CAHP LEGISLATIVE INFORMATION

AB 1642 (Wood)
Chapter 465, Statutes of 2019

As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.

MEDI-CAL: MANAGED CARE PLANS

BACKGROUND

AB 1642 was introduced and sponsored by Assembly Health Committee Chairman Wood in response to issues identified in a recent audit conducted by the Bureau of State Audits (BSA) of Medi-Cal managed care plans' (MCP) provisions of pediatric preventive services and access to care. This bill was amended to include language from the Department of Health Care Services (DHCS) to increase the types of MCP's sanctions and fine amounts. This bill was supported by multiple advocate groups, including the Western Center for Law and Poverty, who provided lead testimony during policy hearings.

AB 1642 Requires MCPs requesting alternative access from existing appointment travel time standards to include a description of how the plan intends to arrange for beneficiaries to access covered services if the health care provider is located outside of the time and distance standards. Establishes additional requirements for alternative access requests submitted by MCPs to DHCS. Under current law MCPs must adhere to existing time and distance standards and may submit alternative access filings as needed to meet the standards.

The second section in this bill increases the maximum civil penalty amounts in existing law for MCPs. Broadens the bases for the Department of Health Care Services (DHCS) to levy sanctions against MCPs plans, and broadens DHCS authority to find noncompliance beyond medical audits. Under current law DHCS has the ability to impose sanctions and corrective actions plans for MCPs.

CAHP participated in multiple meetings to address health plan opposition to this bill that included Local Health Plans of California and the County Behavior Health Directors Association. The introduced time and distance language required MCPs to cover enrollee utilization of out-of-network providers within standards and required DHCS to take the additional provider costs into consideration when developing health plan rates. This section was extremely troublesome because MCPs viewed as a disincentive for providers to contract with MCPs if they knew that an MCP would have to cover medical services at any cost in order to comply with the time and distance standards.

MCPs and other stakeholders were able to negotiate amendments on the MCP sanction language drafted by DHCS. This section of the bill was originally introduced as budget trailer bill language,

but was rejected by the budget committee with guidance stating it needed to be included in a policy bill. Once it was amended into this bill, MCPs negotiated for changes, including the ability for MCPs to meet and confer with DHCS before sanctions going into effect.

After successfully negotiating significant amendments in both sections of the bill, CAHP removed opposition.

REQUIREMENTS

AB 1642 amends Sections 14132.275, 14186.4, 14197, 14197.05, 14302.1, 14409, 14456.5, 14712, 14713, and 14715 of, to add Sections 14197.04 and 14197.7 to, and to repeal Section 14304 of, the Welfare and Institutions Code, relating to Medi-Cal.

Specifically, AB 1642 does the following:

Time and Distance Standards:

14197. (e) (3) Requires a Medi-Cal MCP requesting an alternative access standard for time and distance to include, beginning the contract period on or after July 1, 2020, as part of its description of reasons justifying the request, a description of how the Medi-Cal MCP intends to arrange for beneficiaries to access covered services if the health care provider is located outside of the time and distance standards.

14197. (f) (1) Requires Medi-Cal MCPs, beginning the contract period on or after July 1, 2020, to demonstrate annually in their reports on compliance with the time and distance and appointment time standards and upon request of DHCS, (2) how it arranged for the delivery of covered services to a Medi-Cal beneficiary, who needed to obtain health care services from a health care provider or a facility located outside of the time and distance standards. Requires Medi-Cal MCPs annual report on compliance with the time and distance standards to measure compliance separately for adult and pediatric services for primary care, behavioral health, and core specialist services.

14197. (e) (1) (A) Requires DHCS to include in their evaluation of an alternative access standard request, pursuant to existing law, to evaluate and determine whether the resulting time and distance is reasonable to expect a beneficiary to travel to receive care.

14197.04. (a) (2) Requires a Medi-Cal MCP, which has received approval for an alternative access standard for a specialist provider, to assist a beneficiary, who must travel farther due to the alternative access standard, with obtaining an appointment with an appropriate out-of-network provider within the existing time and distance and appointment time standards, by doing the following:

(A) Make its best effort to establish a member-specific case agreement with an appropriate specialist provider within the time and distance and appointment time standards; and,
(B) Arrange for an appointment with a specialist within the Medi-Cal MCP's network and within the time and distance and appointment time standards.

