

PARTNERSHIP HEALTHPLAN OF CALIFORNIA

POLICY/ PROCEDURE

Policy/Procedure Number: CMP45 (ADM-47)			Lead Department: Administration	
Policy/Procedure Title: Administrative and Financial Sanctions			<input checked="" type="checkbox"/> External Policy <input checked="" type="checkbox"/> Internal Policy	
Original Date: 04/10/2018		Next Review Date: 02/16/2024 Last Review Date: 02/16/2023		
Applies to:	<input checked="" type="checkbox"/> Medi-Cal	<input type="checkbox"/> Healthy Kids	<input type="checkbox"/> Employees	
Reviewing Entities:	<input type="checkbox"/> IQI	<input type="checkbox"/> P & T	<input type="checkbox"/> QUAC	
	<input checked="" type="checkbox"/> OPERATIONS	<input type="checkbox"/> EXECUTIVE	<input checked="" type="checkbox"/> COMPLIANCE	<input type="checkbox"/> DEPARTMENT
Approving Entities:	<input type="checkbox"/> BOARD		<input type="checkbox"/> COMPLIANCE	<input type="checkbox"/> FINANCE
	<input checked="" type="checkbox"/> CEO	<input type="checkbox"/> COO	<input type="checkbox"/> CREDENTIALING	<input type="checkbox"/> DEPT. DIRECTOR/OFFICER
Approval Signature: <i>Liz Gibboney, CEO</i>			Approval Date: 02/16/2023	

I. RELATED POLICIES:

- A. ADM43 Subcontractor Agreements and Delegation Oversight
- B. CMP-02 Risk Assessments, Audits, and Monitoring
- C. CMP-09 Investigating and Reporting Fraud, Waste, and Abuse
- D. CMP-18 Reporting Privacy Incidents
- E. CMP-30 Records Retention and Access Requirements.
- F. CMP-36 Delegation Oversight and Monitoring
- G. CMP-38 Escalation and Corrective Action
- H. FIN 700-405 Treatment of Recoveries of Overpayments to Providers
- I. MPPRGR210 Provider Grievance

II. IMPACTED DEPTS:

- A. All

III. DEFINITIONS:

- A. Delegate: An external entity that Partnership HealthPlan of California (PHC) has given the authority to perform an activity/activities that PHC would otherwise perform as defined by the National Committee for Quality Assurance (NCQA) standards. By virtue of performing delegated activities, a delegate is always a DHCS subcontractor.
- B. Network Provider: Pursuant to 42 CFR 438.2, any provider, group of providers, or entity that has a network provider agreement with PHC (a Managed Care Organization) to order, refer, or render covered services.
- C. Penalty(ies): a monetary sanction imposed on any network provider, support vendor, subcontractor, and/or delegate directly by PHC for failure to satisfactorily perform within the terms and conditions of an agreement between the entity and PHC, or for non-compliance with federal or state statutes, regulations, rules, corrective action plan (CAP), and/or PHC policies and procedures, as applicable.
- D. Sanction(s): Any and all financial sanctions imposed upon PHC by state or Federal agencies as a result of a network provider's, support vendor's, subcontractor's, and/or delegate's non-compliance with federal or state statutes, regulations, rules, contractual obligations, and/or a corrective action plan (CAP), and are subject to PHC pass-through to the non-compliant entity.
- E. Significant non-compliance: Repeated non-compliance or non-compliance that has potential to cause member harm or jeopardize PHC's good standing with accreditation or regulatory agencies.
- F. Subcontractor: A person or entity who enters into a subcontract with PHC. Assessing whether an entity is a Subcontractor depends on the relationship between the entities and the services being performed, not on the type of persons or companies involved. A person or entity is deemed a subcontractor if: 1) they

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are either a provider of health care services that agreed to furnish Covered Services to PHC Members, or 2) has agreed to perform any administrative function or service for PHC specifically related to fulfilling PHC's obligations to DHCS under the terms of the DHCS/Medi-Cal contract.

