

The Medicaid Act and Regulations

Fair Hearings and In-Plan Grievances

42 U.S.C. § 1396a(a)(3) (1998 Supp.)

“A State plan for medical assistance must —

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness.”

42 U.S.C. § 1396u-2(b)(4) (1998 Supp.)

“Each medicaid managed care organization shall establish an internal grievance procedure under which an enrollee who is eligible for medical assistance under the State plan under this subchapter, or a provider on behalf of such an enrollee, may challenge the denial of coverage of or payment for such assistance.”

CODE OF FEDERAL REGULATIONS (C.F.R.)

PART 431 — STATE ORGANIZATION AND GENERAL ADMINISTRATION

Subpart E — Fair Hearings for Applicants and Recipients

GENERAL PROVISIONS

42 C.F.R. § 431.200 Basis and purpose.

This subpart implements section 1902(a)(3) of the Act [42 U.S.C. § 1396a(a)(3)], which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements sections 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and nursing facilities and those adversely affected by the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

42 C.F.R. § 431.201 Definitions.

For purposes of this subpart:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

De novo hearing means a hearing that starts over from the beginning.

Evidentiary hearing means a hearing conducted so that evidence may be presented.

Notice means a written statement that meets the requirements of § 431.210.

Request for a hearing means a clear expression by the applicant or recipient, or his authorized representative, that he wants the opportunity to present his case to a reviewing authority.

42 C.F.R. § 431.202 State plan requirements.

A State plan must provide that the requirements of §§ 431.205 through 431.246 of this subpart are met.

42 C.F.R. § 431.205 Provision of hearing system.

(a) The Medicaid agency must be responsible for maintaining a hearing system that meets the requirements of this subpart.

(b) The State's hearing system must provide for —

(1) A hearing before the agency; or

(2) An evidentiary hearing at the local level, with a right of appeal to a State agency hearing.

(c) The agency may offer local hearings in some political subdivisions and not in others.

(d) The hearing system must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in this subpart.

42 C.F.R. § 431.206 Informing applicants and recipients.

(a) The agency must issue and publicize its hearing procedures.

(b) The agency must, at the time specified in paragraph (c) of this section, inform every applicant or recipient in writing —

(1) Of his right to a hearing;

(2) Of the method by which he may obtain a hearing; and

(3) That he may represent himself or use legal counsel, a relative, a friend, or other spokesman.

(c) The agency must provide the information required in paragraph (b) of this section —

(1) At the time that the individual applies for Medicaid;

(2) At the time of any action affecting his or her claim;

(3) At the time a skilled nursing facility or nursing facility notifies a resident in accordance with § 483.12 of this chapter that he or she is to be transferred or discharged; and

(4) At the time an individual receives an adverse determination by the State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

NOTICE

42 C.F.R. § 431.210 Content of notice.

- A notice required under § 431.206(c)(2), (c)(3), or (c)(4) of this subpart must contain —
- (a) A statement of what action the State, skilled nursing facility, or nursing facility intends to take;
 - (b) The reasons for the intended action;
 - (c) The specific regulations that support, or the change in Federal or State law that requires, the action;
 - (d) An explanation of —
 - (1) The individual's right to request an evidentiary hearing if one is available, or a State agency hearing; or
 - (2) In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and
 - (e) An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

42 C.F.R. § 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

42 C.F.R. § 431.213 Exceptions from advance notice.

- The agency may mail a notice not later than the date of action if —
- (a) The agency has factual information confirming the death of a recipient;
 - (b) The agency receives a clear written statement signed by a recipient that —
 - (1) He no longer wishes services; or
 - (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
 - (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
 - (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231(d) of this subpart for procedure if the recipient's whereabouts become known);
 - (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
 - (f) A change in the level of medical care is prescribed by the recipient's physician;
 - (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
 - (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i).

42 C.F.R. § 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if —

(a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and

(b) The facts have been verified, if possible, through secondary sources.

