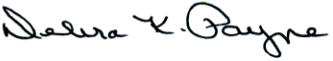
 <p>POLICIES AND PROCEDURES</p> <p>State of Tennessee Department of Intellectual and Developmental Disabilities</p>	Policy #: 80.4.6	Page 1 of 7
	Effective Date: June 2, 2017	
	Distribution: B	
Policy Type: Community/Waiver	Supersedes: 80.4.6 (3/15/13), P-003 Recoupment and Sanctions Policy	
Approved by:   Debra K. Payne, Commissioner	Last Review or Revision: March 28, 2017	
Subject: SANCTIONS		

- I. **AUTHORITY:** Provider Agreement, Tennessee Code Annotated (TCA) 4-3-2708; TCA 4-5-305(a); TCA 33-1-302 (a)(3); TCA 33-1-303; TCA 33-1-304; TCA 33-1-305; TCA 33-1-309; TCA 33-2-202; 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. This deficiency may result in 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 a single violation. 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.
  - D. **Commissioner** shall mean the Commissioner of the Department of Intellectual and Developmental Disabilities.
  - E. **Egregious** shall mean any action or inaction by the provider, or its representative, that potentially jeopardizes the health, safety, and welfare of a person supported.

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- F. **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.
- G. **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.
- H. **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.
- I. **Mandated Technical Assistance** shall mean a 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 (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.
- J. **Moratorium** shall mean a prohibition on new admissions to a program or expansion of provider services.
- K. **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.
- L. **Sanction** shall mean financial or other measures imposed on a provider for failure to comply with TennCare or DIDD rules, regulations, or policies.
- M. **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.
- N. **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.

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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.
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.
3. The DIDD division, unit, or regional department that identified the violation is responsible for issuing the appropriate letter.
4. For the purpose of this policy, agencies that provide services in more than one region will receive:
  - a. Class B and C sanctions as if they were one entity.
  - b. Class A and Mandated Technical Assistance sanctions by region (e.g., a Moratorium against a provider's West region operations will not apply to that provider's Middle or East operations).
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.
6. At a minimum all warning, sanction, and immediate jeopardy sanction 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.

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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 violation that is not designated as egregious or immediate jeopardy.
2. A warning letter shall describe the specific violation and the consequences of future violations.
3. If the violation is designated as egregious or immediate jeopardy, a warning letter shall not be required. If the violation is designated as egregious or immediate jeopardy, a sanction letter or an immediate jeopardy sanction letter shall be issued.

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. 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.
5. Monetary sanctions associated with liquidated damages against DIDD shall be in the amount of the liquidated damage assessed against DIDD.
6. Monetary sanctions involving liquidated damages are exempt from the monetary cap associated with Class B and Class C sanctions.

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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.

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 shall be approved by the Statewide Quality Management Committee (SQMC) and the Regional Director or designee before imposition.
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.
5. The director of risk management and licensure shall report inconsistencies in application of sanctions to the appropriate deputy commissioner or assistant commissioner.

F. Appeal of Sanctions

The following appeals process shall apply to sanctions and shall be conducted in accordance with the Uniform Administrative Procedures Act.

1. DIDD shall issue a sanction letter to the provider prior to imposing any sanction.
2. The provider may appeal the sanction within fifteen (15) days of the provider's receipt of the sanction letter. The provider shall submit the appeal

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to the office of general counsel via certified mail or facsimile. The appeal shall state the provider's objection(s) to the sanction and the provider's justification for requesting the sanction be rescinded or modified.

3. The office of general counsel shall review the appeal and route it to the Commissioner.
4. If the provider filed the appeal in accordance with section VI.F.2., the imposition of monetary sanctions shall be stayed pending resolution of the appeal.
5. The office of general counsel shall schedule a hearing in accordance with the Uniform Administrative Procedures Act of Tennessee.
6. If the administrative law judge upholds the sanction, then the monetary sanction shall be calculated from the effective date noted in the sanction letter.
7. If the administrative law judge does not uphold the sanction, then the monetary sanction shall not be imposed.
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 provider does not submit an appeal in accordance with section VI.F.2.
  - 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.

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VII. **CQL STANDARDS:** None

VIII. **REVISION HISTORY:** March 14, 2016, March 28, 2017

IX. **TENNCARE APPROVAL:** June 16, 2016; November 18, 2016; April 12, 2017

X. **ATTACHMENTS:**

A. Examples of Violations