14197.04. (a) (3) Exempts the Medi-Cal MCP from assisting the beneficiary to obtain an appointment if there is not a specialist provider within the applicable time and distance standard or

the Medi-Cal managed has attempted to establish a member-specific case agreement for the enrollee and the provider refused to enter into the agreement.

14197.04. (b) Requires a Medi-Cal MCP to arrange for transportation, covered under the Medi-Cal program pursuant to existing law, to obtain covered Medi-Cal services if an out-of-network is not available within the appointment time standards.

14197.04. (c) Requires a Medi-Cal MCP that has received approval for an alternative access standard to inform its members of the approved alternative access standards in a manner and timeframe determined by DHCS.

14197.05. (b) (1) (F) Requires the EQRO to include, as part of the review of a Medi-Cal MCP and its time and distance standards, in addition to the requirements under existing law, for any approved alternative access standards, whether a provider was not located within the requested ZIP code or the Medi-Cal MCP was unable to enter into a contract with a provider in the requested ZIP code.

Administrative and Financial Sanctions and Contract Termination

14197.7. (a) Deletes DHCS's existing administrative and financial sanction and contract termination authority of prepaid health plans. Instead, requires DHCS's administrative and financial sanction and contract termination authority to apply to any entity that contracts with DHCS for the delivery of health care services (contractor), including but not limited to, Medi-Cal MCPs, prepaid health plans, MHPs, and Drug Medi-Cal services providers. Requires DHCS's administrative and financial sanction and contract termination authority to be the following:

14197.7. (c) Authorizes the director of DHCS to terminate the contract of or impose sanctions on any contractor if the Director finds the contractor fails to comply with contract requirements, state or federal law or regulations, or the state plan, or for other good cause. Requires DHCS, except in the event the director determines there is an immediate threat to the health of Medi-Cal beneficiaries enrolled in the Medi-Cal MCP, to hold a public hearing within 30 days of the plan receiving the notice to terminate the contract and to present evidence of "good cause" for termination.

Requires DHCS to assign an administrative law judge to provide a written recommendation on the termination of the contract within 30 days of the hearing's conclusion. Requires DHCS to issue notice of the hearing to the Medi-Cal MCP, impacted beneficiaries, and any others the director deems necessary, and to state the effect date of notice and reason for termination;

14197.7. (a) Requires "good cause" to include, but not be limited to, a finding of deficiency that results in improper denial or delay in the delivery of health care services, potential endangerment to patient care, disruption in the contractor's provider network, failure to approve continuity of care, that claims accrued or to accrue have not or will not be recompensed, or a delay in required contractor reporting;

14197.7. (b) Authorizes the Director to identify findings of noncompliance or good cause through any means, including, but not limited to, findings in audits, investigations, contract compliance reviews, quality improvement system monitoring, routine monitoring, facility site surveys, encounter and provider data submissions, grievances and appeals, network adequacy reviews, assessments of timely access requirements, reviews of utilization data, health plan rating systems, fair hearing

decisions, complaints from beneficiaries and other stakeholders, whistleblowers, and contractor self-disclosures;

14197.7. (d) Authorizes the Director, in lieu of terminating the contract, to require or impose a plan of correction and to issue one or more of the following sanctions for noncompliance or good cause:

(1) Temporarily or permanently suspend enrollment and marketing activities;
(2) Require the contractor to suspend or terminate contractor personnel or subcontractors;
(3) Issue one or more of the following temporary suspension orders:
(j) (1) (A) Temporarily suspend enrollment activities;
(j) (1) (B) Temporarily suspend marketing activities;
(j) (1) (C) Require the contractor to temporarily suspend specified personnel of the contractor;
(j) (1) (D) Require the contractor to temporarily suspend participation by a specified subcontractor.
(4) Impose temporary management consistent with the requirements specified in federal regulations;
(5) Suspend default enrollment of enrollees who do not select a contractor for the delivery of health care services; and,
(6) Impose civil monetary sanctions;

