the request for formal hearing to DHCS via email at MHSDFinalRule@dhcs.ca.gov

If the MHP fails to comply by July 1, 2019, DHCS will also impose civil penalties, pursuant to CCR, title 9, section 1810.385, subdivision (b)(4). DHCS will notify the MHP whether it is in compliance and, if the MHP is not in compliance, DHCS will notify the

¹ In the interest of efficiency, the Department is waiving the written appeal process pursuant to CCR, title 9, section 1810.380, subdivision (d).

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MHP of the imposition of the civil penalty and the MHP's appeal rights. DHCS will forego imposition of the civil penalty if the Department determines the MHP has come into compliance.

The civil penalty for Fresno County MHP will be \$751,650. The amount of the civil penalty is based upon the number of violations multiplied by \$500. DHCS is authorized to assess civil penalties in the amount of \$500 for an initial violation and \$1,000 for second and subsequent violations. In this case, DHCS is imposing \$500 for each violation. DHCS considers each beneficiary harmed by the MHP's noncompliance to be a separate violation. The number of beneficiaries harmed is based on the number of beneficiaries the MHP served in Fiscal Year 2016/17. Hence, the Department's calculation to determine the total penalty amount is the number of beneficiaries harmed multiplied by \$500. However, in determining the penalty amount to impose, the Department sought to ensure the MHP comes into compliance promptly while still maintaining all obligations under the contract and the law. Consequently, DHCS will impose a civil penalty equivalent to 10 percent of the total penalty amount.

If you have any questions about the contents of this notice, please contact the Mental Health Services Division at MHSDFinalRule@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Jennifer Kent
Director

cc: Fresno County Board of Supervisors
2281 Tulare Street, Suite 301
Fresno, CA 93721

Jean M Rousseau, CPA
County Administrative Officer
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