- G. Support vendor: An entity that is not contracted as a network provider and is not a subcontractor, but one who enters into an agreement to perform other services for PHC.

IV. ATTACHMENTS:

A. N/A

V. PURPOSE:

To describe standards by which the Department of Health Care Services (DHCS) may impose sanctions against Partnership HealthPlan of California (PHC) for non-compliance or failure to comply with applicable federal or state statutes, regulations, rules, and contractual obligations. Furthermore, establishes standards by which PHC, with good cause, may exercise the authority to impose and enforce sanctions against any network provider, support vendor, subcontractor, and/or delegate for breach of any material term, covenant or condition of an agreement and/or for failure to comply with applicable federal or state statutes, regulations, and rules.

VI. POLICY / PROCEDURE:

Policy

A. DHCS Imposition of Sanctions Against PHC and pass-through to subcontractors

1. In accordance with established federal and state law and as described in DHCS All Plan Letter (APL) 18-003, DHCS maintains the authority to impose sanctions against PHC, a contracted Managed Care Plan (MCP) for its or its Subcontractor's failure to meet contractual obligations, including the requirement to comply with APLs and applicable state and federal laws and regulations.
2. DHCS is authorized to take enforcement actions consistent with APL 22-015 and any future related APLs, when PHC violates any applicable state and federal laws and regulation or violates the contractual agreement
3. DHCS may impose sanctions against PHC for non-compliance or failure to comply. These failures include, but are not limited to:
 - a. Three repeated and uncorrected medical audit deficiencies that have potential to endanger patient care;
 - b. Repeated failure to achieve minimum quality system performance measures (in cases of the Quality Improvement System) on an External Accountability Set measure after the implementation of corrective action;
 - c. Failure to provide medically necessary covered services to a member in specified timeframes;
 - d. Failure to meet Annual Network Certification components or rectify findings identified by DHCS through preliminary corrective action plan process pursuant to APL 20-003 and any future related DHCS guidance, such as APL;
 - e. Non-compliance with contractual obligations or applicable federal or state laws; and/or
 - f. Accrual of claims that have not or will not be paid, as applicable.
4. DHCS may impose any one or a combination of the following enforcement actions when PHC violates any applicable state and federal laws and regulation or violate the contractual agreement
 - a. Temporary suspension orders such as:
 - i. Suspension of PHC's new enrollment activities including default enrollment
 - ii. Requiring PHC to temporarily suspend specified personnel and/or a specified

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- subcontractor
 - iii. Requiring PHC to ensure subcontractors cease certain activities, including referrals, assignment of eligible beneficiaries and reporting, until DHCS determines that PHC is in compliance with Contractual Obligations and applicable state and federal laws and regulations.
 - iv. Temporary suspension order will remain in effect until the hearing is completed and DHCS has made a final determination on the merits.
 - b. PHC personnel termination
 - c. Imposition of temporary management
 - i. Upon finding any of the following:
 - a) Repeated failure 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 repeated engaged in sanctionable conduct
 - b) Continuous egregious conduct by the MCP, including but not limited to conduct that as 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
 - c) There is serious risk to members' health;
 - d) Temporary management is necessary to ensure the health of PHC's members
 - 1. while improvements are made to remedy PHC's sanctionable violations or
 - 2. until there is an orderly termination or reorganization of PHC
 - d. Contract termination
 - i. DHCS may terminate PHC's contract for violating the standards prescribed in WIC section 14197.7 or for failure to meet applicable requirements in sections 1932, 1903(m), or 1905(t) of the Social Security Act.
 - ii. DHCS may terminate PHC's contract if the United States Secretary of Health and Human Services has determined PHC 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.
 - iii. PHC may request to hold a public hearing for a contract termination.
 - e. Corrective action plans (CAPs)
 - i. PHC is required to complete CAPs within the timeframe specified in the Notice of Corrective Action from DHCS
 - ii. PHC is required to provide a monthly status update that demonstrates actionable steps taken to correct the deficiencies to DHCS and provide supporting documentation until the CAP is closed
 - f. Administrative and monetary sanctions
 - i. DHCS can collect monetary sanctions by withholding the amount from capitation payments, or require a check or wire from PHC
 - ii. Deficiencies that impact members will constitute a separate sanction violation for each member
 - iii. DHCS can impose sanctions for up to:
 - a) \$25,000 per
 - 1. Violation for the first violation
 - 2. Each failure to provide medically necessary services that PHC is required to provide
 - 3. Each misrepresentation or falsification of information that is furnished to a

