

POLICY AND PROCEDURE	
<b>Policy # and TITLE:</b> QM37 Fair Hearing Process for Adverse Actions Resulting in Mandatory Reportable Actions	
<b>Primary Policy owner:</b> Quality Management	<b>POLICY #:</b> QM37
<b>Impacted/Secondary policy owner:</b> Select the department(s) that are responsible for compliance with all, or a portion of the policy or procedure as outlined	
1) <input type="checkbox"/> All Departments 2) <input type="checkbox"/> Behavioral Health & Social Services (BH/SS) 3) <input type="checkbox"/> Benefits Administration (BA) 4) <input type="checkbox"/> Care Management (CM) 5) <input type="checkbox"/> Claims (CLMS) 6) <input type="checkbox"/> Community Marketplace & Member Engagement (MAR) 7) <input type="checkbox"/> Compliance (CMP/HPA) 8) <input type="checkbox"/> Configuration (CFG) 9) <input type="checkbox"/> Provider Contracting (CONT) 10) <input type="checkbox"/> Cultural & Linguistics (CL) 11) <input type="checkbox"/> Customer Service (CS)	12) <input type="checkbox"/> Facilities (FAC) 13) <input type="checkbox"/> Finance (FIN) 14) <input type="checkbox"/> Human Resources (HR) 15) <input type="checkbox"/> Information Technology / Core Systems (IT) 16) <input type="checkbox"/> Pharmacy (PH) 17) <input type="checkbox"/> Provider Networks (PRO) 18) <input checked="" type="checkbox"/> QI Health Equity (GRV/HE/HEQ/PHM/QM) 19) <input type="checkbox"/> Utilization Management (UM) 20) <input type="checkbox"/> Procurement (PRM) 21) <input type="checkbox"/> Administration (SAF/BC/EM)
<b>PRODUCT TYPE:</b> <input checked="" type="checkbox"/> Medi-Cal	<b>Supersedes Policy Number:</b> N/A

## **I. PURPOSE**

Health Plan of San Joaquin and Mountain Valley Health Plan ("Health Plan") shall provide Credentialed Providers with those protections, such as due process and timely notice, which are required under California law. Such protections shall be modeled after the applicable hospital bylaw provisions approved by the California Association of Hospitals and Health Systems and the California Medical Association with modifications made pursuant to Health Plan's own needs.

## **II. POLICY**

Health Plan's Peer Review Credentialing Committee (PRCC) and Quality Management and Utilization Management Committee meet bi-monthly to evaluate the quality performance of Credentialed Providers. Emphasis is based on early detection of potential quality problems and resolutions through informal education interventions. Health Plan shall provide Credentialed Providers with those protections, such as due process and timely notice, which are required under California law. Such protections shall be modeled after the applicable hospital bylaw provisions approved by the California Association of Hospitals and Health Systems and the California Medical Association with modifications made pursuant to Health Plan's own needs.

## **III. PROCEDURE**

### **A. Initiation of Adverse Actions.**

1. Only Adverse Actions are subject to a Fair Hearing. An Automatic Suspension, Limitation, or action taken by a provider on an active probation shall not be subject to a Fair Hearing.
2. Recommendations for Adverse Action against Credentialed Providers are initiated by the PRCC, as a result of its review process for initial credentialing or recredentialing, or a referral from the QIUM Committee as a result of investigations and concerns with practice patterns.

### **B. Informal Meeting**

1. The PRC may call the Credentialed Provider in for an informal meeting with the Credentialed Provider prior to commencing a

Fair Hearing to discuss the issues leading to the Adverse Action. This meeting will be conducted in the form of an informal discussion among colleagues.

2. The informal meeting is not conducted according to any formal rules or procedures.
3. Neither party is represented by counsel at the informal meeting.
4. Minutes of the informal meeting may be recorded.
5. Following the informal meeting and evaluation of the information presented, the PRCC will make their recommendation on whether an Adverse Action should be taken.

