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| Title: Fair Hearing Policy | Policy Number: QI-028 |
| Department: Quality Improvement | Effective Date: 3/12/2015 |
| CEO Approved <i>M Twh</i> | Revised: 12/3/2020 |

Purpose:

To describe the Provider appeal process for instances in which Gold Coast Health Plan (GCHP) has taken an Adverse Action (defined below) on a Practitioner's (defined below) participation based on medical disciplinary causes or reasons.

Policy:

- To ensure that there is a formal process to notify Practitioners of potential termination, suspension or limitation of their privileges based on medical disciplinary causes or reasons.
- To provide a method whereby Practitioners may appeal GCHP's decisions regarding their credentialing.

Definitions:

Adverse Action: Any one or more of the following actions or recommended actions shall be considered Adverse Actions constituting grounds for a Fair Hearing if such action is based on a medical disciplinary cause or reason related to the Practitioner's professional competence or conduct.

- Denial or rejection of a Practitioner's application to become a Credentialed Provider.
- Denial, termination, or revocation of a Practitioner's status as a credentialed Practitioner.
- Restriction on a credentialed Practitioner in excess of thirty (30) days.
- Imposition of a summary suspension of a credentialed Practitioner in excess of fourteen (14) days.

Commission: The Ventura County Medi-Cal Managed Care Commission, the governing body for Gold Coast Health Plan.

Credentialing/Peer Review Committee (C/PRC): A subcommittee of the Quality Improvement Committee (QIC) that is responsible for decision-making related to the credentialing and re-credentialing of healthcare Practitioners and organizational providers.

Fair Hearing: The formal hearing process for Practitioners to appeal specific credentialing decisions made by C/PRC.

Practitioner: A licensed or certified professional who provides medical or behavioral health services. Practitioners are credentialed by GCHP to perform services specified in their contract, in accordance with the GCHP Practitioner Credentialing Policy, QI-025.

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Suspension:

- Summary Suspension means immediate suspension of credentialed status based on the need to take immediate action to protect the life or well-being of members, or to reduce substantial and imminent likelihood of significant impairment of the life, health or safety of any member. This can be imposed based on review of professional competence or conduct, or when a summary suspension has been imposed at a hospital or by another peer review entity.
- Automatic Suspension or Limitation is immediate termination or suspension of GCHP credentialed status based on probation, revocation, or limitation by the applicable licensing or certifying authority or sanctions by the Medicare or Medicaid programs. Automatic suspension or limitation is effective immediately and is final without a right to a Fair Hearing or further review.

Procedure:

Right to a Fair Hearing – GCHP has a formal process to notify Practitioners of any recommendation by the C/PRC to terminate, suspend, or restrict their credentials as a member of GCHP's provider network and provide a method whereby Practitioners may appeal GCHP's adverse decisions related to a medical disciplinary cause or reason. A medical disciplinary cause or reason means that aspect of the Practitioner's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

A. Initiation of Adverse Actions

A recommendation for Adverse Action is initiated by the C/PRC as a result of its review process for initial credentialing or re-credentialing, or as a result of a summary suspension. In the case of a summary suspension, such suspension shall be taken in accordance with the GCHP Practitioner Credentialing Policy, QI-025. The C/PRC reviews and ratifies, or discontinues, the summary suspension. Only Adverse Actions included in the definition above are afforded the right to a Fair Hearing.

B. Notice of Adverse Action

When there has been an Adverse Action determination by the C/PRC, the Chief Medical Officer (CMO) shall give the affected Practitioner written notice of the Adverse Action and of the Practitioner's right to request a Fair Hearing. The notice shall state the following:

- That an Adverse Action against the Practitioner has been proposed by the C/PRC which, if adopted, shall be taken and reported pursuant to Section 805 of the California Business and Professions Code;
- The proposed action and the reason for the action;

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- That the Practitioner has the right to request a Fair Hearing on the Adverse Action or request reconsideration through an informal meeting with the C/PRC;
- That the Practitioner may request a Fair Hearing within thirty (30) calendar days following the date of receipt of the notice;
- That the Practitioner may be represented by an attorney, at his or her expense; and
- That failure to request a Fair Hearing within the above time period shall be deemed a waiver of the right to a hearing on the matter that is the subject of the notice.

C. Request for Reconsideration

Within ten (10) calendar days of receipt of the notice from C/PRC of the Adverse Action determination, Practitioners may:

- Request Reconsideration through an informal meeting with the C/PRC and/or
- Request review of the C/PRC's file upon which the determination was made.

