

SENIOR BULLETIN: MEDICAID – INSTITUTIONAL/COPEs

COPEs or MPC client hearing rights when an individual provider's contract is terminated

Under Washington law, COPEs and Medicaid Personal Care clients, like other consumers of in home care services funded by the state, have "the right to select, hire, supervise the work of, and terminate any individual provider providing services to them."¹ At the same time, social workers employed by DSHS and case managers employed by Area Agencies on Aging (under contracts with DSHS) are responsible for assuring that individual providers meet certain standards adopted by the state.² This split in authority between clients and case managers sometimes produces disagreement. In particular, there are times when a case manager may determine that the contract of an individual provider should be terminated and the COPEs or MPC client may disagree.

Case managers are authorized by statute to "take action to terminate" provider contracts if they find "that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being" of a client. The termination must be preceded by notice to the client and opportunity for a prior hearing, unless the case manager "has a reasonable, good faith belief that the health, safety, or well-being of a [client] is in imminent jeopardy," in which case the contract may be summarily suspended, with the opportunity for a hearing to be provided afterward.³ In either case, the COPEs or MPC client is entitled to a hearing to contest the case manager's finding that the "provider's inadequate performance or inability to deliver quality care is jeopardizing [the client's] health, safety, or well-being."⁴ (It is important to note that termination or suspension of an individual provider's contract does not affect the COPEs or MPC client's eligibility for continued services. It only prevents continued COPEs or MPC-funded services from the provider whose contract has been terminated or suspended.)

DSHS has adopted regulations implementing the statutory hearing requirements. In particular, WAC 388-71-0560 provides as follows: "If the department denies, terminates, or summarily suspends the individual provider's contract, the client has the right to . . . [a] fair hearing to appeal the decision, per chapter 388-02 WAC ["DSHS Hearing Rules"]"

(Since an Area Agency on Aging (AAA) provides case management services under contract with DSHS, a contract denial, termination or suspension by an AAA case manager is treated as a determination by “the department.”)

Occasionally, questions arise about what the issue is in a hearing in which a COPES or MPC client challenges the termination of an individual provider’s contract. In general, the issue is whether the termination was justified, that is, whether the “provider’s inadequate performance or inability to deliver quality care is jeopardizing [the client’s] health, safety, or well-being.” The Department has authority to establish some specific provider requirements for the purpose of protecting client health, safety and well-being, and sometimes the issue at a hearing will be whether one of these requirements – the minimum training requirement, for example – has been violated.

What is the hearing issue when a contract has been summarily suspended?

Two specific questions about the scope of a client’s hearing right warrant further discussion. The first arises because both RCW 74.39A.095(7) and WAC 388-71-0551 allow a case manager to summarily suspend a provider’s contract based on *a reasonable, good faith belief* that the health, safety or well-being of the client is in imminent jeopardy.” The question is: in the case of a summary suspension, is the issue for hearing whether the case manager’s belief was reasonable and held in good faith, or is it whether the provider’s inadequate performance or inability to deliver quality care is jeopardizing the client’s health, safety or well-being? It is the latter.

For good reason, a case manager is expected to take summary action in what appears to be an emergency situation. A good faith belief in provider abuse, for example, justifies taking temporary action without waiting for the result of a hearing. But while the appearance of imminent jeopardy justifies summary action without waiting for the results of a hearing (to protect the client from harm that might result from a delay), it does not justify denying the client a hearing on the ultimate issue of whether abuse (for example) occurred. A belief may be reasonable and held in good faith, and may nevertheless turn out to be mistaken. There is nothing in either the statute or the regulations that curtails the issue for review when a summary suspension is used.

What is the significance of an APS finding of abuse or neglect?

The second question arises when a contract suspension or termination is based on an Adult Protective Services finding that abuse or neglect has occurred. If a client's individual provider's contract is suspended, or action is initiated to terminate the contract, based on an APS finding, and the client disputes the finding and requests a hearing, what is the significance of the APS finding in the administrative hearing?

When DSHS or an AAA seeks to terminate an individual provider's contract based on a determination of provider neglect or abuse, the client receiving the in home services is entitled to a hearing to contest the determination. The hearing right should not be affected by whether the determination was made by an AAA case manager or a DSHS staff member, whether within the Home and Community Services Division or the Adult Protective Services Division. Presumably, an APS finding of abuse or neglect would be a reasonable basis for initiating an action to terminate a provider's contract and, perhaps, to summarily suspend it.⁵ But a COPES or MPC client who disputes a DSHS finding of abuse or neglect, made by APS or any other division of the Department, is entitled to have the dispute considered at an administrative hearing.⁶ Neither the statutory language giving a hearing right, nor the regulation implementing it, creates an exception for determinations made by APS.

What hearing rights apply to CAP clients?

While the statutes and regulations discussed in this bulletin apply explicitly to contracts for in home care under the COPES and MPC programs (and also to Chore Services), the hearing rights of clients of the Division of Developmental Disabilities who are served under the Community Alternatives Program (CAP), are not so explicitly addressed in statutes or regulations. CAP clients are covered, however, by the general grant of hearing rights to public assistance recipients aggrieved by department actions.⁷ As to the scope of their hearing rights, it seems reasonable to assume that they are at least as extensive as those guaranteed to COPES and MPC clients. Were developmentally disabled clients afforded inferior hearing rights, a serious question about discrimination on the basis of disability would be presented.

Endnotes:

¹ Initiative 775, Section 6(4), codified at RCW 74.39A.270(4). Similarly, RCW

74.39A.095(4) provides that “[e]ach consumer [or COPES or MPC services] has the right to participate in the development of their plan of care to the maximum extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.” And WAC 388-71-0505 provides that a home and community services program “client, or legal representative: (1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider”

² RCW 74.39A.095.

³ RCW 74.39A.095(7).

⁴ *Ibid.*

⁵ A May 17, 2000 Management Bulletin from the Home & Community Services Division says: “Individual providers who have substantiated APS findings should be terminated immediately.” “Terminated” must mean “have their contracts suspended” in this context, since the regulations do not authorize summary termination of contracts. MB-AASA/AAA-HCS/DDD/RCS-00-25.

⁶ The provider may also be entitled, as a matter of constitutional law, to a hearing to contest an APS finding. *See, e.g., Crescent Convalescent Center v. DSHS*, 87 Wn. App. 353 (1997). That issue is beyond the scope of this bulletin.

⁷ “A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding.” RCW 74.08.080(1)(a).