C. Notice of Proposed Action and Right for a Fair Hearing

1. Following the decision of the PRCC to take an Adverse Action a NOA will be sent within five (5) days, by Health Plan Medical Director to the Credentialed Provider.
2. The Credentialed Provider shall have thirty (30) days to request a Fair Hearing. The request for a Fair Hearing shall be submitted in writing to Health Plan Medical Director.
3. In the event the Credentialed Provider does not request a Fair Hearing within the time frame and in the manner described in the NOA, the Credentialed Provider shall be deemed to have accepted the action to be taken, and to have waived any right to a Fair Hearing and Appellate Review. Any summarily imposed suspension or restriction shall remain in effect, and be forwarded to the Health Commission for consideration, and any recommended action shall likewise be forwarded to the Health Commission for consideration, with the Health Commission then to review the action or recommended action in general accord with the procedures herein regarding Appellate Review.

D. Requests for and Notice of Fair Hearing and Charge

1. If the Credentialed Provider requests a Fair Hearing, Health Plan Medical Director shall make the necessary arrangements and provide the Credentialed Provider with a Notice of Fair Hearing.
  - a. The Notice of Fair Hearing will include the date, time and place of the fair hearing.

2. The date of commencement of the Fair Hearing shall be no less than thirty (30) days, or no more than sixty (60) days from the date of receipt of the request for the Fair Hearing. The Notice of Fair Hearing must be provided at least thirty (30) days prior to the date of commencement of the Fair Hearing.

E. Professional Review Committee (PRC)

1. Upon receipt of a written request from the Credentialed Provider for a Fair Hearing, Health Plan's CEO, upon recommendations by Health Plan Medical Director, shall appoint a PRC which shall be composed of not less than three (3) Credentialed Providers in good standing with Health Plan, who shall gain no direct financial benefit from the outcome, and who have not acted as accusers, investigators, fact finders, initial decision makers, or otherwise actively participated in the consideration of the matter leading up to the recommendation or action and are not in direct economic competition with the Credentialed Provider involved. Such appointment shall include the designation of a Chairperson.
2. Where feasible, the PRC shall include an individual practicing in a like or similar as the Credentialed Provider.
3. Knowledge of the matter involved shall not preclude anyone from serving as a member of the PRC.
4. Health Plan may compensate members of the PRC, with a reasonable stipend, for their participation.
5. In the event that it is not feasible to appoint a PRC, as described above, Health Plan's CEO may appoint medical professionals who are not credentialed with Health Plan to review the recommendation of the PRCC.
6. Health Plan's CEO has the discretion, in lieu of appointing a PRC chosen in the manner set forth above, to enter into an agreement with the Credentialed Provider to hold the Fair Hearing before an arbitrator or arbitrators mutually acceptable to both parties. Failure or refusal to exercise this discretion shall not constitute a breach of Health Plan's responsibility to provide a Fair Hearing.
7. Health Plan's CEO shall appoint a Hearing Officer who shall preside at the Fair Hearing. The Hearing Officer shall endeavor to

assure that all participants in the Fair Hearing have a reasonable opportunity to be heard and to present oral and documentary evidence in an efficient and expeditious manner and that decorum is maintained. The Hearing Officer shall be entitled to determine the order of and procedure for presenting evidence and argument during the Fair Hearing and shall have the authority to make all rulings on questions pertaining to matters of law, procedure, or the admissibility of evidence. If the Hearing Officer determines that either side in a Fair Hearing is not proceeding in an efficient and expeditious manner, the Hearing Officer may take such discretionary action as seems warranted by the circumstances. If requested by the PRC, the Hearing Officer may participate in the deliberations of the PRC, but the Hearing Officer shall not be entitled to vote.

F. Failure to Appear or to Proceed

1. Failure of the Credentialed Provider, without good cause, to personally attend and proceed at a properly noticed and scheduled Fair Hearing in an efficient and orderly manner may be deemed to constitute voluntary acceptance of the recommendations or actions involved and a waiver of all Fair Hearing rights.

