


County of Marin Behavioral Health and Recovery Services (BHRS)	POLICY NO. BHRS-51
	Next Review Date: September 2023
POLICY: <u>VOLUNTARY REPORTING OF OVERPAYMENTS & DISCLOSURE OF MATERIAL DEFICIENCIES</u>	Date Reviewed/Approved: September 4, 2020
	By:  Jei Africa, PsyD Director of Behavioral Health and Recovery Services

TITLE: VOLUNTARY REPORTING OF OVERPAYMENTS & DISCLOSURE OF MATERIAL DEFICIENCIES

I. PURPOSE:

The purpose of this policy is to define and provide guidance on the reporting and repayment of overpayments received from Federal health care programs and other funding sources.

II. REFERENCES:

(DHCS) / (MMHP) Contract
 DHCS/BHRS DMC-ODS Intergovernmental Agreement
 Office of Inspector General, Department of Health & Human Services, Updated Provider Self-Disclosure Protocol, April 17, 2013
 Public Law 111-148 The Patient Protection & Affordable Care Act
 42 CFR, section 438.608(d).
 42 CFR, section 438.606
 42 CFR section 438.606(c)(3)
 42 CFR section 455.23
 42 CFR section 438.608(a)(8)
 31 U.S. Code § 3729-3733 MHSUDS Info Notice 19-034

III. POLICY STATEMENT

Behavioral Health and Recovery Services (BHRS) is committed to ensuring financial integrity for all of its services. It is the policy of BHRS to report and repay overpayments in an appropriate and timely manner. BHRS will report and repay overpayments from Federal health care programs (Medicare & Medicaid) as required by the Patient Protection and Affordable Care Act (PPACA), False Claims Act, Department of Health Care Services / Marin Mental Health Plan (DHCS/MMHP) Contract, and DHCS / BHRS Drug Medi-Cal Organized Delivery System (DMC-ODS) Intergovernmental Agreement, and will notify the Office of Inspector General (OIG) in accordance with the Updated OIG's Provider Self-Disclosure Protocol, April 17, 2013, whenever BHRS determines that there is a material deficiency. BHRS shall report and repay any overpayments received from non-Federal

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healthcare programs consistent with funding source requirements and associated procedures.

BHRS contracted providers will be required to notify BHRS in writing within 5 calendar days of any identified overpayments, including the reason for the overpayment. BHRS requires contracted providers to return any overpayments to BHRS within 60 calendar days after the date on which the overpayment was identified, or the date any corresponding cost report is due, if applicable. BHRS will report to the State (DHCS) on an annual basis of any overpayments recovered.

IV. AUTHORITY/RESPONSIBILITY:

BHRS Director
 HHS Compliance Office
 Quality Management
 HHS Office of Finance, Billing Unit

V. DEFINITIONS:

Material Deficiency – A matter that, in BHRS’ reasonable assessment, potentially violates federal criminal, civil or administrative laws (this may include, but is not limited to, matters resulting in a substantial overpayment).

False Claim Act – Protects the Federal Government from being overcharged or sold substandard goods or services. The civil FCA imposes civil liability on any person who knowingly submits, or causes the submission of, a false or fraudulent claim to the Federal Government.

Overpayment – The amount of money BHRS or contracted providers have received in excess of the amount due and payable under the Federal health care program’s statutes, regulations or guidelines, including carrier and fiscal intermediary instructions. Simple overpayments, such as errors that do not suggest violations of the law are distinguished from Substantial Overpayments or Material Deficiencies.

Substantial Overpayment – In determining if an overpayment is “substantial” the following factors shall be considered: 1) the dollar amount of the overpayment; 2) the period of time over which the overpayment occurred; 3) the overpayment as a percentage of the total reimbursement received from the funding source(s) over the relevant period of time; 4) the overpayment as a percentage of the total reimbursement annually received

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from the funding source(s); and 5) the specific facts and circumstances resulting in the overpayment.

