

 <p><b>TITLE:</b> <i>FAIR HEARING FOR ADMINISTRATIVE/BUSINESS DECISIONS</i></p> <p><b>SERVICE AREA:</b> <i>EXECUTIVE</i></p> <p><b>DEPARTMENT:</b> <i>LEGAL SERVICES</i></p>	<b>Policy and Procedure Number</b>		<b>LS-011</b>		
	Total No. of Pages		Page 1 of 9		
	<b>Dates</b>				
	Effective Date		<b>07/11/2002</b>		
	Review/Revision Date		<b>04/09/2014</b>		
	Supersedes Policy Number		<b>602 and 602.2</b>		
	PPSA/Mandated		YES	<input checked="" type="checkbox"/>	NO
	Next (Annual) Review Date		<b>04/09/2015</b>		
	Administrative		YES		NO
	<b>Applies to:</b>				
	Medi-Cal – Plan Partners		YES	<input checked="" type="checkbox"/>	NO
	Medi-Cal – L.A. Care		YES	<input checked="" type="checkbox"/>	NO
	PASC-SEIU Plan		YES	<input checked="" type="checkbox"/>	NO
	Healthy Families		YES	<input checked="" type="checkbox"/>	NO
	Healthy Kids		YES	<input checked="" type="checkbox"/>	NO
	Medicare SNP		YES	<input checked="" type="checkbox"/>	NO
Cal MediConnect L. A. Care		YES	<input checked="" type="checkbox"/>	NO	
Cal MediConnect Subcontracted Plans		YES	<input checked="" type="checkbox"/>	NO	
L.A. Care Covered		YES	<input checked="" type="checkbox"/>	NO	

**1.0 POLICY:**

- 1.1** To provide a fair review in accordance with applicable law to certain physicians, podiatrists, dentists, or psychologists, and/or their professional corporations and other organizations (collectively referred to as “Providers”), whose contractual agreements with L.A. Care Health Plan (L.A. Care) are terminated or the subject of other adverse action, without stated cause, for administrative or business reasons that are unrelated to the Provider’s professional competence or professional conduct.
- 1.2** This policy and procedure applies to Providers contracted with L.A. Care Subcontractors to provide services to L.A. Care enrollees, but only when L.A. Care and not the L.A. Care Subcontractor, is initiating the adverse action.
- 1.3** This policy and procedure does NOT apply in certain circumstances, including, but not limited to, the following:
- 1.3.1** When L.A. Care Policy and Procedure LS-005, “Fair Hearing for Competency Decisions” applies;
- 1.3.2** When a revocation, restriction or suspension is imposed by a licensing or certifying authority for medical disciplinary cause, in which case the restrictions imposed by the authority shall automatically apply to the Provider’s care of L.A. Care members;

**1.3.3** When a Provider has a direct contract with a Plan Partner, and the Plan Partner has initiated the proposed contract termination or has denied the Provider credentialing or recredentialing; or

**1.3.4** When the applicable laws, regulations or common law principles do not require L.A. Care to make this policy and procedure available to Providers.

## **2.0 DEFINITIONS:**

Whenever a word or term appears capitalized in this Policy and Procedure, the reader should refer to the “Definitions” below.

**2.1 Chief Medical Officer (CMO):** The individual holding the title of Chief Medical Officer at L.A. Care.

**2.2 Knox-Keene Health Care Service Plan Act of 1975 (Knox Keene Act):** The law that regulates HMOs and is administrated by the Department of Managed Health Care (DMHC), commencing with Section 1340 of the Health & Safety Code.

**2.3 L.A. Care Subcontractor:** An entity which either provides or arranges for the provision of health care services to L.A. Care’s members under any of L.A. Care’s health care services programs.

**2.4 Notice of Intent to Deny Participation or Terminate:** Written notice that L.A. Care gives to the Provider informing the Provider of its intent to deny the Provider’s ability to participate in L.A. Care’s network or to terminate the Provider from L.A. Care’s network.

