

**Janice K. Brewer, Governor**  
**Thomas J. Betlach, Director**

801 East Jefferson, Phoenix, AZ 85034  
PO Box 25520, Phoenix, AZ 85002  
Phone: 602-417-4000  
www.azahcccs.gov



*Our first care is your health care*  
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

January 14, 2010

Mark Fisher, CEO  
Gina Conflitti, M.D., Chief Medical Officer  
Mercy Care Plan – Long Term Care  
4350 E. Cotton Center Blvd.  
Building D  
Phoenix, AZ 85040

**SUBJECT: Sanction for Violation of Grievance System Guidelines**

Dear Mr. Fisher and Dr. Conflitti:

Pursuant to the AHCCCS Contract Section D, Paragraph 72 and the AHCCCS Contractor Operations Manual (ACOM) Policy 408 – Sanction Policy, the AHCCCS Administration is imposing a sanction against Mercy Care Plan – Long Term Care in the amount of \$10,000.00. The basis for this sanction is Mercy Care's failure to comply with the AHCCCS Grievance System requirements delineated in contract, rule, and policy, the terms of the *Price* lawsuit settlement and AHCCCS clarifications and directives. This penalty will be assessed by withholding funds from future capitation payments owed to Mercy Care Plan – Long Term Care for performance of contractual duties, until satisfied.

Paragraph 13 of the CYE 09 Acute Care Contract requires Mercy Care Plan – Long Term Care to comply with all requirements set forth in AHCCCS guidelines, policies and manuals. Based on our review of a [REDACTED] Notice of Action Letter sent to [REDACTED], we find that Mercy Care Plan – Long Term Care has insufficiently complied with ACOM Policy 414 which states:

**“A general statement that a requested service is not medically necessary, without explanation of why a service is not medically necessary, is unacceptable as a reason for the action. Use of this or similar language as a reason for an action will result in regulatory action by AHCCCS, including but not limited to civil monetary penalties up to \$25,000 per event (letter) and/ or capping of enrollment.”**

**“The Notice of Action must contain and clearly explain in easily understood language the following information the reason for the action, including factual findings about the member's condition that were the basis for the Contractor's action.”**

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A summary of the violations identified by the AHCCCS Administration discussed below.  
Our findings are based on the following:

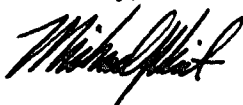
**The Notice of Action letter dated [REDACTED] referenced above, Mercy Care Plan – Long Term Care states under the member specific facts about the member's condition or situation that supported the decision states, "Mercy Care Plan only pays for one wheelchair, because backup chairs are not medically necessary."**

Mercy Care Plan – Long Term Care's blanket statement that back up chairs are not medically necessary does not provide the member with the information as to why the back up chair would not be medically necessary. AHCCCS requires that all service requests be reviewed by a qualified health professional to determine the medical necessity for the individual member. This letter implies that Mercy Care Plan – Long Term Care never pays for a back up wheelchair as they are never medically necessary without addressing the members' individual situation and medical condition. AHCCCS policy does not preclude a Contractor from providing a back up wheelchair. Mercy Care Plan – Long Term Care must also provide AHCCCS with the policy and criteria used by Mercy Care Plan to state that all back up wheelchairs are never medically necessary. Please respond to AHCCCS Medical Management Unit regarding the concerns above by January 15, 2010.

As you know, AHCCCS was the subject of litigation and is vigilant about compliance with the standards involving member rights. Per the terms of your contract, sanctions are not the Administration's exclusive remedy. In particular and without limiting possible future action, if the enforcement of the terms of the *Price* settlement agreement results in an award of attorneys fees and costs and/or in the Administration incurring legal fees, the Administration intends to seek damages from its Contractors' (including Mercy Care Plan – Long Term Care health plan) since the *Price* settlement agreement and any enforcement actions under the *Price* settlement agreement will be a direct result of the Contractors' breach of the terms of the contract.

If you disagree with this decision, Mercy Care Plan – Long Term Care may file a dispute with the AHCCCS Administration using the process outlined in A.A.C. R9-34-401 et seq. The dispute must be filed in writing and must be received by the AHCCCS Administration, Office of Administrative Legal Services, at MD 6200, 701 E. Jefferson, Phoenix, AZ 85034, no later than 60 days from the date of this letter. The dispute shall specify the legal and factual bases for the dispute as well as the relief requested.

Sincerely,



Michael Veit  
Contracts and Purchasing Administrator

Cc: Tom Betlach, AHCCCS Director  
Kate Aurelius, Deputy Director, DHCM  
Shelli Silver, Assistant Director, DHCM  
Kathy Rodham, Finance Manager, DHCM  
Maureen Wade, Medical Management Manager, DHCM  
Alan Schafer, Long Term Care Manager, DHCM  
Contract file