VI. POLICY:

A. Discovery

1. Overpayments may be discovered through a variety of processes, including but not limited to:
 - (a) Internal Audits: Audits conducted by Quality Management
 - (b) External Audits: Audits conducted by entities other than BHRS
 - (c) BHRS preparation for an internal or external audit
 - (d) BHRS review of client charts or files during the normal course of business
2. BHRS shall report and repay simple overpayments that it discovers to Federal health care programs by "...the later of –(A) the date which is 60 days after the date on which the overpayment was identified; or (B) the date any corresponding cost report is due, if applicable." (PPACA, sect. 6402).
3. Individuals who suspect and/or have questions about possible overpayments are to report this occurrence to BHRS Quality Management, or to the HHS Compliance Officer using the Confidential Compliance Hotline (415-473-6948), for services funded by Federal health care programs. The Compliance Office (C.O.) will review and, if necessary, investigate the report to determine if an overpayment(s) exists.
4. The Compliance Officer may receive a report of a suspected fraud, waste, or abuse from any person who identifies an actual or perceived violation of County policy, laws, or regulations. Retaliation is prohibited against any whistleblower who reports, in good faith, suspected compliance violations.
5. Consistent with 42 CFR section 438.608(a)(8), and 455.23 BHRS may implement a suspension of payments to a network provider for which the State, or BHRS, determines there is a credible allegation of fraud.

B. Material Deficiencies

1. Any issue that may result in a determination that a material deficiency exists, must be brought to the immediate attention of the C.O.

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2. The determination of whether or not a material deficiency exists shall be made by the C.O., BHRS Director, County Executive Officer, and County Counsel.
3. If a determination is made that a material deficiency exists, the C.O. is responsible for making a written disclosure to the OIG in accordance with the Updated OIG’s Provider Self-Disclosure Protocol and Section III of this Policy.

C. Voluntary Disclosure Submission

1. BHRS shall disclose material deficiencies to the OIG in accordance with the Updated OIG’s Provider Self-Disclosure Protocol. BHRS will act in good faith and cooperate with the OIG in providing documents and information that relate to the disclosed matter. BHRS will make available to the OIG all relevant audit work papers and other supporting documents.
2. BHRS will conduct a review and submit a report to the OIG estimating the improper amount paid by the Federal health care program.
3. If BHRS identifies conduct involving the Anti-Kickback Statue (AKS) or Physician Self-Referral Law (Stark Law), it will estimate damages as described in the Updated OIG Self -Disclosure Protocol.

D. Criminal Acts

1. BHRS will coordinate with law enforcement agencies if there is suspected criminal conduct in the provision of services related to federal health care programs.

BHRS

Checklist for New or Revised Policies

Please submit this checklist to the Quality Improvement Coordinator along with the draft copy of your policy.

Date of initial submission Sept. 3, 2020

Type of Update: New
 Revision to Existing Policy, Policy Number: 51

Complete Title of Policy:
Voluntary reporting of overpayments and disclosure of material deficiencies

Lead Staff Name: John Bhambra

System(s) of Care Affected: BHRS Mental Health Only SUDS only

I .For **new** policies, summarize what the policy covers and explain the need for a new policy.
or

For **revised** policies, summarize the changes that need to be made to the existing policy:

Updated policy statement to include false claims act and provided definition

2. The Compliance Officer may receive a report of a suspected fraud, waste, or abuse from any person who identifies an actual or perceived violation of County policy, laws, or regulations. Retaliation is prohibited against any whistleblower who reports, in good faith, suspected compliance violations.
3. Consistent with 42 CFR section 438.608(a)(8), and 455.23 BHRS may implement a suspension of payments to a network provider for which the State, or BHRS, determines there is a credible allegation of fraud.
4. **Criminal Acts**
BHRS will coordinate with law enforcement agencies if there is suspected criminal conduct in the provision of services related to federal health care programs

2. List any existing governmental regulations that relate to policy or state "None":

DHCS)/(MMHP) Contract
DHCS/BHRS DMC-ODS Intergovernmental Agreement
Office of Inspector General, Department of Health & Human Services, Updated Provider Self-Disclosure Protocol, April 17, 2013
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3. Describe how policy will impact consumer access to care or state "N/A": 4. Have you compared this policy to similar policies in other counties? Yes No

If so, list counties whose policies were reviewed:

5. Will this policy require staff training? Yes No

If so, indicate what staff will need to be trained and what training will be needed.

BHRS

Checklist for New or Revised Policies

6. Will forms need to be developed or revised for this policy or policy update? Yes No
If so, list forms that will need

7. Describe any other changes that will need to be made in Behavioral Health (financial, consumer care, etc.) as a result of this policy: