CHAPTER 6: Participant Rights

Policy: MSSP participants have the right to express complaints and/or dissatisfaction with any adverse decision of the program. Participants shall be informed of and provided copies of all rights, including a grievance process at the site level as well as access to the formal State Medi-Cal Fair Hearing process. All staff must respect participant rights.

Purpose: This chapter provides minimum standards to ensure that there is a process in place that is respectful of individual rights.

References:

- Welfare and Institutions Code, Division 9, Part 2, Chapter 7, §10950-10967
- Home and Community-Based Services Waiver #0141.R07.00 Appendix F: Participant Rights
- California Code of Regulations, Title 22, Division 3, Subdivision 1, Chapter 3, Article 1.3, Section 51014.1
- Code of Federal Regulations (CFR), Title 42, Part 431, Subpart E
- Section 1557 of the Patient Protection and Affordable Care Act. U.S. Department of Health and Human Services, Office of the Secretary, 45 CFR Part 92

6.000 MSSP Participant Rights

All participants enrolled in the MSSP will be afforded the right to:

- Withdraw from MSSP at any time.
- Not answer any question not relevant to the determination of services to be received or receiving.
- Participate in all aspects of care, including the determination of services needed (self-determination and choice to the fullest extent possible).
- Confidentiality of personal information, including case records.
- Request a fair hearing when application for participation has been denied, or if dissatisfied with the services received.

Participants are informed of their rights upon application for MSSP services: Application form (Appendices 12 or 13); Participant Rights form (Appendix 15); Your Rights Under California Public Benefit Programs (Appendix 16). These rights include freedom of choice (Chapter 3, Section 3.320, Freedom of Choice).

As Medi-Cal recipients, MSSP participants have additional rights under that program, which is administered locally by county welfare offices. These rights are explained to the individual at the time of their enrollment into Medi-Cal.

6.100 Participant Grievance Procedure

A key component to a participant's rights is the opportunity to challenge or dispute a decision. The participant must be provided with information as to how to access the site's grievance procedure. The information must include the name, address, and phone number of the person(s) responsible for initiating the grievance procedure and/or resolving grievances.

Verification of a grievance procedure is provided to CDA by the site on the Quarterly Report which also provides the format to record both frequency and outcome of grievances.

The site-level grievance process shall provide a structure to receive, acknowledge, respond to, and track complaints. Participants may express these issues either verbally or in writing. On-going services will not be interrupted or discontinued during the grievance process. While it is anticipated that a formal request for a Medi-Cal Fair Hearing would occur after the site-level grievance process has been pursued, the participant has the right to initiate a request for a Medi-Cal Fair Hearing at any time.

6.200 Due Process Rights

6.210 Denial of Request for Waiver Services

Persons screened out of the program as not meeting the following minimum eligibility criteria will not be provided with a written notice of appeal rights since these qualifications are not subject to appeal:

- Age
- Medi-Cal eligibility

6.220 Failure to Meet Minimum Eligibility Criteria

Persons screened out of the program for reasons other than listed in 6.210 above, who disagree with the screening decision, will be given a written notice (Notice of Action) of this decision (Section 6.400, Notice of Action for Terminations, Appendix 3). The notice will include the following minimum information:

- A description of the action the site is intending to take.
- The reasons for the intended action.
- Information about the applicant's right to request a hearing (Your Right to Appeal this Action, Appendix 5) must be included with the mailing of the denial letter to the applicant.

While individuals screened out for these reasons will receive a written notice of action, they are not entitled to aid paid pending (APP).

6.230 Notice of Action

A Notice of Action (NOA) must be sent to participants for any adverse decision regarding Waiver enrollment. A NOA is also required when a service that is provided using Waiver Service (WS) funds is reduced, suspended, terminated, or denied

(Appendix 4). A ten-day notice period is required unless the participant has requested the reduction, suspension, or termination of Waiver Services and waives their right to a Fair Hearing. A copy of each NOA with hearings rights notification must be maintained in the participant's record.

6.300 State Medi-Cal Fair Hearing

Participants will be informed, in writing, of their right to request a State Medi-Cal Fair Hearing when they indicate disagreement with any decision which would result in a discontinuance, termination, suspension, cancellation or decrease of services under the program. A copy of the Request for State Fair Hearing form (Appendix 6) will be included with the mailing of the written notice sent to the participant.

The formal State Medi-Cal Fair Hearing process steps are as follows:

1. The Request for a State Fair Hearing form (Appendix 6) is sent to a participant for any adverse decision regarding enrollment, or reduction, suspension, termination, or denial of Waiver Services. If the participant disagrees with the action taken, they complete the form and submit it to the Office of the Chief Referee at the State Department of Social Services.