14197.7. (f) (1) Authorizes the Director to impose civil monetary penalties for each day the contractor fails to correct an identified deficiency. Authorizes the sanctions to be imposed separately and to be independently assessed;

14197.7. (d) (6) Re-establishes the following civil monetary penalties from existing law:
14197.7. (d) (6) (A) No more than $25,000, in total, for each of the following determinations:

(i) The contractor fails to provide medically necessary services that the contractor is required to provide, pursuant to existing law and its contract with DHCS;
(ii) The contractor misrepresents or falsifies information to an enrollee, potential enrollee, or health care provider; or,
(iii)The contractor distributes directly, or indirectly through an agent or independent contractor, marketing materials that have not been approved by the state or that contain false or materially misleading information.

14197.7. (d) (6) (B) No more than $100,000, in total, for each of the following determinations:

(i) The contractor conducts any act of discrimination against an enrollee on the basis of their health status or need for health care services, termination of enrollment or refusal to reenroll a beneficiary, except as provided under the Medicaid program, or any practice that would reasonably be expected to discourage enrollment by beneficiaries whose medical condition or history indicates probable need for substantial future medical services. Authorizes the director to impose a civil penalty up to $15,000, but no more than $100,000 in total, for each beneficiary not enrolled because of a discriminatory practice; or,
(ii) The contractor misrepresents or falsifies information that it furnishes to the CMS or to the DHCS.

14197.7. (f) (1) (A) Authorizes the Director to also impose civil monetary penalties, up to $25,000 for the first violation, (B) up $50,000 for the second violation, and (C) up to $100,000 for each subsequent violation, 14197.7. (e) for each of the following determinations:

(1) The contractor violates any federal or state statute or regulation, which re-establishes a provision of existing law;
(2) The contractor violates any provision of its contract with DHCS, which re-establishes a provision of existing law;
(3) The contractor violates any provision of the state plan or approved waivers;
(4) The contractor fails to meet quality metrics or benchmarks that have been established by DHCS in advance of the applicable reporting or performance measurement period, unless mandated by federal law;
(5) The contractor fails to demonstrate that it has an adequate network to meet anticipated utilization in its service area;
(6) The contractor fails to comply with network adequacy standards, including time and distance, timely access, and provider to beneficiary ratio requirements, that have been posted in advance to DHCS's website;
(7) The contractor fails to comply with the requirements of a corrective action plan;
(8) The contractor fails to submit timely and accurate network provider data;
(9) The director identifies deficiencies in the contractor's delivery of health care services;
(10) The director identifies deficiencies in the contractor's operations, including the timely payment of claims;
(11) The contractor fails to comply with reporting requirements, including, but not limited to, those set forth in state regulations; and,
(12) The contractor fails to timely and accurately process grievances or appeals.

14197.7. (f) Requires each beneficiary impacted by a violation in subdivision (e) to constitute a separate civil monetary penalty. Authorizes the Director to assess a separate civil monetary penalty for each day the contractor fails to correct an identified deficiency;

14197.7. (g) Requires the Director to consider any of the following nonexclusive factors when imposing civil monetary penalties:

(1) The nature, scope, and gravity of the violation;
(2) The good or bad faith of the contractor;
(3) The contractor's history of violations;
(4) The willfulness of the violation;
(5) The nature and extent to which the contractor cooperated with the department's investigation;
(6) The nature and extent to which the contractor aggravated or mitigated 1. any injury or damage caused by the violation;
(7) The nature and extent to which the contractor has taken corrective action to ensure the violation will not recur;
(8) The financial status of the contractor;
(9) The financial cost of the health care service that was denied, delayed, or modified;
(10) Whether the violation is an isolated incident; and,
(11) The amount of the penalty necessary to deter similar violations in the future.

