

From: [DMHC Licensing eFiling](#)

Subject: APL 23-023 (OPM) – Notice of Amendments to Rules 1300.51 and 1300.67.2 and Incorporated Documents – Network Adequacy Requirements and Mental Health Standards and Methodology for RY 2024

Date: Thursday, December 14, 2023 10:04 AM

Attachments: [APL 23-023 – Network Adequacy Requirements and Mental Health Standards and Methodology for RY 2024 \(12.14.23\).pdf](#)
[Amendments to 28 CCR 1300.51\(d\)\(H\).docx](#)
[Amendments to 28 CCR 1300.67.2.docx](#)
[APL FAQ Network Adequacy Amendments.docx](#)
[Counseling MHP Accepting New Patients Standards and Methodology RY 2024.docx](#)
[Counseling MHP Ratio Standards and Methodology RY 2024.docx](#)
[Geographic Access Measurement Methodology.docx](#)
[Mental Health Geographic Access Standards and Methodology RY 2024.docx](#)
[Mental Health Standards – Summary Tables for RY 2024.xlsx](#)
[Schedule B Geographic Access RY 2024.docx](#)
[Schedule C Accepting New Patients RY 2024.docx](#)
[Schedule A-A-6 Ratios RY 2024.docx](#)

Dear Health Plan Representative:

The Department of Managed Health Care (DMHC) hereby issues APL 23-023 (OPM) – Notice of Amendments to Rules 1300.51 and 1300.67.2 and Incorporated Documents – Network Adequacy Requirements and Mental Health Standards and Methodology for RY 2024.

Thank you.

ALL PLAN LETTER

DATE: December 14, 2023

TO: All Health Care Service Plans

FROM: Nathan Nau
Deputy Director, Office of Plan Monitoring

SUBJECT: APL 23-023 (OPM) – Notice of Amendments to Rules 1300.51 and 1300.67.2 and Incorporated Documents – Network Adequacy Requirements and Mental Health Standards and Methodology for RY 2024

The Department of Managed Health Care (DMHC) issues this All Plan Letter (APL) to notice amendments to 28 CCR §§ 1300.51 and 1300.67.2 and documents incorporated by reference. The amendments are noticed pursuant to Senate Bill (SB) 225 (Wiener, Chapter 601, Statutes of 2022).¹

I. Application

The noticed amendments set forth in this APL apply as follows:

- All regulatory amendments noticed in this APL apply to health care service plans (plans) that are required to file an Annual Network Report submission pursuant to Health and Safety Code sections 1367.03 and 1367.035, and Rule 1300.67.2.2.
- Additionally, the amendments described in Section IV. of this APL apply to all plans that are subject to network reviews as part of new and ongoing licensure filings made pursuant to Sections 1351 and 1352 and the regulations promulgated thereunder.²

¹ SB 225 amended Health and Safety Code section 1367.03. The Knox-Keene Act is set forth in California Health and Safety Code sections 1340 et seq. References herein to “Section” are to sections of the Act. References to “Rule” refer to the California Code of Regulations (CCR), title 28.

² See Rules 1300.51, 1300.52, 1300.52.4, and 1300.67.2.1. This APL does not apply to plans licensed only to offer Medicare Advantage product lines or Employee Assistance Program (EAP) products.

Amendments to the Rule and incorporated documents are effective January 1, 2024. For those plans required to submit an Annual Network Report, the DMHC will apply these requirements to the reporting year (RY) 2024 Annual Network Review.³

I. Overview

In 2022, the Governor signed SB 225 into law.⁴ SB 225 requires plans to ensure that each network contains sufficient numbers of in-network providers to maintain compliance with all standards established under Section 1367.03.⁵ SB 225 also made changes to the law that reiterated the DMHC's authority to ensure plan networks are able to deliver in-network mental health and substance use disorder providers within geographic and timely access standards set by law and regulation.⁶ The DMHC is required to review plan network submissions annually for compliance with these requirements, and other established network adequacy requirements.⁷

Under SB 225, the DMHC may adopt new standards that address the availability of network providers and services, including the availability of primary care physicians, specialty physicians, hospital care, and other network providers, including mental health providers, as a means to ensure enrollees have timely access to care. The development and adoption of these standards are exempt from formal rulemaking under the Administrative Procedure Act until December 31, 2028.⁸

This APL sets forth new network adequacy standards and methodologies pursuant to SB 225, including standards and methodologies related to measuring the adequacy of mental health networks. Existing law requires plans to ensure that mental health services are readily available and accessible to each of a plan's enrollees.⁹ The DMHC regularly reviews plans to ensure that networks have a comprehensive range of mental health providers that are readily available at reasonable times to all enrollees and readily accessible within reasonable proximity of all enrollees.¹⁰ The DMHC will continue to evaluate plans for compliance with existing mental health network adequacy

³ Plans are required to submit an Annual Network Report to the DMHC, and the DMHC is required to review the Annual Network Report submissions for compliance with the Knox-Keene Act (the "Annual Network Review"). See sections 1367.03(f) and 1367.035, and Rule 1300.67.2.2(h).