A Request for Reconsideration takes precedence over the request for hearing timeline. The informal Reconsideration meeting with the C/PRC must take place within twenty (20) calendar days of the Practitioner's request. The C/PRC must provide a decision within ten (10) calendar days of the informal meeting with the Practitioner. If Reconsideration is not requested, the Practitioner has thirty (30) calendar days from receipt of the notice of the Adverse Action to request a Fair Hearing. If the C/PRC reconsiders the decision at an informal meeting, the Practitioner may not request a second Reconsideration, and has thirty (30) calendar days from receipt of notification from the C/PRC on the outcome of the Reconsideration to request a Fair Hearing.

When a C/PRC action is not submitted for Reconsideration or appealed within the timeline specified in this policy, the action will be considered a Final Decision. The written decision shall be sent to the CMO, the Director of Network Operations, the Chief Executive Officer (CEO), and the Practitioner involved. When the findings result in termination or limitation of credentialing, the action will be effective after GCHP has taken action to terminate the Practitioner's contract with GCHP and complied with the requirements of member notifications in GCHP's contract with the California Department of Health Care Services (DHCS). Decisions resulting in termination or restriction of credentialing shall be reported to the QIC.

D. File review

Practitioners have the right to access certain information contained in the credentialing file in order to verify accuracy and/or petition the C/PRC to correct erroneous information submitted by the Practitioner or a third party. This information includes the following:

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- Documents authored by the Practitioner;
- Documents addressed to the Practitioner;
- National Practitioner Databank (NPDB), Medical Board of California (MBOC), or Medicare/Medicaid sanction reports; and
- A summary, prepared by C/PRC, of the remaining contents of the credentialing file.

E. Informal Meeting

A request to rescind the previous C/PRC recommendation may be heard at an ad-hoc meeting of the C/PRC. Contemporaneous minutes of the informal meeting are recorded. Neither party is represented by counsel at the informal meeting for the reconsideration of the C/PRC's action, but GCHP regulatory counsel may attend the meeting as is routine. Contemporaneous minutes of the informal meeting are recorded.

F. Request for a Fair Hearing

The Practitioner shall have thirty (30) calendar days following the date of receipt of GCHP's notice of an Adverse Action to request a Fair Hearing. The request must be submitted in writing directed to the CMO and shall be postmarked or transmitted within the prescribed period. A copy should be sent to the Quality Improvement Director and the CEO. If the GCHP Practitioner does not request a Fair Hearing within thirty (30) calendar days, he/she shall be deemed to have waived his/her right to appeal the decision, and it shall be adopted by the C/PRC as the Final Decision.

G. Notice of Hearing

Upon receiving a request for a Fair Hearing, the CMO shall promptly schedule and arrange for the hearing. The Practitioner shall be given notice of the time, place, and date of the hearing. The date of the commencement of the hearing shall not be less than thirty (30) calendar days and no more than sixty (60) calendar days from the date that the Quality Improvement Director received the request for a hearing.

H. Notice of Charges

If a hearing is requested on a timely basis, the C/PRC shall give the Practitioner a written notice of charges, stating all of the reasons for the Adverse Action taken or recommended, including the acts or omissions with which the Practitioner is charged. A notice of charges or reasons may be sent along with or separate from the notice of hearing.

This supplemental notice shall provide a list of the patient records, if any, which are to be discussed at the hearing, if that information has not been provided previously. The Practitioner shall be given notice of the names and addresses of the individuals, as then reasonably known or anticipated, who are expected to give testimony or evidence in support of the action at the hearing. This notice shall be updated, as

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necessary and appropriate, at least ten (10) calendar days prior to the commencement of the hearing.

I. Fair Hearing Committee

The CEO, CMO, and the Quality Improvement Director shall appoint a Fair Hearing Committee consisting of at least three (3) Practitioners with current GCHP Provider Agreements who have the requisite expertise to ensure an efficacious and fair hearing process. The hearing panel members will be impartial, will not have actively participated in the formal consideration of the matter at any previous level (e.g., they will not have acted as an accuser, investigator, fact finder, or initial decision maker in the same matter), will not be in direct economic competition with the affected Practitioner, and will stand to gain no direct financial benefit from the outcome of the hearing. Whenever possible, at least one committee member should practice the same specialty as the affected Practitioner. The CMO shall designate a chairperson, who shall preside in the manner described below, and handle all pre-hearing matters and preside unless and until a hearing officer, as described below, is appointed.