G. Postponements and Extensions

1. Once a request for a Fair Hearing is initiated, postponements and extensions of time beyond the times prescribed in this Policy and Procedure may be requested by any participant and shall be permitted by the Hearing Officer upon agreement by the parties or upon a showing of good cause.
2. Good cause shall include but not be limited to failure by either party to comply with the exchange of information provisions.

H. Pre-Fair Hearing Procedure

1. Within ten (10) days of a request by either side, the parties shall exchange lists of witnesses expected to testify, and copies of all documents expected to be introduced at the Fair Hearing.
2. If after the list is exchanged, witnesses and/or documents are added, it is the duty of that party to notify the other of such

change(s) and furnish the other party with the additions to the listed witnesses and/or additional documents.

3. Failure to disclose the identity of a witness or to produce copies of all documents expected to be produced, at least fifteen (15) days before the commencement of the Fair Hearing shall constitute good cause for a continuance.
  4. The Credentialed Provider requesting the Fair Hearing shall have the right to inspect and copy at the Credentialed Provider's expense documentary information relevant to the charges which Health Plan has in its possession or under its control, as soon as practicable, but no later than fifteen (15) days prior to the initial date of the Fair Hearing.
  5. The PRC shall have the right to inspect and copy at its expense any documentary information relevant to the charges which the Credentialed Provider requesting the Fair Hearing possesses or controls as soon as practicable, but no later than fifteen (15) days prior to the initial date of the Fair Hearing.
  6. The failure by either party to provide access to the information set forth in sections 3.8.4 and 3.8.5 information at least fifteen (15) days before the Fair Hearing shall constitute good cause for a continuance.
  7. The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable persons, other than the Credentialed Provider under review.
- I. Hearing Officer Rulings
1. No later than five (5) days prior to commencement of the Fair Hearing, the Hearing Officer shall consider and rule upon any dispute or controversy concerning a request for access to information, if any, and may impose any safeguards that the protection of the peer review process, confidentiality of medical records, and justice, requires. In so doing, the Hearing Officer shall consider:
    - a. Whether the information sought may be introduced to support or defend the charges.

- b. The exculpatory or inculpatory nature of the information sought, if any, i.e., whether there is a reasonable probability that the result of the Fair Hearing would be influenced significantly by the information if received into evidence.
- c. The burden imposed on the party in possession of the information sought if access is granted.
- d. Any previous requests for access to information submitted or resisted by the parties to the same proceeding; and
- e. Whether the information sought is advisory or deliberative, rather than factual, and its disclosure would intrude on privacy rights or otherwise threaten the frank and open exchange of ideas in the process by which peer review decisions or policies are formulated.

J. Voir Dire

- 1. The Credentialed Provider who requested the Fair Hearing shall be entitled to a reasonable opportunity to question and challenge the impartiality of the PRC members and the Hearing Officer. Challenges to the impartiality of any PRC member, or the Hearing Officer, shall be ruled on by the Hearing Officer. Any challenge directed at one or more members of the PRC shall be ruled on by the Hearing Officer prior to the continuance of the Fair Hearing.
- 2. The Hearing Officer shall establish the procedure by which this right may be exercised, which may include requirements that voir dire questions be proposed in writing in advance of the Fair Hearing and that the questions be presented by the Hearing Officer.
- 3. The Hearing Officer shall rule on any challenges in accordance with applicable legal principles defining standards of impartiality for Fair Hearing panels and Hearing Officer's in proceedings of this type.

K. Procedural Disputes

- 1. It shall be the duty of the Credentialed Provider who requested the Fair Hearing and the PRCC to exercise reasonable diligence in notifying the Hearing Officer of any pending or anticipated procedural disputes as far in advance of the scheduled Fair

Hearing as possible, in order that decisions concerning such matters may be made in advance of the Fair Hearing.

