SECTION 5, CHAPTER 4, POLICY 013

NON COMPLIANCE INVESTIGATION AND CORRECTIVE ACTION

POLICY NUMBER:	5-4-013
SYSTEM OF CARE:	BEHAVIORAL HEALTH
FINALIZED DATE:	03.29.2021
EFFECTIVE:	03.01.2021
SUPERSEDES # :	Supersedes Policy #'s: PP 1403 Sanctions and Corrective Actions PP 406 Non-Compliance Investigation and corrective Action (10-16-08)

A. PURPOSE: This policy provides information about the Yolo County Health and Human Services (HHSA) Behavioral Health (BH) process for investigation of suspected non-compliance in the operation of Yolo County HHSA BH programs, including reported fraud, waste, abuse, misconduct or other violations of applicable law or requirements of the Behavioral Health Compliance Program ("Compliance Program".) This policy also describes the range of corrective actions that may be taken, feedback to staff, follow up and documentation.

B. RELATED DOCUMENTS: N/A

C. DEFINITIONS:

1. **The Behavioral Health Compliance Plan ("Compliance Plan"):** articulates the establishment and implementation of procedures and a system with dedicated staff for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues as they are raised, investigation of potential compliance problems as identified in the course of self-evaluation and audits, correction of such problems promptly and thoroughly (or

coordination of suspected criminal acts with law enforcement agencies) to reduce the potential for recurrence, and ongoing compliance with the requirements under the MHP contract.

2. **The Behavioral Health Compliance Officer ("Compliance Officer"):** is responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements of State contracts and who reports directly to the Behavioral Health Director.

3. **The Behavioral Health Compliance Committee ("Compliance Committee"):** is a regulatory committee at the senior management level charged with overseeing Yolo County HHSA Compliance Program and its compliance with requirements under the Mental Health Plan (MHP) and the Drug Medi-Cal Organized Delivery System (DMC-ODS) contract.

4. **Applicable State Contracts:** are the Mental Health Plan contract and other State contracts for federal and/or state funded behavioral health care programs (i.e., substance use disorder services) to which the requirements of the Medicaid Managed Care regulations apply.

5. **Abuse:** means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program.

6. **Behavioral Health Employees:** means HHSA employees that participate in the provision of behavioral health services, including administrators and management.

7. **Beneficiary:** means any person certified as eligible for services under the Medi-Cal program. In the behavioral health field, the term "beneficiary" may also be used interchangeably with behavioral health consumer, client, patient, or person who is eligible to receive Medi-Cal specialty mental health services from the Mental Health Plan (MHP), depending on the service setting and the preference of the beneficiary

8. **Fraud:** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

9. **A Credible allegation of fraud**: may be an allegation, which has been verified by HHSA or the California Department of Health Care Services (DHCS), from

any source, including but not limited to the following:

a. *Fraud hotline complaints.*
b. *Claims data mining.*
c. *Patterns identified through provider audits, civil false claims cases, and law enforcement investigations. Allegations are considered to be credible when they have indicia of reliability and the State Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis.*

10. **Medicaid:** means Medical assistance provided under a State plan approved under Title XIX of the Social Security Act.

11. **Medi-Cal:** is California's Medicaid program. This is a public health insurance program which provides needed health care services for low-income individuals including families with children, seniors, persons with disabilities, foster care, pregnant women, and low-income people with specific diseases such as tuberculosis, breast cancer or HIV/AIDS.

12. **Mental Health Plan (MHP):** is an entity that enters into a contract with the Department of Health Care Services (DHCS) to provide directly or arrange and pay for specialty mental health services to beneficiaries in a county as provided in the California Code of Regulations (CCR), Title 9, Chapter 11. A MHP may be a county, counties acting jointly or another governmental or non-governmental entity.

13. **Waste:** is overutilization of services, needless expenditure of funds or consumption of resources or other practices that, directly or indirectly, result in unnecessary costs to the health care system, including the Medicare and Medicaid programs caused by deficient practices, poor system controls or bad decisions. It is not generally considered to be caused by criminally negligent actions, but by the misuse of resources.

D. **POLICY**: Upon receipt of a report or reasonable indications of suspected non-compliance including reported fraud, waste, abuse, misconduct or other violations, the Compliance Officer shall investigate the allegations to determine whether a violation of applicable law or the requirements of the Compliance Program has occurred. If violations have occurred, a corrective action plan shall be developed to correct and mitigate the compliance issue.

