



Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
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May 24, 2019

SENT VIA FACSIMILE ONLY TO: (213) 438-5724

Augustavia J. Haydel
Local Initiative Health Authority For L.A. County
DBA: L.A. Care Health Plan
1055 West 7th Street
Los Angeles, CA 90017

RE: ENFORCEMENT MATTER NUMBER: 18-084

LETTER OF AGREEMENT

Dear Augustavia J. Haydel:

The Office of Enforcement within the Department of Managed Health Care (the Department) has concluded its investigation of Local Initiative Health Authority For L.A. County (the Plan), License Number 933 0355, concerning the above matter. This investigation concerned the Plan's violations of the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) and regulations promulgated thereunder. The relevant facts are fully set forth below.

I. Facts

On December 10, 2015, the Department issued an All Plan Letter including a revised Independent Medical Review (IMR) Application/Complaint form. The Department required all plans to transition to using the new form by February 10, 2016.

The 2015 Survey

On May 12, 2015, the Department notified the Plan that the Department had commenced a Routine Survey of the Plan. As part of the routine survey, the Department reviewed 14 randomly selected expedited grievance and appeal files. Six of the files were eliminated because the files did not meet the expedited review criteria, the grievance was withdrawn, or the Plan's determination was not based in whole or in part on medical necessity. In three of eight of the remaining files, the Plan's responses to the

Enforcement Matter No.:18-084

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enrollee did not include IMR applications, instructions, and an envelope addressed to the Department.

The May 6, 2016, Preliminary Report First Identified “Deficiency No. 3.”

The Department issued a Preliminary Report of the Routine Survey of the Plan on May 6, 2016 (the Preliminary Report). The Preliminary Report stated, “The Plan’s responses for upheld denials do not consistently include independent medical review information and materials,” in violation of California Code of Regulations, title 28, section 1300.68, subdivision (d)(4) (Deficiency No. 3).

Within 45 days following notice of the deficiency, the Plan was required to file a written statement with the Department, signed by an officer of the Plan, describing any actions that have been taken to correct the deficiency.

In its response to the Preliminary Report, the Plan provided the following response and Corrective Action Plan (CAP) to the Department, and indicated that:

- The Plan would revise Desk Top Procedures and policies A&G-007 and A&G-008 to clearly state that IMR information must be included in all upheld denial responses.
- Appeals and Grievance management would conduct staff training on the requirement during the mandatory all staff meeting.
- By September 1, 2016, the Plan would develop and implement a pre-mail checklist process for staff to verify that IMR information and materials are included in all denial related communications to members.
- The Plan would revise its Appeals and Grievance Audit Tool and Audit Scope documents to include the requirement that IMR information and materials must be included in all denial related communications to members.
- Managers and supervisors would conduct monthly audits to make sure these requirements are met, and, if necessary, one-on-one interventions with staff may be implemented.

The Plan also submitted CAP documentation, such as an audit tool, a June 15, 2016, Appeals and Grievance meeting agenda, two sample resolution letters, and amended policies and procedures.

The September 13, 2016, Final Report identified Deficiency No. 3 as uncorrected.

On September 13, 2016, the Department issued the Final Report of Routine Survey of the Plan (the Final Report), citing five uncorrected deficiencies, including Deficiency No. 3.

The Department found that the Plan had undertaken efforts to correct Deficiency No. 3, but the Plan’s proposed and implemented corrective actions were not sufficient to demonstrate that the deficiency was sufficiently corrected.

The two sample resolution letters included in the Plan's response and CAP stated, "Enclosed is a copy of the Independent Medical Review Application Form and instructions for filling out and submitting the IMR form." The list of enclosures at the bottom of the letters showed that the letter contained "IMR Application Form and Instructions." While the letters include IMR applications, instructions, and the Department's toll-free telephone number, the letters did not include envelopes addressed to the Department.

In order to verify that the Plan had fully implemented the changes and that the changes were effective to correct Deficiency No. 3, the Department conducted a desk level Follow-Up Survey.

The December 11, 2017, Routine Survey Follow-Up Report identified Deficiency No. 3 as uncorrected. The Plan continued to use outdated IMR forms from 2006 and failed to include envelopes.

On September 6, 2017, the Department commenced the desk level Follow-Up Survey.

The Plan provided the Department its corrective actions taken to correct Deficiency No.3. According to the narrative, the Plan created a "Master Letter Notification Template," which included an IMR Form, IMR instructions and a Department self-addressed envelope.

The Plan also provided its policy titled, "Grievance Processes for Members (DP-008A)(revised 6/09/16)," which stated that the resolution letter shall include "Current Appeal instructions, application, and an envelope addressed to the DMHC for requesting an Independent Medical Review (IMR) with the DMHC with the content and format displayed as prescribed in the regulation; the Department's toll-free number for further information; and an envelope addressed to the Department of Health Care, HMO Help Center, 980 Ninth Street, 5th Floor, Sacramento, CA 95814."

The Department reviewed 23 randomly selected expedited grievance and appeal files processed by the Plan between January 1, 2017, and June 30, 2017. The Department found that of the 23 files, only one file contained a current IMR application and instructions.

The remaining 22 files contained IMR applications and instructions from 2006. The 2006 version of the IMR application and instructions are not current and predate the Department's Online IMR/Complaint submission portal. None of the 23 files included an envelope addressed to the Department with the IMR application.

On December 11, 2017, the Department issued the Follow-Up Survey Report (the Follow-Up Report). The Follow-Up Report revealed that Deficiency No. 3 remained uncorrected.

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The Plan's December 21, 2017, Addendum to the Follow-Up Report.