2. CDA receives notification from the Office of the Chief Referee that the appeal has been filed, and the date, place, and time for the hearing. This information is immediately forwarded to the MSSP site.

3. The local MSSP site staff participates in a State Fair Hearing by:
   - Developing a written position statement that sets forth the reason for the adverse decision or termination, and
   - Being present (in person or by telephone) at the hearing to respond to questions or present additional information.
   - NOTE: CDA will be responsible for the position statement(s) and hearing presence for any appeals filed due to CDA's determination that the applicant/participant fails to meet level of care certification requirements for program eligibility.

4. After the hearing, the Office of the Chief Referee notifies the participant and MSSP site of the final disposition.

Participants who have filed a timely appeal of their termination from MSSP are entitled to continue receiving MSSP services (including care management) until the hearing is held and a decision rendered by the Hearing Officer. The continuance of Medi-Cal benefits, in this situation MSSP services, until a hearing is held is referred to as aid paid pending (APP).

Withdrawal of Request for Hearing: The decision to withdraw the Request for State hearing must be voluntarily made by the participant. Local MSSP staff must be cautioned not to encourage participants to withdraw State Fair Hearing requests.

Staff may only clarify for participants the reason for the adverse decision and explain the resulting effects. The State Fair Hearing Withdrawal Form (Appendix 7) is used by MSSP participants to formally withdraw a request for a State Fair Hearing.

6.400 Notice of Action for Terminations

State law and Medi-Cal regulations require that a Notice of Action (Appendix 3) and the Right to State Medi-Cal Fair Hearing (Appendix 5 and 6) be sent to an applicant who is denied eligibility at point of application. A Notice of Action (Appendix 2) and the State Fair Hearing Notice (Appendix 5 and 6) is mandated for any MSSP participant who is terminated from the program for the following reason codes: 2, 3, 4, 5, 7, 8, 9 or 10.

The information contained in the termination and denial letters may be reproduced on the site's letterhead. The care manager should select the appropriate reason from the choices given for termination or denial. The NOA informs the applicant/participant of rights to a fair hearing if they are dissatisfied with the termination action or denial of entry into the MSSP. A copy of the NOA must be filed in the case record.

The continuance of Medi-Cal benefits (in this case, MSSP services) pending the hearing, is often referred to as aid paid pending (APP). Participants who have filed a timely appeal of their termination from MSSP and/or discontinuance of MSSP services and who are eligible for APP, are entitled to continue receiving MSSP services, including care management, until the hearing is held, and a decision rendered by the Hearing Officer.

When a termination reason requires a ten-day notice period (reason codes 4, 5, 7, 8, 9 and 10), the ten-day period shall not include the date of mailing or the date that the action is to take effect. The NOA must be mailed in sufficient time for the participant to receive it ten days prior to termination from the program.

Following is a list of termination reason codes and the NOA required:

1. **Death**. A NOA is **not required** when a participant dies.
2. **Moves**. A NOA **is required** if the participant moves out of the MSSP contracted service area. It does not need to meet the ten-day requirement but must be mailed before the effective date of the termination action. The participant does have appeal rights (fair hearing), but is not entitled to APP.
3. **Declines Further Services**. A NOA **is required** if the participant no longer desires services. The NOA does not need to meet the ten-day requirement but **must be mailed** before the effective date of the termination action. The participant does have appeal rights (fair hearing), but is not entitled to APP.
4. **Doesn't Meet LOC**. When a participant is no longer certifiable for NF Level of Care, a NOA with a ten-day notice period **is required**. The participant does have appeal rights (fair hearing). If an appeal is filed and APP is determined to be appropriate, MSSP services must continue until the fair hearing process has been completed and a decision has been rendered.

