



POLICIES AND PROCEDURES

State of Tennessee
Department of Intellectual and
Developmental Disabilities

Policy #: 80.4.6

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Effective Date: March 15, 2013 pending

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Commissioner

Approved by:

Debra K. Payne, Commissioner

Last Review or Revision: January 23, 2013 May 20, 2016

Subject: SANCTIONS

Split Cells

- I. **AUTHORITY:** Provider Agreement, Tennessee Code Annotated (TCA) 4-3-2708; TCA 33-1-302 (a)(3); TCA 33-1-303; TCA 33-1-305; TCA 33-1-309; TCA 33-2-301; TCA 33-2-408, Tennessee Home and Community Based Waivers.
- II. **PURPOSE:** The purpose of this policy is to establish guidelines for applying sanctions against contracted entities due to violations of the provider agreement, provider manual, conditions of the home and community based services waivers, and departmental policies and procedures.
- III. **APPLICATION:** This policy applies to department staff responsible for enforcement of the provider agreement, provider manual, authorizing and applying sanctions, and to all contracted entities.
- IV. **DEFINITIONS:**
 - A. **Class A Sanction** shall mean systemic issues that jeopardize the health and safety of people supported. These may result in a moratorium; termination of provider agreement; or management takeover. This level of sanction requires the approval of the Commissioner or designee before imposition.
 - B. **Class B Sanction** shall mean multiple violations or repeat violations or violations that involve multiple persons supported or an agency that supports only one (1) person.. This deficiency may result in daily cumulative sanctions of \$100.00 to \$1,500.00 per violation until resolution of the deficiency. This level of sanction requires the approval of the Director of Risk Management and Licensure or designee prior to imposition.
 - C. **Class C Sanction** shall mean an initial single violation or a violation that involves one (1) person supported or an agency that supports only one (1) person.. This deficiency may result in a one-time sanction of \$100.00 to a maximum of \$1,500.00, depending upon the significance or scope of the violation. This level of sanction requires the approval of the Regional Office Director or designee prior to imposition.

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- D. **Commissioner** shall mean the Commissioner of the Department of Intellectual and Developmental Disabilities.
- E. **Home and Community Based Services (HCBS) waiver or waiver** shall mean a waiver approved for Tennessee by the Centers for Medicare and Medicaid Services to provide services to a specified number of Medicaid eligible individuals who have an intellectual disability and who meet criteria for Medicaid reimbursement in an Intermediate Care Facility for Individuals with Intellectual Disabilities. The HCBS waivers for individuals with intellectual disabilities in Tennessee are operated by the Department of Intellectual and Developmental Disabilities (DIDD) with oversight from the Bureau of TennCare, the state Medicaid agency.
- F. **Immediate Jeopardy** shall mean issues that have caused or have the potential to cause imminent harm to the person supported. These issues require immediate corrective action by the provider.
- G. **Immediate Jeopardy Sanction Letter** shall mean a written document that describes the violation committed by the provider that placed the person(s) supported in jeopardy, actions taken to ensure the safety of the person(s) supported, and the sanction to be imposed.
- H. **Mandated Technical Assistance** shall mean a [requirement non-monetary sanction which requires](#) that a provider receive training and assistance from DIDD or secure training and assistance from a source identified by the provider [and approved by DIDD. \(at the provider's expense\) and approved by DIDD. This level of sanction requires the approval of the Statewide Quality Management Committee \(SQMC\) and the Regional Director or designee before imposition.](#)
- I. **Moratorium** shall mean a prohibition on new admissions to a program or expansion of provider services.
- J. **Provider Agreement** shall mean a signed agreement between DIDD, the Department of Finance and Administration, the Bureau of TennCare, and an approved provider that specifies the terms and conditions a provider must meet to receive reimbursement for services provided.
- K. **Sanction** shall mean financial or other measures imposed on a provider for failure to comply with TennCare or DIDD rules, regulations, or policies.
- L. **Sanction Letter** shall mean a written document that describes the violation committed by the provider, any history of action by DIDD staff to ameliorate the situation, and the sanction to be imposed.

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M. **Warning Letter** shall mean a written document citing a provider for violating the provider agreement, policy, regulation, etc., and warning of the consequences of future violations.

V. **POLICY:** This policy provides a framework for consistent application of sanctions by all three (3) regional offices and central office. Sanctions shall be corrective in purpose and progressive in nature, unless the deficiency is so egregious that more severe actions are necessary to ensure immediate and appropriate correction.

VI. **PROCEDURES:**

A. General

1. Types of sanction the Department may levy include:

- a. Class A.
- b. Class B - can lead to monetary sanctions.
- c. Class C - can lead to monetary sanctions.
- d. Mandated Technical Assistance.
- e. Immediate jeopardy sanction letter.