⁴ SB 225 followed the legislature's recent amendments to Section 1367.03 by SB 221 in 2021 (Wiener, Chapter 724, Statutes of 2021).

⁵ Section 1367.03(a)(7). This is also required by Rule 1300.67.2.2(c)(7).

⁶ Section 1367.03(a)(7)(C).

⁷ Sections 1367.03(a)(7)(A) & (C), (i); 1367.035(a), (d) & 1374.72(d).

⁸ See Sections 1367.03(f)(5).

⁹ Section 1367.03.

¹⁰ Rules 1300.51(d)(H) & 1300.67.2(a); See also Sections 1367.03(a)(7) and 1374.72(d).

requirements in all areas of review.¹¹ Additionally, this APL sets forth standards and methodologies for the measurement of the availability of counseling non-physician mental health providers and mental health facilities, that the DMHC shall apply when monitoring plans as part of the Annual Network Review.

II. Stakeholder Feedback

The DMHC circulated draft amendments to network adequacy regulations to stakeholders for feedback on June 16, 2023, pursuant to Section 1367.03(f)(5). The documents and amendments noticed in this APL incorporate, where possible, the feedback received at that time. The DMHC thanks those stakeholders who provided input. Please note that the DMHC is no longer taking comments for the amended regulations noticed in this APL. Plans will have an opportunity to provide further feedback to the DMHC in advance of any future amendments to the standards and methodologies that will be effective January 1, 2025.

The DMHC has prepared responses to frequently asked questions (FAQ) by stakeholders pertinent to the amendments noticed in this APL. FAQ responses are attached to this APL. The DMHC will provide an opportunity to ask additional questions regarding the new standards and methodologies to the extent there are further questions that are not addressed in the FAQ responses.

III. Mental Health Standards for Annual Network Review

The noticed amendments include new and revised mental health standards and methodologies for mental health facilities and counseling non-physician mental health professionals (Counseling MHPs). The standards and methodologies outlined in these amendments specify how the DMHC will evaluate plan networks for these mental health provider types in the Reporting Year 2024 Annual Network Review conducted pursuant to Section 1367.035(d). These mental health standards and methodologies are set forth in amendments to Rule 1300.67.2 and incorporated documents, and include the following:

- **Mental Health Geographic Access Standards and Methodology**
(New for RY 2024)

The Mental Health Geographic Access Standards and Methodology document and accompanying Schedules A through A-6 are incorporated by reference in Rule 1300.67.2(a), effective for RY 2024. The DMHC will evaluate the ability of plan networks to demonstrate sufficient geographic access to Counseling MHPs

¹¹ This includes network adequacy reviews conducted for the purposes of licensure pursuant to Rules 1300.52 and 1300.52.4, and the Annual Network Review conducted pursuant to Sections 1367.03, 1367.035 and Rule 1300.67.2.2.

and mental health facilities to ensure compliance with network adequacy standards referenced in the Act, including Sections 1367.03, 1367.035, and 1374.72 and Rules 1300.67.2, 1300.67.2.1, and 1300.67.2.2. Compliance will be evaluated based on the DMHC's measurement of geographic access conducted in accordance with the Geographic Access Measurement Methodology included in this APL and further described below.

- **Counseling Non-Physician Mental Health Ratio Standards and Methodology**
(*New for RY 2024*)

The Counseling Non-Physician Mental Health Ratio Standards and Methodology document and accompanying Schedule B is incorporated by reference in Rule 1300.67.2(d), effective for RY 2024. To assess the capacity of mental health networks to deliver medically necessary services, the DMHC will evaluate the ratio of Counseling MHPs-to-enrollees against a set ratio standard. The ratio standard identifies the minimum number of full-time equivalent (FTE) Counseling MHPs per enrollees needed to demonstrate a plan network has adequate capacity and availability of licensed health care providers to reasonably assure that covered mental health services will be accessible to enrollees on an appropriate basis without delays detrimental to the health of the enrollee, as required by Rule 1300.67.2(d). The methodology also provides further information as to how the DMHC will calculate the number of full-time equivalent providers in a particular network and county.