14197.7. (h) Requires the Director, except in exigent circumstances determined by DHCS, to give reasonable written notice to the contractor of the intention to impose sanctions authorized and others who may be directly interested, as determined by the director. Requires the notice to include the effective date and the reason for each sanction proposed by the director. Authorizes the contractor to request DHCS to meet and confer with the contractor to discuss information that may impact the Director's final decision to impose sanctions. Requires the director grant the contractor's request if the contractor submits the request, as specified;

14197.7. (i) Requires the Director to terminate the contract of any contractor that the Secretary of the U.S. Health and Human Services Agency (HHS) has determined does not meet the requirements of the Medicaid program;

14197.7. (k) Requires DHCS to provide the contractor written notice prior to issuing a temporary suspension order or temporarily withholding funds. Requires the notice to state DHCS's intent to impose a temporary suspension or temporary withhold, and specify the nature and effective date of the temporary suspension or temporary withhold. Requires the contractor to have 15 days from the date of receiving the notice to file a written appeal. Requires DHCS to set the matter for a hearing within 15 days of receiving the written appeal and to hear the matter within 30 days. Requires the temporary suspension to remain in effect until the hearing is completed and a final determination has been made. Requires DHCS to stay imposition of a temporary withhold until the hearing is completed and a final determination has been made by DHCS;

14197.7. (l) (1) Authorizes a contractor to request a hearing in connection with any sanction within 15 working days, as specified. Requires DHCS to stay collection of monetary sanctions when a request for a hearing is received and to continue to stay the collection until a final determination has been made by DHCS;

14197.7. (l) (2) Requires DHCS to make available to MHPs the appeals process, specified in existing law, in connection with any contract termination, temporary suspensions or withhold of funds, and sanctions;

14197.7. (m) Requires hearings related to sanctions, temporary suspension orders, and temporary and permanent withhold of funds to be subject to procedures established in existing law;

14197.7. (n) Authorizes DHCS to collect sanctions through withholding capitation or other payments owed to the contractor. Authorizes DHCS to collect sanctions, for a contractor funded through realignment funding, by offsetting realignment funds attributed to the contractor each month until the full amount of the sanction has been reached;

14197.7. (o) Authorizes DHCS to temporarily withhold FPP and realignment funding payments from a MHP or a Drug Medi-Cal services provider for violating state and federal law or regulations, the state plan, any terms and conditions of an approved waiver, or a provision of its contract. Requires DHCS to temporarily withhold amounts deemed necessary to ensure correction of the violation and until DHCS determines the MHP or Drug Medi-Cal services provider is in compliance. Authorizes a MHP or a Drug Medi-Cal services provider to appeal the imposition of a temporary withhold. Requires the withhold to be stayed upon appeal and until a final determination has been made by DHCS;

14197.7. (q) (1) Requires nonfederal moneys collected by DHCS from sanctions, except for realignment funding, to be deposited into the General Fund for use, and upon appropriation by the Legislature, to address workforce issues in the Medi-Cal program and to improve access to care in the Medi-Cal program. Requires realignment funding collected from sanctions to be redeposited in the account, as specified; and,

14197.7. (r) Authorizes DHCS to implement, interpret, or make specific provisions related to DHCS's administrative and financial penalty and contract termination authority, in whole or in part, by means of all-plan (APL) or county letters (ACL), information notices, plan or provider bulletins, or other similar instructions, without taking regulatory action. Requires DHCS, by July 1, 2025, to adopt regulations to implement this bill. Requires DHCS to implement this bill only to the extent that any federal approvals are obtained and FPP is available.

COMPLIANCE DATES

AB 1642 becomes operative on January 1, 2020.

IMPLEMENTATION ISSUES

Network, Provider Relations and Compliance Teams

When filing networks with DHCS, MCPs will need to include a description of how the MCP intends to arrange for beneficiaries to access covered services if the health care provider is outside of the plan's time and distance standards.

Provider Relations will need to coordinate with enrollee services because this bill changes enrollees' rights relating to alternative access and requires, upon the enrollees request, that they shall receive assistance with travel times or receive assistance in obtaining an appointment with a closer specialist.

Compliance teams will want to carefully review the sanction sections of the bill because the prior statute repealed and replaced with a new section. There are new types of sanctions and new fine amounts that MCPs are subject to.