2. Objections to any pre-Fair Hearing decisions may be succinctly made at the Fair Hearing.

L. Legal Representation

1. The Fair Hearing provided for in these Policies and Procedures is for the purpose of intra-professional resolution of matters bearing on professional conduct, professional competency, or character.
2. Accordingly, neither the Credentialed Provider requesting the Fair Hearing, nor the PRC shall be represented in any phase of the Fair Hearing by an attorney at law unless the Credentialed Provider and the PRC mutually agree that both sides shall be represented by legal counsel at the Fair Hearing. In no event shall the PRC be represented by legal counsel unless the Credentialed Provider is also represented by legal counsel.
3. The Credentialed Provider requesting the Fair Hearing shall be entitled to be accompanied and represented at the Fair Hearing by a Credentialed Provider in good standing with Health Plan who is not also an attorney.
4. Health Plan Medical Director or the PRCC shall appoint a representative to present its recommendation in support thereof and to examine witnesses.
5. Nothing in the foregoing shall be deemed to deprive the Credentialed Provider or the PRCC of the right at their own cost to advice from legal counsel in connection with the preparation for the PRC Fair Hearing or for possible further proceedings.

M. Recording of the Fair Hearing

1. A court reporter shall be present to make a record of the Fair Hearing proceedings, and the pre-Fair Hearing proceedings if deemed appropriate by the Hearing Officer.
2. The court reporter shall, at the request of the PRC or the Credentialed Provider, make a transcript of the Fair Hearing. The cost of preparing the transcript shall be borne by the party requesting such transcript.



3. The PRC may, but shall not be required to, order that oral evidence be taken only on oath administered by a person lawfully authorized to administer such oath.

N. Cost of Fair Hearing

1. Except as otherwise provided herein, Health Plan shall bear the costs of the Fair Hearing, which shall include the cost of the Hearing Officer, stipends for members of the PRC, and if applicable, the cost of the court reporter.

O. Fair Hearing Procedure

1. Within reasonable limitations, both sides at the Fair Hearing may call and examine witnesses for relevant testimony; introduce exhibits or other documents determined by the Hearing Officer to be relevant; cross-examine any witness who shall have testified orally on any matter relevant to the issues, impeach any witness; and rebut any evidence and make opening and closing statements, as long as these rights are exercised in an efficient and expeditious manner.
2. The Credentialed Provider who requested the Fair Hearing may be called by the PRC and examined as if under cross-examination.

P. Admissibility of Evidence

1. Judicial rules of evidence and procedure relating to the conduct of the Fair Hearing, examination of witnesses, and presentation of evidence shall not apply to a Fair Hearing conducted under this article. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law. The PRC may interrogate the witnesses or call additional witnesses if it deems such action appropriate.

Q. Burdens of Presenting Evidence and Proof

1. Except as set forth in Section 3.17.2, the PRCC shall have the initial duty to present evidence for each case or issue in support of its action or recommended action and shall bear the burden of persuading the PRC by a preponderance of the evidence, that its action or recommended action is reasonable and warranted.

2. An initial applicant applying to be a Credentialed Provider requesting a Fair Hearing shall have the burden of proving by a preponderance of the evidence that he or she is sufficiently qualified to be a Credentialed Provider. This burden of proof requires the production of information which allows for adequate evaluation and resolution of the initial applicant's current qualification. The initial applicant shall not be permitted to introduce information that was not produced initially to Health Plan during the application process unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence.

R. Adjournment and Conclusion

1. After consultation with the chairman of the PRC, the Hearing Officer may adjourn the Fair Hearing and reconvene the same without special notice at such times and intervals as may be reasonable and warranted, with due consideration for reaching an expeditious conclusion to the Fair Hearing.
2. Both the PRCC and the Credentialed Provider may submit a written statement to the Hearing Officer for distribution to the PRC no later than five (5) days following the close of the Fair Hearing.
3. Upon conclusion of the presentation of oral and written evidence, or the receipt of closing written statements, if submitted, the Fair Hearing shall be closed.