- **Counseling Non-Physician Mental Health Professionals Accepting New Patients Standards and Methodology**
(*Revised for RY 2024*)

The Counseling Non-Physician Mental Health Professionals Accepting New Patients Standards and Methodology document and accompanying Schedule C is incorporated by reference into Rule 1300.67.2(h)(1), effective for RY 2024. The DMHC will evaluate the ability of plan networks to demonstrate sufficient availability of Counseling MHPs to ensure compliance with network adequacy standards referenced in the Act, including Sections 1367.03, 1367.035, 1374.72, and Rules 1300.67.2.2 and 1300.67.2. The DMHC will use compliance thresholds to evaluate Counseling MHPs accepting new patients, based on a plan's reported annual network data. The compliance thresholds take into consideration the number and geographic distribution of providers within a network and a county to determine an appropriate minimum level of compliance for Counseling MHPs, or MHP locations, within a county and within the network service area.

This document replaces the previous version of the Counseling Non-Physician Mental Health Professionals Accepting New Patients Standards and

Methodology for RY 2023 posted in the DMHC’s web portal on January 12, 2023.¹² The amended standards and methodology attached to this APL is effective for RY 2024. The amendments include the addition of an alternative review standard for certain rural county types.

During the APA exemption period, these standards and methodologies may be tested and updated annually. Each standard also includes definitions as well as attached Schedules that provide further details concerning how the review is conducted.

As a courtesy to stakeholders, attached to this APL is a document entitled: **Mental Health Standards – Summary Tables for RY 2024**, which contains an overview of the standards set forth in the Mental Health Geographic Access Standards and Methodology, and the Counseling Non-Physician Mental Health Professionals Ratio Standards and Methodology for RY 2024.

A. Enforcement of Mental Health Standards

The DMHC shall review plan networks for compliance with the mental health standards and methodologies as part of the Annual Network Review.¹³ The DMHC’s enforcement of the mental health standards will differ depending on whether the standard is new for the reporting year or is an amended version of a standard that was released for a previous reporting year.

The Mental Health Geographic Access Standards and Methodology and Counseling Non-Physician Mental Health Ratio Standards and Methodology are new for RY 2024. If the DMHC’s review indicates a plan’s network does not meet these standards within the plan’s network service area, the plan will be informed of the findings and the DMHC may require the Plan to submit a corrective action plan.¹⁴ In subsequent reporting years, the DMHC may also rely upon these standards as a basis for carrying out and completing enforcement action.

¹² For RY 2023, this document was titled: “Reporting Year 2023 Compliance Threshold for Counseling Mental Health Professionals (MHP) Accepting New Patients.” The prior version was also circulated to stakeholders for initial feedback, and the final version was re-circulated and posted to the DMHC’s web portal.

¹³ The DMHC will also continue to review Annual Network Report submissions for compliance with network adequacy requirements in the Knox-Keene Act through its Benchmark Review, as set forth in Section 1367.035 and posted on the DMHC’s Timely Access and Annual Network Reporting Web Portal. As detailed below, the amendments also permit the DMHC to evaluate plans under these mental health standards and methodologies as part of licensure filings, as applicable.

¹⁴ See Rule 1300.67.2.2(i).

The Counseling Non-Physician Mental Health Professionals Accepting New Patients Standards and Methodology was released in RY 2023 and has been updated for RY 2024. In addition to requiring a corrective action plan, for RY 2024 the DMHC may rely on this standard as a basis for carrying out and completing enforcement action related to the annual network and timely access review, pursuant to the Administrative Procedures Act exemptions established in Section 1367.03(f).

For RY 2024, the Mental Health Geographic Access Standards and Methodology and the Counseling Non-Physician Mental Health Ratio Standards and Methodology will not apply to plan networks licensed exclusively for Medi-Cal. Medi-Cal networks will be reviewed under the Counseling Non-Physician Mental Health Professionals Accepting New Patients Standards and Methodology.

IV. Network Adequacy Requirements for all Network Reviews

The noticed amendments also include amendments to existing regulations to clarify and update network adequacy requirements for plans, consistent with SB 225. These amendments are set forth in Rule 1300.51 and Rule 1300.67.2, and incorporated documents. The amendments pertain to a plan's ongoing obligations to meet network adequacy requirements, as well as DMHC's Annual Network Review and review of networks through licensure filings.¹⁵

Amendments to Rule 1300.67.2 effectuate the following changes:

- Incorporate defined network adequacy terms and standards from Rule 1300.67.2.2 (the Timely Access Regulation) into Rule 1300.67.2.
- Clarify a plan's obligation to maintain sufficient numbers of network providers who are accepting new patients.
- Provide a methodology the DMHC shall use when reviewing plans for geographic access pursuant to the law, entitled the "Geographic Accessibility Measurement Methodology."
- The Geographic Access Measurement Methodology is incorporated by reference into Rule 1300.67.2(h)(1). It details how the DMHC will determine plan compliance with the geographic accessibility standards set forth in Rule 1300.67.2(a). This document also defines how the DMHC will calculate the driving distance and expected driving time, as applicable, when determining plan compliance with established geographic accessibility standards.