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- member, eligible beneficiary, or health care provider.
 - b) \$50,000 for the second violation
 - c) Up to \$100,000 for:
 - 1. Each subsequent violation
 - 2. Conducting any act of discrimination against a member on the basis of the member's health status or need for health care services.
 - a. \$15,000 may be imposed for each eligible beneficiary that DHCS determines was not enrolled because of a discriminatory practice. This is subject to the overall limit of \$100,000
 - ii. Misrepresenting or falsifying information furnished to the CMS or DHCS
 - d) Up to \$15,000 for each eligible beneficiary that DHCS determines was not enrolled because of discriminatory practice – overall limit of \$100,000
 - e) 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
 - f) Sanction amount may be assessed separately and independently for each day PHC fails to correct an identified deficiency
 - g) In addition to the above listed sanctions, DHCS is authorized to take any other appropriate action deemed necessary.
5. In the event of an administration or monetary sanction, DHCS will provide PHC with reasonable notice of DHCS' intent to impose the sanction. DHCS may also alert other persons or organizations that may be impacted or interested in PHC's sanction.
- a. All sanction notices will be in writing and will include the effective date, duration of, reason for each sanction proposed, and any appeal rights PHC has.
 - b. PHC may request to meet and confer regarding the proposed sanctions. The request must be done in writing and provided to PHC's contract manager within 2 business days of receipt of the notice.
 - c. PHC 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 PHC receives notice of the order.
 - i. However, suspension order will remain in effect through hearing completion and DHCS final determination.
 - d. PHC may request a continuance for a hearing related to a temporary suspension order if PHC needs more time to prepare an adequate defense.
 - e. In the event PHC requests a hearing in connection with a monetary sanction, the sanction will not go into effect until after DHCS issues a final decision.
6. In the event that PHC elects to appeal a sanction, PHC must send its request in writing to the DHCS Office of Administrative Hearings and Appeals (OAHA) and other parties as specified in the sanction notice, within 15 business days from the date PHC receives the notice of sanction. This includes for instances of proposed temporary management and/or monetary sanctions.
- a. 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 Section 100171, and generally, such hearings must be conducted pursuant to the administrative adjudication provisions of the Administrative Procedure Act.
7. Furthermore, the Centers for Medicare and Medicaid Services (CMS) may impose a denial of payment sanction against the Plan, as specified in Title 42 CFR Section 438.730 (e)
8. Pass-through actions
- a. As a part of or resulting from disciplinary action against PHC, DHCS may require PHC to pass-

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through corrective action and/or sanction to a PHC contracted network provider or subcontractor. All such pass-through mandates will be at the direction of DHCS and not subject to processes established under this policy and/or other established complaint procedures.

- B. PHC's Imposition of Penalties Against any Network Provider, Support Vendor, Subcontractor, and/or Delegate
1. PHC is responsible for ensuring all subcontractors comply with all contract requirements related to the delegated functions undertaken.
 2. PHC, through the direct authority of the PHC Compliance Committee or the Chief Executive Officer (CEO), whichever is the most expeditious method for authorization, may impose Penalties against any network provider, support vendor, subcontractor, and/or delegate for failure to comply with federal or state statutes, regulations, rules, contractual obligations, Corrective Action Plan (CAP), and/or PHC policies and procedures.
 3. PHC may impose Penalties following any instance of non-compliance against any organization or individual described herein with or without a CAP. PHC may require that the Penalty recipient implement a CAP concurrent with other terms of the Penalty.
 4. The extent possible, the Penalty shall correspond with the severity of the deficiency and potential or actual risk posed to PHC's members, financial solvency, or contractual or accreditation good standing and shall be designed to correct non-compliance and remediate future occurrences.
 5. Penalties include, but are not limited to, monetary sanctions, suspension of membership enrollment, suspension of membership referrals, suspension of reporting activities, revocation of delegation, and/or contract termination. PHC retains the right to take termination action in addition to, and notwithstanding, the imposition of other sanctions as described under this policy.
 6. In the event that the recipient of a Penalty fails to correct the issue(s) of non-compliance in the required time or manner, PHC may impose additional and/or more severe Penalties.

