

## **51485.1 Civil Money Penalties**

### **(a)**

The Director may assess civil money penalties against a person or provider ("provider") pursuant to Welfare and Institutions Code Section 14123.2 after a determination that the provider knows or has reason to know that items or services: (1) Were not provided as claimed, (2) Are not reimbursable under the Medi-Cal Program as provided in subsection (d), or (3) Were claimed in violation of an agreement with the State.

#### **(1)**

Were not provided as claimed,

#### **(2)**

Are not reimbursable under the Medi-Cal Program as provided in subsection (d), or

#### **(3)**

Were claimed in violation of an agreement with the State.

### **(b)**

The Director's determination of whether a provider "knows or has reason to know" that items or services were not provided, are not reimbursable, or were claimed in violation of an agreement with the State (hereafter "improperly claimed"), shall be based on the following standards:(1) Knows: The provider is aware of a high probability of the existence of the fact that items or services were improperly claimed, or (2) Has reason to know: The provider has information from which a

reasonable person in that position would infer that items or services were improperly claimed.

**(1)**

Knows: The provider is aware of a high probability of the existence of the fact that items or services were improperly claimed, or

**(2)**

Has reason to know: The provider has information from which a reasonable person in that position would infer that items or services were improperly claimed.

**(c)**

The Director's determination of whether the provider knows or has reason to know that items or services were "not provided as claimed" shall be based on information available pursuant to Section 51476.

**(d)**

The Director shall determine whether or not the provider knows or has reason to know that claimed items or services are "not reimbursable under the Medi-Cal Program" in the following instances: (1) The provider has been suspended from participation in the Program, (2) The claimed items or services are substantially in excess of patient needs as defined in Section 51303(a), (3) The items or services are deficient in quality compared with professionally recognized standards of health care (See Section 51472), (4) The provider has demonstrated a pattern of abusive overbilling to the Medi-Cal Program. Evidence of such overbilling shall include, but not be limited to: (A) Identical audit adjustments repeated in two or more fiscal years except if there is a pending appeal where these adjustments are still at issue, (B) Repeated submission of improperly coded or identified claims. Evidence of such overbilling shall not include repeated submission of claims which have been denied payment previously, even though such payment denial was not

contested.

**(1)**

The provider has been suspended from participation in the Program,

**(2)**

The claimed items or services are substantially in excess of patient needs as defined in Section 51303(a),

**(3)**

The items or services are deficient in quality compared with professionally recognized standards of health care (See Section 51472),

**(4)**

The provider has demonstrated a pattern of abusive overbilling to the Medi-Cal Program. Evidence of such overbilling shall include, but not be limited to: (A) Identical audit adjustments repeated in two or more fiscal years except if there is a pending appeal where these adjustments are still at issue, (B) Repeated submission of improperly coded or identified claims. Evidence of such overbilling shall not include repeated submission of claims which have been denied payment previously, even though such payment denial was not contested.

**(A)**

Identical audit adjustments repeated in two or more fiscal years except if there is a pending appeal where these adjustments are still at issue,

**(B)**

Repeated submission of improperly coded or identified claims. Evidence of such overbilling shall not include repeated submission of claims which have been denied payment previously, even though such payment denial was not contested.

**(e)**

The Director's determination of whether the provider knows or has reason to know

that items or services were "claimed in violation of an agreement with the State" shall be based on the terms of the written agreement, and on other relevant evidence as that term is defined in Section 51037(e)(1). The Director shall consider only material violations which go to the merits of the agreement as distinguished from those which affect only form.

**(f)**

A civil money penalty shall be no more than three times the amount claimed by the provider for each item or service. It shall be within the Director's discretion to assess a lower penalty. In setting the amount of the penalty, the Director may consider evidence of mitigating circumstances submitted by the provider. Examples of such evidence include, but are not limited to: (1) Clerical error. (2) Good faith mistake. (3) Reliance on official publications. (4) Prior record of properly submitted claims.

**(1)**

Clerical error.

**(2)**

Good faith mistake.

**(3)**

Reliance on official publications.

**(4)**

Prior record of properly submitted claims.

**(g)**

An assessment of civil money penalties shall be effective upon the 60th calendar day after the date that the Department serves notice to the provider of the determination. Such notice shall be in writing, and shall include grounds for the determination.

**(h)**

A provider shall have the right to appeal the determination by filing a request for hearing pursuant to Section 51022. The effective date of the assessment shall be deferred until this request is rejected or a final administrative decision is adopted.

**(i)**

Upon the effective date of assessment, the Director shall collect the civil money penalty in accordance with the procedures set forth in Sections 14115.5 and 14172 of the Welfare and Institutions Code and Section 51047.

**(j)**

Interest shall accrue on any unpaid balance of a civil money penalty from the effective date of assessment, at the rate specified in Section 14172(a) of the Welfare and Institutions Code.

**(k)**

Civil money penalty appeal hearings shall be conducted pursuant to the procedural guidelines set forth in Section 51016 et seq. (Title 22, CAC, Article 1.5).

**(l)**

Assessment of civil money penalties pursuant to Welfare and Institutions Code Section 14123.2 shall not operate to bar imposition of any other applicable penalty provisions, such as those contained in Welfare and Institutions Code Section 14171.5.