1.2. Any DIDD division, unit, or regional department responsible for enforcing the provider agreement and or provider manual may issue warning letters or sanction letters.

2.3. The DIDD division, unit, or regional department that identified the violation is responsible for issuing the appropriate letter.

4. For the ~~purposes~~ purpose of this policy, ~~each regional provider operation is considered a separate entity. Warnings agencies that provide services in more than one region will receive:~~

- a. Class B and C sanctions as if they were one entity.
- a.b. Class A and Mandated Technical Assistance sanctions by region (e.g. a Moratorium against a provider operating in one region (e.g., provider's West Tennessee) shall region operations will not automatically apply to that provider's operations in another region (e.g., Middle Tennessee) or East operations).

3.5. Warning, sanction, and immediate jeopardy sanction letters shall be sent by email or certified mail to the executive director of the provider agency and the board chair or agency owner, if applicable.

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B. Warnings

1. A warning letter shall be issued for the first violation of the provider agreement, provider manual, departmental policy, or state or federal rule or regulation, or any situation not designated as an immediate jeopardy.
2. A warning letter shall describe the specific violation and the consequences of future violations.
3. At a minimum all warning letters shall be copied to the assistant commissioner of quality management, office of general counsel, director of risk management and licensure, director of provider supports and services, regional office director, chair of the regional quality management committee, the regional director of compliance, and the Bureau of TennCare.

C. Sanctions

1. A sanction letter shall be issued if a provider is cited for the same violation within 24-months of the initial warning letter for Class A and B violations and 12-months for Class C violations.
2. A Class B sanction resulting in a financial penalty that is imposed on a "per day" basis shall remain in effect until the department receives from the provider documentation that the violation has been corrected. The effective date of the sanction shall be the date the violation was discovered, reported, or otherwise brought to the department's attention.
3. A sanction letter shall describe the specific violation, the sanction being imposed, the history of corrective action taken prior to imposition of the sanction, and the consequences of future violations.
4. At a minimum all sanction letters shall be copied to the deputy commissioner of program operations, assistant commissioner of quality management, office of general counsel, director of risk management and licensure, director of provider supports and services, director of business services, regional office director, chair of the regional quality management committee, the regional office compliance unit and the Bureau of TennCare.
5. Sanctions involving mandated technical assistance, egregious violations and/or liquidated damages assessed against the Department due to a provider's failure to provide services as authorized are exempt from the prerequisite warning letter otherwise afforded when a sanctionable offense has been identified.
6. Monetary sanctions associated with liquidated damages against DIDD shall be in the amount of the liquidated damage assessed against DIDD.

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7. ~~Sanctions involving liquidated damages are exempt from the monetary cap associated with Class B and Class C sanctions.~~

D. Immediate Jeopardy Sanctions

1. An immediate jeopardy sanction letter shall be issued for any (including the first) violation of the provider agreement, provider manual, departmental policy, or state or federal rule or regulation, or any situation designated as an immediate jeopardy to person(s) supported.
2. An immediate jeopardy sanction letter shall describe the violation committed by the provider that placed the person(s) supported in jeopardy, actions taken to ensure the safety of the person(s) supported, and the sanction to be imposed.
3. All immediate jeopardy sanction letters shall be copied to the deputy commissioner of program operations, assistant commissioner of quality management, office of general counsel, director of risk management and licensure, director of provider ~~supports and~~ services, director of business services, regional office director, chair of the regional quality management committee, the regional office compliance unit and the Bureau of TennCare.

E. Central Office Sanction Review

1. All Class A sanctions shall be approved by the Commissioner or designee before imposition.
2. All Class B sanctions ~~as well as sanctions assessed against agencies providing services in more than one region~~ shall be approved by the director of risk management and licensure or designee before imposition.
3. ~~All Mandated Technical Assistance sanctions shall be approved by the Statewide Quality Management Committee (SQMC) and the Regional Director or designee before imposition.~~
- 3.4. The director of risk management and licensure or designee shall review all sanctions imposed on contracted providers. This review shall ensure that sanctions are imposed consistently and reliably across all regions.
- 4.5. The director of risk management and licensure shall report inconsistencies in application of sanctions to the appropriate deputy commissioner or assistant commissioner.

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8. Notwithstanding an appeal, non-monetary sanctions (e.g., mandated technical assistance) shall be applied immediately and no stay shall apply.
9. The department shall impose financial sanctions under the following circumstances:
 - a. When the time period for the provider to submit an appeal has ended without an appeal having been received from the provider.
 - b. When a final order has been issued in accordance with the Uniform Administrative Procedures Act of Tennessee upholding imposition of the financial sanction.