Procedure

- A. Basis for Penalties or Sanctions Against any Network Provider, Support Vendor, Subcontractor, and/or Delegate
1. PHC may choose to request a corrective action plan (CAP) as a condition of penalty or sanction. CAPs at the result of penalty or sanction shall be developed, monitored, and reported consistent with PHC Policy CMP-38 Escalation and Corrective Action.
 2. PHC may impose Penalties or pass-through Sanctions, or take any other action against any network provider, support vendor, subcontractor, and/or delegate, at the direction of DHCS or other regulatory agency or based on the identification of deficient performance, or failure to comply. Failures may include, but are not limited to:
 - a. Findings from monitoring, auditing, and other delegation oversight activities as described under PHC policy and procedure CMP-36 Delegate Monitoring and Oversight;
 - b. Failing to comply with rules, regulations, or findings from state and/or federal regulatory agencies or accreditation bodies including, but not limited to, the Department of Health Care Services (DHCS), Office of Civil Rights (OCR), Department of Justice (DOJ), Centers for Medicare and Medicaid Services (CMS), and the National Committee for Quality Assurance (NCQA) audits, surveys, or investigations;
 - c. Findings from provider and member complaints and surveys;
 - d. Failing to provide medically necessary covered services to a member within specified timeframes;
 - e. Accrual of claims that have not or will not be paid, which constitutes a failure to meet operational standards.
 - f. Engaging in Fraud, Waste, or Abuse (FWA) activities, and/or failure to comply with applicable

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standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH);

- g. Failing to meet data quality and reporting requirements, which includes failing to report timely or knowingly reporting incorrect/incomplete data, or other information, required by PHC and in accordance with PHC policy and procedure CMP-05 Reports and Agency Requests, DHCS APL 14-019 Encounter Data Submission Requirements, and DHCS APL 17-005 Certification of Document and Data Submissions;
- h. Failure to identify and/or timely report providers and/or subcontractors suspended or excluded from participation in the Medi-Cal program;
- i. Failure to submit timely and accurate Network Provider data, including meeting Annual Network Certification components as identified by PHC and/or DHCS;
- j. Failing to comply with PHC policies and procedures, Provider Manual, audits, and/or investigations as applicable;
- k. Breaching any covenant, condition, or term of the contract, agreement, or delegation grid as applicable, including, but not limited to, failing to perform specified duties and responsibilities in the required time or manner;
- l. Failing to submit, remediate, or implement a CAP response, or take corrective action under any approved CAP response in the required time or manner.
- m. Failure to meet contractual obligations;
- n. Failure to meet quality metrics or benchmarks;
- o. Failure to comply with California Medicaid State Plan or approved federal waivers; and
- p. Failure to accurately and timely process grievances or appeals.