S. Basis for Decision & Decision

1. The decision of the PRC shall be based on the evidence introduced at the Fair Hearing, including all logical and reasonable inferences from the evidence including any testimony.
2. Within thirty (30) days, after closure of the Fair Hearing, the PRC shall render a written decision. The decision shall contain a concise statement of the reasons in support of the decision including findings of fact and a conclusion articulating the connection between the evidence produced at the Fair Hearing and the conclusion reached.
3. A copy of said decision shall be sent to Health Plan's PRCC, CEO, Medical Director, the Health Commission, the San Joaquin County

Counsel, and the Credentialed Provider who requested the Fair Hearing. The PRC decision will be presented to the Health Commission for its information and appropriate action.

T. Appellate Review Before the Health Commission

1. Within ten (10) days after the date of receipt of a copy of the PRC decision, the Credentialed Provider or the PRCC may request an Appellate Review of the PRC decision by the Health Commission.
  - a. The request for an Appellate Review shall take the form of a notice to Health Plan's Medical Director stating that an Appellate Review by the Health Commission is being requested in response to the PRC decision. The request shall contain a brief statement of the ground or grounds upon which the request is based. A copy of this notice shall be sent to the opposing party.
  - b. If such Appellate Review is not requested within the ten (10) day period and in the manner required, the Credentialed Provider and the PRCC will be deemed to have accepted the PRC decision and to have waived the right to challenge the PRC decision.

U. Nature of the Review and Grounds for Appeal

1. Recognizing that the PRCC and the Credentialed Provider enjoyed opportunities to present factual statements, documents, and argument to the PRC, the Health Commission review shall be limited, designed to determine if significant error was committed during the PRC proceedings.
2. The grounds for appeal shall be limited to the substantial failure of the PRC, PRCC or Health Commission to comply with the policy and procedures in the conduct of the Fair Hearing so as to deny the Credentialed Provider due process and a Fair Hearing; or that the action of the PRC was taken arbitrarily, capriciously, or with prejudice; or the decision of the PRC is not supported by substantial evidence based upon the Fair Hearing record or such additional information as may be permitted pursuant to this procedure.

3. The party requesting the Appellate Review shall be responsible for the costs associated with obtaining a transcript of the Fair Hearing.
4. The Health Commission may deny Appellate Review of the PRC's decision based upon failure to state an appropriate ground for Appellate Review.

V. Scheduling of Health Commission Review

1. Upon receipt of a request for Appellate Review, the Health Commission shall decide upon the procedures to be followed in accord with the requirements of this policy and procedure.
2. The Appellate Review shall be concluded, and an appellate decision issued not less than sixty (60) days after the date of the receipt of a request for an Appellate Review by Health Plan Medical Director. However, if the Health Commission review has been requested by a Credentialed Provider in response to disciplinary action which has been summarily imposed and which is then in effect, the Appellate Review shall be concluded within forty-five (45) days from the date of receipt of the request for an Appellate Review by Health Plan Medical Director. The Health Commission, for good cause, and where the rights of either party will not be impaired, may extend these time periods.

W. Appellate Review Committee

1. The Health Commission may, in its discretion, appoint an Appellate Review Committee to discharge any of the appellate duties of the Health Commission under this policy and procedure.
2. The parties recognize that the membership of the Health Commission cannot be readily altered depending upon which issues or disputes require attention at any particular time. Knowledge of the credentialing or disciplinary recommendation or decision involved or knowledge of the Credentialed Provider and general facets of his or her background, behavior, and practice shall not preclude anyone from serving as a member of the Health Commission or of any Appellate Review Committee during this review. At the same time, if a member of the Health Commission has a conflict of interest, he/she shall recuse himself/herself from review of the matter.

3. If the Health Commission chooses to appoint an Appellate Review Committee, it shall delegate the Final Action to this committee.