5. **Other**. The site **is required** to mail a NOA with a ten-day notice period before the date that the termination action takes place. The participant does have appeal rights (fair hearing). If an appeal is filed and APP is determined to be appropriate, MSSP services must continue until the fair hearing process has been completed and a decision has been rendered.
6. **Not Medi-Cal Eligible**. When a participant is no longer eligible for Medi-Cal, a NOA is **not required** because this notification is the responsibility of the County Medi-Cal agency. As a courtesy to the participant who loses their Medi-Cal eligibility, the site should also send a letter advising them of their loss of MSSP eligibility. Once the beneficiary receives the Medi-Cal NOA, they have ten (10) calendar days to appeal the action by requesting a fair hearing. If an appeal is made and it is determined that the APP provision applies, the Medi-Cal beneficiary/participant is issued a Medi-Cal card and MSSP services are to continue until a fair hearing decision is rendered. It is the site's responsibility to verify the participant's Medi-Cal eligibility.
7. **Institutionalized**. When a participant is terminated because they have become institutionalized, a NOA with a ten-day notice period **is required**. The participant does have appeal rights (fair hearing).
   If an appeal is filed and APP is determined to be appropriate, MSSP services must continue until the fair hearing process has been completed and a decision has been rendered.
8. **High Cost**. When a participant is terminated due to high cost, a NOA with a ten-day notice period **is required**. The participant does have appeal rights (fair hearing). If an appeal is filed and APP is determined to be appropriate, MSSP services must continue until the fair hearing process has been completed and a decision has been rendered.
9. **Not MSSP/Medi-Cal Eligible**. When a participant retains eligibility for Medi-Cal, but the basis for that eligibility changes to an aid category that no longer qualifies for MSSP, a NOA with a ten-day notice period **is required**. The participant does have appeal rights (fair hearing). If an appeal is filed and APP is determined to be appropriate, MSSP services must continue until the fair hearing process has been completed and a decision has been rendered. If the ten-day NOA takes the participant into the next month (in which the participant has become ineligible due to Medi-Cal share of cost or other factors), sites cannot bill the Medi-Cal Fiscal Intermediary for any MSSP services in that month. Any claims for MSSP services for that month that were submitted for payment will be denied.
10. **Unable/Unwilling to Utilize Care Management or Follow a Care Plan.** When a participant is terminated because they are unwilling or unable to utilize care management, a NOA with a ten-day notice period **is required**. The participant does have appeal rights (fair hearing). If an appeal is filed and APP is determined to be appropriate, MSSP services must continue until the fair hearing process has been completed and a decision has been rendered.

6.500 Final Rule Section 1557 Requirements

The Department of Health and Human Services (HHS) issued the Final Rule implementing the prohibition of discrimination under Section 1557 of the Affordable Care Act (ACA) of 2010. The Final Rule, Nondiscrimination in Health Programs and Activities, intends to advance equity and reduce health disparities by protecting some of the populations that have been most vulnerable to discrimination in the health care context. The Final Rule explains consumers' rights under the law and provides covered entities important guidance about their obligations.

Section 1557 prohibits discrimination based on race, color, national origin, sex, sexual orientation, gender identity, age, or disability in certain health programs and activities. It also addresses meaningful access to individuals with limited English proficiency eligible to be served or likely to be encountered in their health programs and activities.

To ensure compliance with Final Rule Section 1557 and DHCS' direction, MSSP sites must develop and implement policy and procedure that incorporate the following requirements:

- Sites are required to post a notice of nondiscrimination in a prominent physical location at the MSSP site, as well as a conspicuous location on the home page of a site's website, if applicable.

- Sites are required to post taglines that alert individuals with limited English proficiency (LEP) to the availability of language assistance services. Taglines of the top 15 languages spoken nationally by LEP individuals will be posted in a prominent physical location at the MSSP site, as well as a conspicuous location on the home page of a site's website, if applicable. A sample tagline:

  ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

- Sites will include use of the nondiscrimination language and tagline in significant publications targeted to beneficiaries, applicants, and members of the public (Appendix 8 Participant Non-Discrimination Notice and Appendix 9 Language Assistance Taglines).
  - This notice must include:
    - Nondiscrimination Statement: Information stating that the covered entity does not discriminate based on race, color, national origin (including LEP and primary language), sex, gender, age, or disability.
    - Accessibility Services: Details about the provision of reasonable modifications and appropriate auxiliary aids and services for individuals with disabilities, including qualified interpreters and alternate formats such as braille or large print, free of charge and in a timely manner.
    - Language Assistance: Information on the availability of language assistance services, including translated documents and oral

interpretation, free of charge and in a timely manner for individuals with LEP.

- Access Information: How to obtain reasonable modifications, appropriate auxiliary aids and services, and language assistance services.
- Contact Information: Contact details for the site.
- Grievance Procedure: Information on the availability of the grievance procedure and how to file a grievance (if applicable).
- OCR Complaint Information: Details on how to file a discrimination complaint with OCR.
- Website Access: How to access the site's website, if it has one, for further information.

This notice must be provided annually to participants and applicants, or upon request, and in conspicuous locations on the site's website and in clear and prominent physical locations where it is reasonable to expect individuals to seek services, in no smaller than 20-point sans serif font. Sample notices are available on OCR's website.

- Sites are required to offer a qualified interpreter for oral interpretation and use a qualified translator when translating written content in paper or electronic form. A qualified interpreter is defined as someone who has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and adheres to generally accepted translator ethics principles, including client confidentiality.

- Sites will only be required to translate full documents if they do not have access to language specific workers and/or translation services; otherwise, full written documents will not need to be translated into the 15 threshold languages.

- Sites with 15 or more employees are required to have a grievance procedure and a compliance coordinator.

- All vendor contracts should include non-discrimination language.