**2.5 Notice of Request for Review:** Notice given to L.A. Care by the Provider stating the Provider’s desire to exercise the review rights provided for in this policy and procedure (see Sections 3.1.2 and 3.1.3 for requirements of a Notice of Request for Review).

**2.6 Notice of Review Date:** Notice of the date of review provided by L.A. Care’s Chief Medical Officer to Provider if L.A. Care accepts Provider’s showing of Significant Economic Impairment (see Section 3.1.4.3.1 for requirements of a Notice of Review Date).

**2.7 Notice of Review Rights:** Where L.A. Care intends to deny an application for Provider status without stated cause or to terminate a Provider without stated cause, this is such notice that L.A. Care must give to the Provider advising the Provider of the right to request a review of the proposed action through the process described in this policy and procedure (see Section 3.1.1 for requirements of a Notice of Review Rights).

**2.8 Plan Reviewer:** The individual who is chosen by L.A. Care’s Chief Medical Officer to review whether the proposed action to terminate or deny participation is substantively rational and procedurally fair.

**2.9 Provider:** Any physician, podiatrist, dentist, or psychologist, and/or their professional corporations and other organizations with which L.A. Care or L.A. Care's Plan Partners may contract to provide health care services to L.A. Care's members.

**2.10 Significant Economic Impairment:** In the 12-month period prior to the date of the Notice of Intent to Deny or Terminate, at least 20% of the Provider's gross revenue was paid by L.A. Care to the Provider (see *Potvin v. Metropolitan Life Insurance Company* (2000) 22 Cal.4th 1060, at 1071-1072.).

### **3.0 PROCEDURE/S:**

#### **3.1 NOTICE TO PROVIDER AND PROVIDER DEMAND FOR REVIEW FOR TERMINATIONS WITHOUT STATED CAUSE**

**3.1.1** If L.A. Care intends to deny an application for Provider status without stated cause or to terminate a Provider without stated cause, L.A. Care shall send the Provider a Notice of Intent to Deny or Terminate. L.A. Care shall give the Provider a Notice of Review Rights within 10 calendar days of the date that L.A. Care gives the Provider the Notice of Intent to Deny or Terminate. The Notice of Review Rights shall advise the Provider of the right to request a review of the proposed action through the process described herein. The Notice of Review Rights shall include a copy of this procedure.

**3.1.2** If the Provider desires to exercise the review rights provided for in this policy and procedure, the Provider shall deliver to L.A. Care a Notice of Request for Review within 15 calendar days of receipt of the Notice of Review Rights. At this same time, and as a requirement for eligibility for review rights, the Provider shall document the Significant Economic Impairment that will affect the Provider's ability to practice which the Provider claims would be caused by the proposed action.

**3.1.2.1** A Provider's failure to timely deliver a Notice of Request for Review or its failure to submit documentation demonstrating Significant Economic Impairment shall be a waiver of the Provider's rights under this policy and procedure and thus shall be deemed to be an acceptance by the Provider of L.A. Care's proposed action and subsequent action. A good cause exception to waiver of the Provider's rights may be determined in L.A. Care's reasonable discretion.

**3.1.3** The Notice of Request for Review must contain the following:

**3.1.3.1** Showing that L.A. Care's proposed action would result in Significant Economic Impairment that will affect the Provider's ability to practice;

- 3.1.3.2** Any supporting documentation or other materials that the Provider wishes L.A. Care to consider in determining whether the showing requested in section (a) above is sufficient;
- 3.1.3.3** An attestation supporting the facts contained in the Notice of Request for Review signed by the Provider or an officer or proprietor of the entity under penalty of perjury under the laws of the State of California.
- 3.1.4** Within 15 calendar days after L.A. Care's receipt from the Provider of a Notice of Request for Review, L.A. Care shall give the Provider notice of one (1) of the following:

  - 3.1.4.1** That it rejects Provider's showing of Significant Economic Impairment, in which case all further review proceedings under this procedure will terminate.