B. Authority for Imposition of Penalties Against any Network Provider, Support Vendor, Subcontractor, and/or Delegate

1. Incidents of non-compliance as identified by any of the mechanisms described under this policy or otherwise, that may result in the imposition of Sanctions or Penalties shall be reviewed by the PHC Compliance Committee or the CEO, whichever is the most expeditious method for authorization, for the final determination of the severity and implementation of Sanctions or Penalties.
2. Except for those directed by regulatory agencies, the PHC Compliance Committee or the CEO retains the authority to authorize and implement all Sanctions or Penalties. The aforementioned or designee, shall oversee and monitor all sanctions imposed.
3. PHC staff assigned to the development and/or monitoring of Penalties shall be responsible for providing regular reports to the Compliance Committee and/or CEO and other governing committees, as applicable (e.g. Delegation Oversight Review Sub-committee) and for the duration of related corrective action plans. Based on the type of issue(s) and the impact of failure to comply, the PHC Compliance Committee or the CEO may consult with executive leadership including, but not limited to, the Chief Financial Officer, Chief Operating Officer, Chief Medical Officer, or Chief Information Officer prior to imposing a Penalty.
4. Where Sanction and/or corrective action is directed by a regulatory agency, related actions are exempt from the aforementioned hierarchy and authority for imposition shall be retained by the governing agency.

C. Types of Penalties Assessed Against any Network Provider, Support Vendor, Subcontractor, and/or Delegate

1. Following any instance of non-compliance by any network provider, support vendor,

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- subcontractor, and/or delegate, PHC may impose sanctions including, but not limited to;
- Monetary penalties, including but not limited to deduction or withholding of capitation payments;
 - Suspension of new membership enrollment, membership referrals, and/or reporting activities;
 - Revocation of delegated function(s);
 - The requirement to engage and pay for an external auditor, or other consultant, acceptable to and approved by PHC, in order to correct the identified deficiency or non-compliance to PHC's satisfaction;
 - Termination of the contract or agreement with the non-compliant organization or individual; and
 - Any other action that PHC deems appropriate and reasonable.

D. Notification of Sanctions and Penalties Imposed Against any Network Provider, Support Vendor, Subcontractor, and/or Delegate

- Unless otherwise directed by a regulatory agency, PHC shall notify the affected entity in writing no fewer than thirty (30) days prior to the implementation date of the Sanctions or Penalties. Such notice shall include:
 - Effective date;
 - Detailed findings of non-compliance;
 - Reference to the applicable statutory, regulatory, contractual, PHC policy and procedures, or other requirements that are the basis of the findings;
 - Detailed information describing the Sanctions and/or Penalties;
 - Request to develop corrective action, as applicable;
 - Timeframes by which the organization or individual shall be required to achieve compliance, as applicable;
 - Indication that PHC may impose additional Penalties if compliance is not achieved in the manner and time frame specified; and
 - Network providers notice shall include their right to file a complaint (grievance) in accordance with PHC policy and procedure MPPRGR210 Provider Grievance.
 - Nonprovider entities notice shall include their right to file a complaint under the terms of their agreement with PHC.
- If PHC determines a need for termination of contract or agreement with the non-compliant organization or individual, the timeframes for notification shall comply with those standards set forth in applicable state or federal regulations or contractual obligations.
- The PHC Compliance Committee or the CEO or their designee shall oversee and monitor the response to the Sanctions and/or Penalties notification.
- Pursuant to DHCS All Plan Letter (APL) 17-004, PHC shall alert the DHCS Managed Care Operations Division (MCOD) Contract Manager within three (3) business days upon the discovery of significant non-compliance for contracted delegates, subcontractors, and/or network providers that result in development of a CAP and/or imposition of Penalties.

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E. Record Retention:

1. Data, documentation, and information related to the processes described under this policy shall be maintained in compliance with PHC policy and procedure CMP-30 Records Retention and Access Requirements.

VII. REFERENCES:

- A. DHCS APL 19-002
- B. DHCS APL 22-015
- C. DHCS APL 14-019
- D. DHCS APL 16-019
- E. DHCS APL 17-004
- F. DHCS APL 17-005
- G. 42 CFR 438.700
- H. 42 CFR 438.2

VIII. DISTRIBUTION:

- A. PowerDMS

IX. POSITION RESPONSIBLE FOR IMPLEMENTING PROCEDURE:

CEO or designee

X. REVISION DATES:

7/23/2019, 8/19/2021, 2/16/2023

PREVIOUSLY APPLIED TO:

ADM 4/2018 – 8/2025