If GCHP does not have a Practitioner or Practitioners available within its provider network that meet all of the above requirements, GCHP may appoint an appropriate Practitioner or Practitioners from its tertiary network or from the local community to participate in the Fair Hearing Committee.

The Practitioner shall have the right to a reasonable opportunity to voir dire the panel members and any hearing officer, and the right to challenge the impartiality of any member or hearing officer. Challenges to the impartiality of any member or hearing officer shall be ruled on by the presiding officer, who shall be the hearing officer if one has been selected.

The CEO shall have the discretion, in lieu of appointing a hearing panel as described above, to enter into an agreement with the Practitioner and the CMO to hold the hearing before an arbitrator or arbitrators mutually acceptable to both parties and to establish the rules pertaining to the arbitration proceedings.

J. Hearing Officer

The CEO, CMO, and Quality Improvement Director may appoint a hearing officer to preside at the hearing. The hearing officer will be an attorney-at-law qualified to preside over a Fair Hearing and have experience in professional peer review proceedings. He/she will not be biased for or against the Practitioner, will not be in a position to gain direct financial benefit from the outcome, and will not act as a prosecuting officer or as an advocate for any party. He/she may participate in the deliberations and act as a legal advisor, but will not be entitled to vote.

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K. Presiding Officer

The presiding officer at the hearing shall be the hearing officer described above. The presiding officer shall act to assure that all participants in the hearing have a reasonable opportunity to be heard and to present all relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained. If the presiding officer determines that either party is not proceeding as described, he/she may take such discretionary action as seems warranted by the circumstances. He/she shall be entitled to determine the order of, or procedure for, presenting evidence and argument during the hearing, and shall have the authority and discretion, in accordance with these provisions to: grant continuances; to rule on disputed discovery requests; to decide when evidence may not be introduced; to rule on challenges to Fair Hearing Committee members; to rule on challenges to him/herself serving as a presiding officer; to rule on questions which are raised prior to or during the hearing pertaining to matters of law, procedure, or the admissibility of evidence; and to exercise discretion in formulating such additional procedures as are not inconsistent with these hearing policies and procedures and are deemed reasonably necessary to effect an expeditious and efficient Fair Hearing.

L. Pre-Hearing Procedures

It shall be the duty of the Practitioner and the CMO to exercise reasonable diligence in notifying the presiding officer of any pending or anticipated procedural disputes, as far in advance of the scheduled hearing as possible, so that decisions concerning such matters may be made expeditiously. Objection to any such pre-hearing decisions shall be raised at the hearing and when raised shall be reflected on the record.

M. Rights of Discovery and Copying

The affected Practitioner may inspect and copy (at his/her own expense) any documentary information relevant to the charges that the CMO has in his/her possession or control. The CMO and/or C/PRC may inspect and copy (at GCHP's expense) any documentary information relevant to the charges that the affected Practitioner has in his/her control. This right of inspection and copying does not create or imply an obligation to modify or create documents in order to satisfy a request for information. Requests for discovery must be met as soon as practicable upon receipt of the request. Failure to comply with reasonable discovery requests at least thirty (30) calendar days prior to the hearing shall constitute good cause for a continuance of the hearing.

N. Limits on Discovery

The presiding officer, upon the request of either side, may impose safeguards including, but not necessarily limited to, the denial of a discovery request on any of the following grounds:

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- The information refers solely to individually identifiable Practitioners other than the affected Practitioner.
- The safeguard is warranted to protect the peer review privilege.
- The safeguard is warranted to protect justice.

In ruling on discovery disputes, the factors that may be considered include the following:

- Whether the information sought may be introduced to support or defend the charges.
- Whether the information is "exculpatory" in that it would dispute or cast doubt upon the charges or "exculpatory" in that it would prove or help support the charges and/or recommendation.
- The burden on the party of producing the requested information.
- Other discovery requests the party has previously made.

O. Pre-Hearing Document Exchange

At the request of either party, the parties shall exchange lists of witnesses expected to testify and copies of all documents expected to be introduced at the hearing. Failure to disclose the identity of a witness or produce copies of all documents expected to be produced at least ten (10) calendar days before the commencement of the hearing shall constitute good cause for a continuance. Repeated failures to comply with the pre-hearing document exchange shall be good cause for the presiding officer to limit introduction of any documents not provided to the other side in a timely manner. Witness lists shall be amended when additional witnesses are reasonably known or anticipated.