RIGHT TO HEARING

42 C.F.R. § 431.220 When a hearing is required.

(a) The agency must grant an opportunity for a hearing to:

(1) Any applicant who request it because his claim for services is denied or is not acted upon with reasonable promptness;

(2) Any recipient who requests it because he or she believes the agency has taken an action erroneously;

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged; and

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

(b) The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

42 C.F.R. § 431.221 Request for hearing.

(a) The agency may require that a request for a hearing be in writing.

(b) The agency may not limit or interfere with the applicant's or recipient's freedom to make a request for a hearing.

(c) The agency may assist the applicant or recipient in submitting and processing his request.

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing.

42 C.F.R. § 431.222 Group hearings.

The agency —

(a) May respond to a series of individual requests for hearing by conducting a single group hearing;

(b) May consolidate hearings only in cases in which the sole issue involved is one of Federal or State law or policy;

(c) Must follow the policies of this subpart and its own policies governing hearings in all group hearings; and

(d) Must permit each person to present his own case or be represented by his authorized representative.

42 C.F.R. § 431.223 Denial or dismissal of request for a hearing.

The agency may deny or dismiss a request for a hearing if —

(a) The applicant or recipient withdraws the request in writing; or

- (b) The applicant or recipient fails to appear at a scheduled hearing without good cause.

PROCEDURES

42 C.F.R. § 431.230 Maintaining services.

(a) If the agency mails the 10-day or 5-day notice as required under § 431.211 or § 431.214 of this subpart, and the recipient requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless —

- (1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and
- (2) The agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.

(b) If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient, to the extent they were furnished solely by reason of this section.

42 C.F.R. § 431.231 Reinstatement of services.

(a) The agency may reinstate services if a recipient requests a hearing not more than 10 days after the date of action.

(b) The reinstated services must continue until a hearing decision unless, at the hearing, it is determined that the sole issue is one of Federal or State law or policy.

(c) The agency must reinstate and continue services until a decision is rendered after a hearing if —

- (1) Action is taken without the advance notice required under § 431.211 or § 431.214 of this subpart;
- (2) The recipient requests a hearing within 10 days of the mailing of the notice of action; and
- (3) The agency determines that the action resulted from other than the application of Federal or State law or policy.

(d) If a recipient's whereabouts are unknown, as indicated by the return of unforwardable agency mail directed to him, any discontinued services must be reinstated if his whereabouts become known during the time he is eligible for services.

42 C.F.R. § 431.232 Adverse decision of local evidentiary hearing.

If the decision of a local evidentiary hearing is adverse to the applicant or recipient, the agency must —

- (a) Inform the applicant or recipient of the decision;
- (b) Inform the applicant or recipient that he has the right to appeal the decision to the State agency, in writing, within 15 days of the mailing of the notice of the adverse decision;
- (c) Inform the applicant or recipient of his right to request that his appeal be a *de novo* hearing; and
- (d) Discontinue services after the adverse decision.

42 C.F.R. § 431.233 State agency hearing after adverse decision of local evidentiary hearing.

(a) Unless the applicant or recipient specifically requests a *de novo* hearing, the State agency hearing may consist of a review by the agency hearing officer of the record of the local evidentiary hearing to determine whether the decision of the local hearing officer was supported by substantial evidence in the record.

(b) A person who participates in the local decision being appealed may not participate in the State agency hearing decision.

42 C.F.R. § 431.240 Conducting the hearing.

(a) All hearings must be conducted —

- (1) At a reasonable time, date, and place;
- (2) Only after adequate written notice of the hearing; and
- (3) By one or more impartial officials or other individuals who have not been directly involved in the initial determination of the action in question.

(b) If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, and if the hearing officer considers it necessary to have a medical assessment other than that of the individual involved in making the original decision, such a medical assessment must be obtained at agency expense and made part of the record.