¹⁵ See Sections 1351 and 1352, Rules 1300.51, 1300.52, & 1300.52.4.

- Provide permissive authority to the DMHC to consider the mental health network adequacy standards and methodology documents incorporated in Rule 1300.67.2. when determining whether services are readily available and accessible to each of a plan's enrollees in its review of licensure filings.¹⁶
- Revise Rule 1300.67.2 to clarify plans have a continuing obligation to adhere to network adequacy standards required at the time of licensure set forth in Rule 1300.51(d)(H) and (I).

Rule 1300.51, subd. (d), was correspondingly amended to clarify the geographic access requirements listed in Item H.

V. Implementation of Noticed Amendments

1. Amendments to Rules 1300.67.2 and 1300.51 and the Geographic Access Measurement Methodology

As of the date of this All Plan Letter, all plan operations must incorporate the amendments to the law described in **Section IV.** of this APL. Plans must review all documents on file with the DMHC to ensure they are consistent with the new regulatory language described in Section IV. and noticed in this APL, including: the incorporation of new definitions, the requirement to ensure the network maintains sufficient numbers of network providers accepting new patients, and the ongoing obligation of the plan to adhere to network adequacy standards set forth in Rule 1300.51(H) & (I).

It is the plan's responsibility to evaluate its existing documents and determine if any need to be revised to address requirements outlined in this APL. To the extent a plan must amend documents on file with the DMHC to come into compliance with the regulatory changes described in Section IV. of this APL, the plan must file those documents with the DMHC pursuant to Section 1352 and Rules 1300.52 and 1300.52.4. within the timeframes prescribed by law, but no later than January 3, 2025.

If a plan has documents currently pending regulatory review in the e filing system, such as documents submitted pursuant to the implementation of regulatory changes outlined in APL 22-026 (November 4, 2022), and these documents must be further updated to address the changes to the amended regulations described in Section IV. of the APL, the plan should communicate to the DMHC through the e filing web portal for that individual filing to determine the best way to incorporate new changes.

¹⁶ This includes filings specified in Sections 1352, 1367.03, 1367.035, 1371.31, 1374.141 and Rules 1300.51, 1300.52, 1300.52.4, and 1300.67.2.1. As described in Section III. of this APL, the mental health network adequacy standards will be applied by the DMHC to determine compliance in the Annual Network Review.

2. Implementation of Mental Health Standards

At this time, as part of the Annual Network Review, the DMHC will review plans according to the new and revised mental health standards and methodologies referenced in **Section III.** of this APL. Additionally, as described above, with respect to the mental health standards and methodologies that are in the first year of implementation, the DMHC will allow plans to address a plan's failure to meet network adequacy standards through corrective action prior to the DMHC taking enforcement action. Once the DMHC has promulgated a final rule incorporating the standards described in Section III. of this APL, plans will be required to submit any required Policies and Procedure updates not previously submitted, applicable to the new and revised mental health standards. The DMHC anticipates promulgating a final rule after expiration of the exemption from the Administrative Procedures Act set forth in Section 1367.03(f)(5).

Plans are reminded that to the extent a plan's internal policy and procedure documents are at odds with the amended regulatory standards and methodology set forth in this APL, the DMHC's amended regulation and incorporated documents are controlling law in the contexts described in Sections III. and IV. above. If the plan chooses to amend a document currently on file with the DMHC to conform with the DMHC's mental health standards and review methodologies, the plan should file revisions to that document in accordance with Section 1352 and Rules 1300.52 and 1300.52.4.

VI. Attachments: Noticed Amendments and FAQ

- Amendments to 28 CCR § 1300.67.2
- Documents incorporated by reference in 28 CCR § 1300.67.2:
 - Geographic Access Measurement Methodology
 - Counseling Non-Physician Mental Health Ratio Standards and Methodology
 - Attached: Schedules A - A6
 - Mental Health Geographic Access Standards and Methodology
 - Attached: Schedule B
 - Counseling Non-Physician Mental Health Professionals Accepting New Patients Standards and Methodology
 - Attached: Schedule C
- Amendments to 28 CCR § 1300.51(d), Item H
- Frequently Asked Questions (FAQ)
- Mental Health Standards - Summary Tables for RY 2024

If you have any questions about this APL, please contact the Office of Plan Monitoring at ANRTeam@dmhc.ca.gov.