    - 3.1.4.1.1** If L.A. Care's proposed action is to reject an application to participate in the network, L.A. Care's determination of nonparticipation will be final.
    - 3.1.4.1.2** If L.A. Care's proposed action is termination, the termination will become effective as indicated in the Notice of Intent to Deny Participation or Terminate or as otherwise determined by L.A. Care in its sole discretion.
  - 3.1.4.2** That L.A. Care requests specific additional information from the Provider concerning Provider's showing of Significant Economic Impairment.

    - 3.1.4.2.1** If L.A. Care requests specific additional information from the Provider, the Provider will submit such specific additional information within 10 calendar days following L.A. Care's request. If the Provider fails to provide such specific additional information, all further review proceedings under this policy and procedure will terminate. If the Provider submits such specific additional information timely, and L.A. Care rejects the Provider's showing of Significant Economic Impairment, L.A. Care shall give notice of a rejection of Provider's showing of Significant Economic Impairment within 15 calendar days after receipt of the additional information or 30 calendar days from the date of the request for additional information, whichever is sooner.

**3.1.4.3** That L.A. Care grants review based on a sufficient showing of Significant Economic Impairment.

**3.1.4.3.1** If L.A. Care accepts the Provider's showing of Significant Economic Impairment, L.A. Care's Chief Medical Officer shall issue a Notice of Review Date within 15 calendar days after L.A. Care accepts the Provider's showing of significant impairment. The review shall be scheduled within 90 calendar days from the date that the Notice of Review Date is mailed by certified mail. The Chief Medical Officer reserves the right to amend the reasons for the proposed action. The Notice of Review Date shall contain:

**3.1.4.3.1.1** The date of the review;

**3.1.4.3.1.2** The proposed action against the Provider and the reasons for the proposed action; and

**3.1.4.3.1.3** Notice of Provider's right to be represented by an attorney or another person of the Provider's choice.

**3.1.5** If the Provider is granted a review, no adverse action will be taken against the Provider until after a final decision has been reached pursuant to this policy and procedure.

## **3.2 REVIEW**

### **3.2.1 Plan Review**

**3.2.1.1** Upon receipt of a Notice of Request for Review and an accepted showing of Significant Economic Impairment, L.A. Care shall promptly select a Plan Reviewer to determine whether the proposed termination or exclusion is substantively rational and whether the Provider has been afforded procedural fairness.

**3.2.1.2** L.A. Care Reviewer shall not have participated in making the initial decision to terminate or exclude the Provider or be in direct economic competition with the Provider. L.A. Care shall inform the Provider of L.A. Care Reviewer's identity, background, and qualifications.

### **3.2.2 Scheduling**

**3.2.2.1** Subsequent to L.A. Care issuing a Notice of Review Date (as described above in Section 3.1.4.3.1), the Provider shall submit all

statements, documents, and other materials in support of its position to L.A. Care Reviewer and L.A. Care not less than 45 calendar days before the review date.

**3.2.2.2** Plan may submit statements or documentation in support of its position to L.A. Care Reviewer and the Provider within 15 calendar days of the review date.

**3.2.2.3** Failure of a Provider to timely submit supporting statements or documentation shall be a waiver of the right to a review.

**3.2.2.4** No untimely statements, documents or other materials may be submitted except with the prior approval of L.A. Care Reviewer, for good cause shown.

**3.2.2.5** The review date may be rescheduled to some later date on the agreement of L.A. Care and the Provider.

**3.2.2.6** At its sole discretion, L.A. Care may amend any Notice of Review Date to change review date up to 10 calendar days before the review date.

**3.2.2.7** The Provider shall not be entitled to an in-person appearance before L.A. Care Reviewer.

### **3.3 DECISION**

**3.3.1** Within 45 calendar days after the review date, the Plan Reviewer will issue a written decision determining whether L.A. Care's proposed denial of participation or termination is substantively rational and whether the Provider has been afforded procedural fairness. The decision shall include a statement of the basis for the decision. The Plan Reviewer shall forward a copy of the decision to the Provider, Plan and to L.A. Care's Compliance and Quality Committee for its information only. The Plan Reviewer's decision is final and effective immediately as of the date of the written decision.