G. TennCare Reporting Requirements

1. As specified in the department's contract with TennCare, the director of business services or designee shall submit a quarterly sanction report to the designated TennCare representative.
2. This report shall include the requirements as printed in accordance with the TennCare/DIDD interagency agreement.

VII. **CQL STANDARDS:** none

VIII. **REVISION HISTORY:** March 14, 2016

IX. **TENNCARE APPROVAL:** June 16, 2016

VII.X. **ATTACHMENTS:**

- A. Examples of Violations

VIII. **TENNCARE APPROVAL DATE:** December 21, 2012

Attachment A

Examples of Violations

Classes of Sanctions

Class A: Systemic issues that jeopardize the health and safety of people supported. These may result in a moratorium; termination of provider agreement; or management takeover. This level of sanction requires the approval of the Commissioner or designee before imposition.

Class B: Repeat violations or violations that involve multiple persons-supported or an agency that supports only one (1) person. This deficiency may result in daily cumulative sanctions of \$100.00 to \$500.00 until resolution of the deficiency. This level of sanction requires the approval of the Director of Risk Management and Licensure or designee prior to imposition.

Class C: An initial violation or a violation that involves one (1) person-supported or an agency that supports only one (1) person. This deficiency may result in a one-time sanction of \$100.00 to a maximum of \$500.00. This level of sanction requires the approval of the Regional Office Director or designee prior to imposition.

<u>Failure to Comply with:</u>	<u>Examples including, but not limited to:</u>	<u>Support</u>
The Provider Manual, memorandums or other DIDD policies, procedures or written guidelines	<ul style="list-style-type: none"> • Failure to abide by protection from harm processes and procedures. • Authorized services not performed in accordance with the expectations in the provider manual. • Failure to manage a person's funds in accordance with the Personal Funds Management Policy. • Placing a person-supported in Immediate Jeopardy (e.g., not following dining plans or special diet). 	Provider Agreement A.3
Provider Personnel Requirements	<ul style="list-style-type: none"> • Failure to obtain permission for release of information for all new hires and contracted staff. • Failure to complete background checks. • Employing, retaining, hiring, or contracting with prohibited staff. 	Provider Agreement A.11

Reporting Abuse, Neglect, and Exploitation (ANE)	<ul style="list-style-type: none"> • Failure to report suspected ANE. • Failure to cooperate with an ANE investigation. • Refusal to allow access to records. 	Provider Agreement A. 12
Fraud	<ul style="list-style-type: none"> • Committing fraud. • Failure to cooperate with a fraud investigation. 	Provider Agreement A. 13
Training	<ul style="list-style-type: none"> • Failure to comply with all training requirements within the specified time frames. • Failure to participate in Mandatory Technical Assistance. 	Provider Agreement A. 15
Timely Reports	<ul style="list-style-type: none"> • Failure to submit reports within required time frames. • Failure to submit documents using prescribed forms and formats. • Failure to abide by documentation requirements as specified in the provider manual. 	Provider Agreement A. 16
License requirements	<ul style="list-style-type: none"> • Lack of appropriate food in the home. • Failure to obtain or maintain appropriate licenses. • Failure to ensure appropriate supervision for clinical staff, e.g., licensed practical nurses. 	Provider Agreement A. 20
Freedom of Choice	<ul style="list-style-type: none"> • Impeding the person's Freedom of Choice of providers. • Forcing a person residing in Supported Living to move when another provider is selected. • Failure to ensure that the person-supported is not unduly influenced by the provider or the provider's employees. • Failure to ensure that the person-supported is not unduly influenced by the Independent Support Coordinator. 	Provider Agreement A.6

Continuity of Care	<ul style="list-style-type: none"> • Failure to provide written notice of discontinuation of services. • Failure to obtain state approval prior to discontinuing services. • Failure to cooperate with discharge planning. 	Provider Agreement A. 19
Financial, Business and Service Records	<ul style="list-style-type: none"> • Failure to maintain bookkeeping and or accounting records. • Failure to maintain documentation of services provided. • Failure to maintain and store records for each person-supported. • Failure to maintain copies of pertinent medical records. 	Provider Agreement A.9; A.10
Medical Appointments	<ul style="list-style-type: none"> • Failure to ensure the person attends scheduled appoints. • Failure to arrange appointments as recommended by the person's healthcare providers. 	Provider Agreement A.3 Provider Manual Chapter 11
Retaliation	<ul style="list-style-type: none"> • Failure to allow a person-supported to seek resolution of a violation of their rights or complaints about the quality of their care without retaliation. • Retaliation against a person-supported in response to a complaint. 	Provider Manual Chapter 2 Provider Manual Chapter 2