42 C.F.R. § 431.241 Matters to be considered at the hearing.

The hearing must cover —

(a) Agency action or failure to act with reasonable promptness on a claim for services, including both initial and subsequent decisions regarding eligibility;

(b) Agency decisions regarding changes in the type or amount of services;

(c) A decision by a skilled nursing facility or nursing facility to transfer or discharge a resident; and

(d) A State determination with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

42 C.F.R. § 431.242 Procedural rights of the applicant or recipient.

The applicant or recipient, or his representative, must be given an opportunity to —

(a) Examine at a reasonable time before the date of the hearing and during the hearing:

(1) The content of the applicant's or recipient's case file; and

(2) All documents and records to be used by the State or local agency or the skilled nursing facility or nursing facility at the hearing;

(b) Bring witnesses;

(c) Establish all pertinent facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

42 C.F.R. § 431.243 Parties in cases involving an eligibility determination.

If the hearing involves an issue of eligibility and the Medicaid agency is not responsible for

eligibility determinations, the agency that is responsible for determining eligibility must participate in the hearing.

42 C.F.R. § 431.244 Hearing decisions.

(a) Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.

(b) The record must consist only of —

- (1) The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;
- (2) All papers and requests filed in the proceeding; and
- (3) The recommendation or decision of the hearing officer.

(c) The applicant or recipient must have access to the record at a convenient place and time.

(d) In any evidentiary hearing, the decision must be a written one that —

- (1) Summarizes the facts; and
- (2) Identifies the regulations supporting the decision.

(e) In a *de novo* hearing, the decision must —

- (1) Specify the reasons for the decision; and
- (2) Identify the supporting evidence and regulations.

(f) The agency must take final administrative action within 90 days from the date of the request for a hearing.

(g) The public must have access to all agency hearing decisions, subject to the requirements of subpart F of this part for safeguarding of information.

42 C.F.R. § 431.245 Notifying the applicant or recipient of a State agency decision.

The agency must notify the applicant or recipient in writing of —

(a) The decision; and

(b) His right to request a State agency hearing or seek judicial review, to the extent that either is available to him.

42 C.F.R. § 431.246 Corrective action.

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility

if —

- (a) The hearing decision is favorable to the applicant or recipient; or
- (b) The agency decides in the applicant's or recipient's favor before the hearing.

FEDERAL FINANCIAL PARTICIPATION

42 C.F.R. § 431.250 Federal financial participation.

FFP is available in expenditures for —

- (a) Payments for services continued pending a hearing decision;
- (b) Payments made —
 - (1) To carry out hearing decisions; and
 - (2) For services provided within the scope of the Federal Medicaid program and made under a court order.
- (c) Payments made to take corrective action prior to a hearing;
- (d) Payments made to extend the benefit of a hearing decision or court order to individuals in the same situation as those directly affected by the decision or order;
- (e) Retroactive payments under paragraphs (b), (c), and (d) of this section in accordance with applicable Federal policies on corrective payments; and
- (f) Administrative costs incurred by the agency for —
 - (1) Transportation for the applicant or recipient, his representative, and witnesses to and from the hearing;
 - (2) Meeting other expenses of the applicant or recipient in connection with the hearing;
 - (3) Carrying out the hearing procedures, including expenses of obtaining the additional medical assessment specified in § 431.240 of this subpart; and
 - (4) Hearing procedures for Medicaid and non-Medicaid individuals appealing transfers, discharges and determinations of preadmission screening and annual resident reviews under part 483, subparts C and E of this chapter.

PART 434 — CONTRACTS

Subpart C — Contracts with HMOs and PHPs: Contract Requirements

ADDITIONAL REQUIREMENTS

42 C.F.R. § 434.32 Grievance procedure.

The contract must provide for an internal grievance procedure that —

- (a) Is approved in writing by the agency;
- (b) Provides for prompt resolution; and
- (c) Assures the participation of individuals with authority to require corrective action.