On December 21, 2017, the Plan requested the Department append the Follow-Up Report with an addendum (the Addendum). In the Addendum, the Plan stated that the deficiencies were caused by the use of "a manual process." The Plan stated that it had automated its grievance tracking system so that systemic algorithms would determine which forms to use. The Plan also stated that it configured its letter template for the grievance tracking system to include a "DMHC Self-Addressed Envelope" in the enclosure line. The Plan also stated that letter production and fulfillment are completed by an outside vendor based on the Plan's configurations.

II. Violations

A. The Plan failed to provide enrollees with correct IMR forms and envelopes, in violation of Health and Safety Code section 1374.30, subdivision (m), and California Code of Regulations, title 28, section 1300.68, subdivision (d)(4).

When denying an enrollee grievance in a way that results in a denial, delay or modification of a request for a health care service, all plans must provide enrollees with specific information on a Department-approved form regarding IMRs, and an envelope addressed to the Department. Health and Safety Code section 1374.30, subdivision (m), requires that when plans notify enrollees of the plan's disposition of an enrollee grievance that denies, modifies, or delays a health care service, the plan "shall provide the enrollee with a one-page application form approved by the department, and an addressed envelope, which the enrollee may return to initiate an independent medical review." The plan must include on the form "any information required by the department to facilitate completion of the [IMR]."

California Code of Regulations, title 28, section 1300.68, subdivision (d)(4), further requires that plans include an envelope addressed to the Department's "HMO Help Center" with any response to a grievance involving delay, modification, or denial of services based on a determination, in whole or in part, that the service is not medically necessary.

Here, the Plan failed to include the one-page form of IMR information approved by the Department, and failed to include envelopes addressed to the Department's Help Center.

The Plan had multiple opportunities to cure this deficiency. The Plan was informed of its obligation to use the Department approved form on December 15, 2015. The Preliminary Report, Final Report and Follow-Up Report all identified this deficiency as uncured.

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The Plan violated Health and Safety Code section 1374.30, subdivision (m), and California Code of Regulations, title 28, section 1300.68, subdivision (d)(4), for failure to provide enrollees with the correct IMR form, and failure to include an envelope addressed to the Department. The Plan is thus subject to discipline pursuant to Health and Safety Code section 1386, subdivision (b)(6).

B. The Plan failed to correct the deficiencies identified in the Final Report in a reasonable time in violation of Health and Safety Code section 1380, subdivision (i)(1).

Health and Safety Code section 1380 requires plans to correct deficiencies identified in a final report of a health plan survey, within a reasonable time. "Failure on the part of the plan to comply to the director's satisfaction shall constitute cause for disciplinary action against the plan." (Health & Saf. Code, § 1380, subd. (i)(1).)

Here, the Follow-Up Report revealed that the Plan failed to correct Deficiency No. 3, by failing to include correct IMR forms and envelopes addressed to the Department, to enrollees submitting expedited grievances and appeals to the Plan. The Final Report was issued September 13, 2015. The Routine Survey Follow-Up Report was issued more than two years later on December 11, 2017. This should have been an ample amount of time for the Plan to stop using a 2006 form and to start including envelopes addressed to the Department. Because the Plan's corrective action failed to remedy Deficiency No. 3 within a reasonable time, the Plan is subject to discipline pursuant to Health and Safety Code section 1380, subdivision (i)(1), and Health and Safety Code section 1386, subdivision (b)(6).

III. Penalty and Corrective Action Plan

The Plan has acknowledged its failure to comply with the Knox-Keene Act and title 28 of the California Code of Regulations in this enforcement matter. The Department has determined that a Corrective Action Plan (CAP) and an administrative penalty of \$50,000 are warranted. The Department notes that the Plan has already performed a Corrective Action Plan, in response to the 2015 Routine Survey, and the deficiencies identified in this enforcement action, were not identified as deficiencies in the more recent 2018 survey of the Plan. The Department accepts the prior CAP, in addition to the single corrective action deliverable as detailed in the table below. The Department agrees that performance of the CAP to the Department's satisfaction and payment of the penalty will settle all issues, accusations, and claims pertaining to this enforcement matter. This Letter of Agreement may not be used as an admission against the Plan in any civil or criminal proceedings; however, it may be used by the Department in future administrative proceedings.

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Deliverable Number	Description of Deliverable	Deliverable Due Date or Date Completed	DMHC Office to Receive the Deliverable	Related Statutes or Regulations
1	Attestation that the CAP previously performed in response as required by the Department after the 2015 Routine Survey, remains effective and viable at ensuring compliance with Health and Safety code section 1374.30, subdivision (m) and California Code of Regulations, title 28, section 1300.68, subdivision (d)(4).	Ten business days after this Letter of Agreement is executed.	Office of Enforcement*	Health and Safety code section 1374.30, subdivision (m), and California Code of Regulations, title 28, section 1300.68, subdivision (d)(4).

***A plan must submit its deliverable(s) to the Office of Enforcement via email only at EnforcementCAP@dmhc.ca.gov.**

In summary, the statute(s) and/or regulation(s) prosecuted herein are:

- **Health and Safety Code section 1374.30, subdivision (m)**
- **Health and Safety Code section 1380, subdivision (i)(1)**
- **California Code of Regulations, title 28, section 1300.68, subdivision (d)(4)**

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This agreement contains the entire understanding among the parties and supersedes any prior misunderstandings and/or written or oral agreements among them respecting the within subject matter.

Sincerely,

Dated: June 14, 2019

/Original Signed/
Drew Brereton
Deputy Director | Chief Counsel
Office of Enforcement

Accepted by Local Initiative Health Authority For L.A. County

Dated: May 24, 2019

/Original Signed/
Augustavia J. Haydel
Chief Legal Officer
Local Initiative Health Authority For L.A.
County

HRM: jam