### **3.4 MISCELLANEOUS**

#### **3.4.1 Service of Notice**

**3.4.1.1** All notices provided for in this policy and procedure shall be in writing and delivered by certified or registered mail, return receipt requested, or by personal delivery acknowledged by the person or an authorized representative of the person to whom the notice is being delivered.

#### **3.4.2 Substantial Compliance**

**3.4.2.1** Deviations from the procedures set forth in this policy and procedure by L.A. Care that are technical or not materially prejudicial to a party shall not be grounds for invalidating any action taken or determining that Provider has not been afforded procedural fairness.

### **3.4.3 Confidentiality**

**3.4.3.1** The records and proceedings of any proceeding under this policy and procedure shall, to the fullest extent permitted by law, be confidential. Participants in any part of the proceeding shall, except as otherwise required by law, limit their discussion of the matters involved to the formal avenues provided for in this policy and procedure.

### **3.4.4 Right to One Review Only**

**3.4.4.1** No Provider has the right to more than one (1) review on any single matter that shall have been the subject of action against the Provider. No Provider shall have a right to a separate review with a Plan Partner, it being understood that the review provided under this policy and procedure by Plan shall take the place of any required review by a Plan Partner.

### **3.4.5 Consolidated Review**

**3.4.5.1** In the event L.A. Care takes action against more than one (1) Provider on substantially the same or similarly applicable basis and Plan Review is granted to any such Provider, L.A. Care may consolidate the proceedings and provide a single review for all similarly impacted Providers. The Chief Medical Officer may make such adjustments to the procedures set forth herein to permit for the efficient conduct of a single consolidated review, provided that any procedural change is substantially comparable to the procedures set forth herein and does not materially prejudice any party.

## **4.0 AUTHORITY:**

**4.1** Title 2, California Code of Regulations (CCR), §51.2

**4.2** Business & Professions Code, §805 et seq.

**4.3** Health & Safety Code, §1370, Review of Quality of Care (Knox Keene)

**4.4** *Palm Medical Group, Inc. v. State Compensation Insurance Fund* (2008) 161 Cal.App.4th 206

**4.5** *Potvin v. Metropolitan Life Insurance Company* (2000) 22 Cal.4th 1060

4.6 Plan Partner Services Agreement, §4.02(g)

5.0 **REFERENCE:**

5.1 L.A. Care Policy & Procedure, LS-005, “Fair Hearing for Competency Decisions”

5.2 L.A. Care Policy & Procedure, QI-005, “The Role of the Chief Medical Officer in the QI Program”

6.0 **ATTACHMENTS:**

None



<b>ACCOUNTABILITY MATRIX</b>	
<b>Responsible Department(s)</b>	<b>Policy Section #</b>
Health Services	2.1; 2.5; 2.9; 3.1.4.3.1; 3.4.5.1; 5.2

<b>ELECTRONICALLY APPROVED BY THE FOLLOWING</b>			
	<b>Officer</b>	<b>Director</b>	<b>Regulatory Affairs &amp; Compliance</b>
<b>Name</b>	Augustavia J. Haydel	Andrea Leeb	Denise Corley
<b>Department</b>	Legal Services	Legal Services	Regulatory Affairs & Compliance
<b>Title</b>	General Counsel	Assistant Managing Counsel	Compliance Officer
<b>IF APPLICABLE</b>			
<b>Board of Governors</b>	<b>Motion Number:</b>		

\*Note: Please write "N/A" for the Name, Department, and Title of the Director if this approval is not applicable.

<b>POLICY HISTORY</b>				
<b>Date</b>	<b>Department</b>	<b>Policy or Section #</b>	<b>Comment(s)</b>	<b>Next or Annual Review Date</b>
07/11/2002	Legal	602.2	New policy	07/11/2003
04/09/2014	Legal	LS-011	Supersedes 602 and 602.2; modifications for clarification purposes	04/09/2015