All Yolo County HHSA behavioral health employees are expected to be familiar with the Compliance Plan and the appropriate processes necessary to perform his or her duties and how to obtain the requisite information in order to perform those duties in a manner consistent with legal, regulatory, Yolo County HHSA and County

requirements. Behavioral health employees who act in violation of the Compliance Plan or who otherwise ignore or disregard the standards of HHSA or the County may be subjected to progressive disciplinary action up to and including termination.

Network Providers shall be required to have a Compliance Program that address the provisions set forth in State/Federal guidelines and Yolo County contracts and/or policies. Network Provider staff shall be expected to understand and comply with Compliance organizational policies. Compliance Plans shall be sent to Yolo County HHSA at minimum, the timeframes outlined in Yolo County HHSA provider monitoring policies, when there have been significant updates to the Compliance Program or upon request from Yolo County HHSA or the Department of Health Care Services (DHCS).

E. PROCEDURE:

1. **Investigation:**
    a. The Compliance Officer may initiate an investigation of an alleged compliance violation based on information from one of several sources:
        i. Employee reports to the Compliance Officer or a supervisor/manager;
        ii. Fraud hotline complaints;
        iii. Claims data mining;
        iv. Patterns identified through provider audits, civil false claims cases, and law enforcement investigations;
        v. Routine audits and self-assessments;
        vi. Monitoring activities that may detect such warning indicators as the number and/or types of claim rejections, challenges to medical necessity, and/or high volumes of unusual charge or payment adjustment transactions;
        vii. Reported excluded parties during regular certification, recertification checks;
        viii. State chart disallowances; and/or
        ix. Any other sources of information that become available.

    b. The Compliance Officer will log the investigation in the Behavioral Health Compliance Log and report the incident to the Compliance Committee, in addition to notifying DHCS promptly and in accordance with appropriate DHCS time frames.

    c. The investigation may include staff interviews, review of relevant compliance documents, and regulations and/or the assistance of external experts, auditors, etc.

2. **Corrective Action:**

If an investigation yields valid evidence of non-compliance, the Compliance Officer, in coordination with the Compliance Committee, will develop a plan of correction to address the violation. As determined by the type of violation, the corrective action may include:

a. Development of internal changes in policies, procedures, and/or the Compliance Program;

b. Re-training of staff;

c. Internal discipline of staff;

d. The prompt return of any overpayments;

e. Suspension of payments to any provider for which there is a credible allegation of fraud.

f. Reporting of the incident to the State Department of Health Care Services and any otherappropriate state or federal agency;

g. Referral to law enforcement authorities if appropriate; and/or

h. Other corrective actions as deemed necessary.

3. **Feedback to Staff**

As appropriate, the Compliance Officer, in coordination with the Compliance Committee, shall notify appropriate staff of the results of the investigation and inform them of the corrective actions needed. The Compliance Officer will document this notification in the Compliance Log.

4. **Follow-Up**

Subsequent investigations may be conducted to determine if corrective action has been followed by the appropriate staff member(s). If the subsequent investigation indicates that corrective action was not taken or the magnitude of the non-compliance issue cannot be remedied through a plan of correction, staff may be subject to disciplinary action and/or the case may be sent to the Federal Office of the Inspector General (OIG) to be reviewed for possible civil and criminal action. Please refer to *Disciplinary Guidelines* policy and procedures.

5. **Documentation**

Documentation of violation investigations and results will be maintained by the Compliance Officer in the Compliance Log. Information from the Compliance Log will be summarized and system level issues will be reviewed with the QIC. Suggestions, feedback and changed to the system from the QIC are also documented in the Compliance Log. The Compliance Log contains the following materials:

a. The Behavioral Health (BH) Compliance Issue Number;

b. The date or general time period in which suspected non-compliant action(s) occurred;

c. The date or general time period in which suspected non-compliant action(s) werediscovered;

d. Source of the allegation (via direct or anonymous contact with the Compliance Officer,routine audit, monitoring activities, etc.);

e. Name of the behavioral health provider or employee(s) involved;

f. Name of the client(s) or chart number(s) involved;

g. Issue description with specific information regarding the nature of the allegation,including supporting reference materials, etc.;

h. In the event that the non-compliant actions require a Privacy Incident Report (PIR) be made to the State, the following information will be logged as well: State Investigation Number, Date incident was reported to the State: Submission date of the Initial PIR Form; Submission date of the Final PIR Form; Date the Investigation was closed by the State;

i. Additional Information re the incident;

j. The corrective action plan;

k. Name of the person responsible for following up, if appropriate; and

l. Final Disposition.

F. REFERENCES:

1. Disciplinary Guidelines

Approved by:

Karen Larsen

_____ 3/30/2021

Karen Larsen, Director **Date**

Yolo County Health and Human Services Agency