P. Representation:

Fair Hearings are provided for the purpose of addressing issues of professional conduct or competence in healthcare. Accordingly, the Practitioner may be represented by an attorney. At least twenty (20) calendar days prior to the date of the hearing, the Practitioner must notify the CEO if he/she shall be represented by an attorney. If the Practitioner will be represented by an Attorney, the CMO may be represented by an attorney. In no case may the CMO be represented by an attorney if the Practitioner is not represented by an attorney. The foregoing shall not be deemed to deprive any party of its right to the assistance of an attorney for the purpose of preparing for the hearing. The Practitioner and the CMO may be represented at the hearing by a licensed Practitioner who is not an attorney.

Q. Failure to Appear

Failure by the Practitioner, without good cause, to appear and proceed at the hearing shall be deemed to constitute voluntary acceptance of the recommendation or action involved, and it shall thereupon become the Final Decision of the C/PRC.

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R. Postponements and Extensions

After a timely request for a hearing has been received as described above, postponements and extensions of time beyond the times expressly permitted in this Fair Hearing procedure may be effected upon agreement of the parties or granted by the presiding officer on a showing of good cause and subject to the presiding officer's discretion to assure that the hearing proceedings are completed in a reasonably expeditious manner under the circumstances.

S. Record of the Hearing

The Fair Hearing Committee shall maintain a record of the hearing by tape recording the proceedings. The Practitioner shall be entitled to receive a copy of the transcript of the recording upon paying the reasonable cost for preparing the records. The presiding officer may, but is not required to, order that oral evidence be taken under oath.

T. Rights of the Parties at the Hearing

Both parties shall have the following rights, which shall be exercised in an efficient and expeditious manner and within reasonable limitations imposed by the presiding officer: to call and examine witnesses; to introduce relevant documents and other evidence; to receive all information made available to the Fair Hearing Committee; to examine and cross-examine witnesses; and to present and rebut evidence determined by the presiding officer to be relevant. The Practitioner may be called by the CMO or the attorney representing GCHP in the matter and examined as if under cross-examination. The Fair Hearing Committee and the presiding officer may examine the witnesses or call additional witnesses, as the Committee deems appropriate. Each party has the right to submit a written statement at the close of the hearing. The Fair Hearing Committee may request such a statement to be filed following the conclusion of the hearing.

U. Rules of Evidence

Rules relating to the examination of witnesses and the presentation of evidence in courts of law shall not apply in any hearing conducted hereunder. Any relevant evidence, including hearsay, shall be admitted by the presiding officer if it is the sort of evidence upon which responsible persons are accustomed to rely on in conducting serious affairs. However, the CMO may object to the introduction of any evidence that was requested of an applicant but not provided during the credentialing process. Such objections shall be sustained by the presiding officer unless the applicant can prove that the information could not have been produced previously in the exercise of reasonable diligence.

V. Basis of Decision

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The decision of the Fair Hearing Committee shall be based on the evidence produced at the hearing and any written statements submitted to the Fair Hearing Committee.

W. Burden of Proof

In all cases, the CMO shall have the burden of initially presenting evidence to support the charge or the C/PRC's recommended action.

(1) Initial applicants shall bear the burden of persuading the Fair Hearing Committee by a preponderance of the evidence of their qualifications by producing information which allows for adequate evaluation and resolution of reasonable doubts concerning their current qualifications for credentialing.

(2) Initial applicants shall not be permitted to introduce information not produced upon request of the C/PRC during the application process, unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence, subject to the CMO's right to object to the production of certain evidence pursuant to Section U above.

(3) For C/PRC denials of re-credentialing or the suspension or restriction of credentialing, the CMO shall have the burden of persuading the Fair Hearing Committee by a preponderance of the evidence that his/her action is reasonable and warranted. The term "reasonable and warranted" means within the range of reasonable and warranted alternatives available, and not necessarily that the action is the only measure or the best measure that could be taken in the opinion of the Fair Hearing Committee.