X. Appellate Review Procedure

1. The PRC process constitutes an evidentiary proceeding designed to resolve factual disputes as part of a credentialing or peer review process. The Health Commission review is appellate in nature and is not designed to duplicate the fact-finding and fact-adjudicating efforts of the PRC. The Health Commission review shall therefore be based upon the record of the PRC Fair Hearing.
2. The Credentialed Provider and the PRCC may submit written statements in support of their positions on appeal.
3. In any Appellate Review the parties may appear at a meeting of the Health Commission or the Appellate Review Committee and offer an oral argument. At that time, the parties may be accompanied and represented by legal counsel or another representative.

Y. Record of the Appellate Fair Hearing

1. Any appellate review meeting attended by the parties shall be recorded by a Court Reporter, with provision for payment being made by the party requesting the Appellate Review.

Z. Appellate Review Decision

1. The party that requests Appellate Review bears the burden of proving, by a preponderance of the evidence, that the PRC decision was incorrect.
2. Within ten (10) days after the conclusion of the proceedings before the Health Commission or Appellate Review Committee, a final decision shall be rendered in writing and copies sent to the Credentialed Provider, and Health Plan Medical Director.
3. The final decision of the Health Commission shall state whether the PRC decision is affirmed, reversed, modified or remanded to the PRC for further consideration. If the decision is remanded to the PRC, the PRC shall follow the procedures outlined in this policy and procedure and limit its consideration to the issues remanded for further consideration. The decision shall be accompanied by a

written report that briefly summarizes the findings of the Health Commission and explains why those findings support its decision.

4. Except where the matter is remanded for further review, the decision of the Health Commission shall be Health Plan's Final Action and shall take effect immediately. There shall be no appeal of the Final Action.

**AA. Exhaustion of Rights**

1. If Adverse Action is recommended or taken, the Credentialed Provider must exhaust the remedies afforded by this Fair Hearing and Appeals policy and procedure before resorting to legal action.
2. In the event the Credentialed Provider does not request a Fair Hearing within the timeframe and in the manner stated above, the Credentialed Provider shall be deemed to have waived the right to Fair Hearing and to have accepted the Adverse Action, which should become effective immediately.

**IV. ATTACHMENT(S)**

- A. DHCS Medi – Cal Managed Care Plans Definitions (Exhibit A, Attachment I, 1.0 Definitions)
- B. [Glossary of Terms Link](#)
- C. Medi-Cal Managed Care Contract Acronyms List (Exhibit A, Attachment I, 2.0 Acronyms)

**V. REFERENCES**

- A. Business and Professions Code Section 805 and 809
- B. Health and Safety Code Section 1370

**VI. REVISION HISTORY**

*\*Version 001 as of 01/01/2023*

Version*	Revision Summary	Date
000	01/09, 06/16, 09/17, 09/19, 06/20, 03/22, 03/23	N/A
001	Moved to new template	6/13/2023
002		

**Initial Effective Date:** 5/20/2004

## VII. Committee Review and Approval

Committee Name	Version	Date
Compliance Committee	001	5/17/2024
<ul style="list-style-type: none"> <li>Privacy &amp; Security Oversight Committee (PSOC)</li> </ul>		
<ul style="list-style-type: none"> <li>Program Integrity Committee</li> </ul>		
<ul style="list-style-type: none"> <li>Audits &amp; Oversight Committee</li> </ul>		
<ul style="list-style-type: none"> <li>Policy Review</li> </ul>	001	5/16/2024
Quality Improvement Health Equity Committee (QIHEC)		
<ul style="list-style-type: none"> <li>Quality Of Care</li> </ul>		
<ul style="list-style-type: none"> <li>Grievance</li> </ul>		

## VIII. REGULATORY AGENCY APPROVALS

Department	Reviewer	Version	Date
Department of Healthcare services (DHCS)			
Department of Managed Care (DMHC)	DMHC Attorney	001	3/18/2024



**IX. Approval signature\***

Signature	Name Title	Date
	PRC Chairperson	
	Policy Owner	
	Department Executive	
	Chief Executive Officer	

\*Signatures are on file, will not be on the published copy