X. Final Decision

Within thirty (30) calendar days of the final adjournment of the hearing, the Fair Hearing Committee shall issue a written decision which shall include findings of fact and conclusions, articulating the connection between the evidence produced at the hearing and the result. The written decision shall be sent to the CMO, the Director of Network Operations, the Practitioner involved, and the CEO. When the findings result in termination or limitation of credentialing, the action will be effective after GCHP has taken action to terminate the Practitioner's contract with GCHP and complied with the requirements of member notifications in GCHP's contract with DHCS. All decisions by the Fair Hearing Committee are final. Decisions resulting in termination or restriction of credentialing shall be reported to the QIC. There are no rights of appeal to the Commission following a Fair Hearing.

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Y. Reporting to State Licensing Agencies

(1) The CMO or CEO shall file an 805 report with the relevant State licensing agency within fifteen (15) calendar days after the effective date on which any of the following become final as a result of an action of the C/PRC or the Fair Hearing Committee, if the action is appealed by the Practitioner:

- (a) A Practitioner's application for membership is denied or rejected for a medical disciplinary cause or reason.
- (b) A Practitioner's membership or contract is terminated or revoked for a medical disciplinary cause or reason.
- (c) Restrictions are imposed, or voluntarily accepted, on membership, or employment for a cumulative total of thirty (30) calendar days or more for any 12-month period for a medical disciplinary cause or reason.

(2) The CEO or CMO shall file an 805 report with the relevant State licensing agency within fifteen (15) calendar days after the effective date of the Practitioner taking any of the following actions after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership is denied or will be denied for a medical disciplinary cause or reason:

- (a) Resigns or takes a leave of absence from membership, staff privileges, or employment.
- (b) Withdraws or abandons his or her application for membership.
- (c) Withdraws or abandons his or her request for renewal of membership.

(3) An 805 report shall also be filed within fifteen (15) calendar days following the imposition of summary suspension of membership by the C/PRC, if the summary suspension remains in effect for a period in excess of fourteen (14) calendar days.

(4) The 805 report shall be signed by the CMO or CEO.

(5) A copy of the 805 report and a notice advising the Practitioner of his/her right to submit additional statements or other information, electronically or otherwise, pursuant to Section 800 of the California Business and Professions Code, shall be sent by the CMO to the Practitioner named in the report. The notice shall also advise the Practitioner that information submitted electronically will be publicly disclosed to those who request the information.

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(6) The information to be reported in an 805 report shall include the name and license number of the Practitioner involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

(7) A supplemental report shall also be made within thirty (30) calendar days following the date the Practitioner is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the C/PRC.

(8) If another peer review body is required to file an 805 report, the C/PRC is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, the C/PRC is not required to file an 805 report when it takes an action as a result of the revocation or suspension. If the California Board of Podiatric Medicine or a licensing agency of another state revokes or suspends, without a stay, the license of a doctor of podiatric medicine, the C/PRC is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(9) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports.

Z. *Reports to the National Practitioner Databank*

(1) An NPDB report is filed within fifteen (15) calendar days after any of the following actions taken by the C/PRC involving a Practitioner becomes final:

(a) An action that is based on the Practitioner's professional competence or conduct which adversely affects or could adversely affect the health or welfare of a patient when that action adversely affects the Practitioner's authority to provide care to GCHP members for more than thirty (30) calendar days; or

(b) Acceptance of the Practitioner's surrender or restriction of authority to provide care to GCHP members while under investigation for possible professional incompetence or improper professional conduct or in return for not conducting an investigation or professional review action; or

(c) An action that denies or rejects a Practitioner's application for membership for a medical disciplinary cause or reason.

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(d) Except in the event of a summary suspension in effect less than thirty-one (31) calendar days or a surrender or restriction of authority to provide care to GCHP members, an NPDB report is filed after the Practitioner has had the opportunity to either waive or exhaust his/her Fair Hearing rights.

(e) An NPDB report is filed when any revision is made to a previously reported Adverse Action.

Attachments:

N/A

References:

Cal. Bus. & Prof. Code §809 *et. seq.*

National Committee for Quality Assurance 2020, CR Standards

Revision History:

| Review Date | Revised Date | Approved By |
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| 4/21/2015 | | C/PRC |
| 6/25/2015 | | DHCS (Default) |
| 6/30/2015 | | Dale Villani, CEO |
| 3/9/2017 | | Credentialing Peer Review Committee (C/PRC) |
| 3/11/2017 | | Dale Villani, CEO |
| | 12/3/2020 | Credentialing Peer Review Committee (C/PRC) |
| 12/3/2020 | | Nancy Wharfield, MD - CMO |
| 02/22/2021 | | DHCS |
| 02/22/2021 | | Margaret Tatar, Interim CEO |
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