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4.2 FAIR HEARINGS

The single state agency has an established procedure for fair hearings by which a claimant or provider, except Long Term Care providers, may request an appeal in relation to a claim for medical assistance and medical vendor payment. The fair hearing procedure meets the requirements of 42 CFR 431.200 through 431.250.

NOTE: See Attachment 4.19-D for the Long Term Care Appeals procedure.

1. Claimant Appeals

A. A claimant or his representative may request a fair hearing to the local Medicaid office or directly to the Department of Health and Hospitals, Bureau of Appeals, within thirty (30) days of receiving adequate and/or timely notice in relation to a change in his eligibility for medical assistance benefits.

All applicants and recipients are informed of the right to request a hearing and the procedure. All hearing requests are directed to the Department of Health and Hospitals, Bureau of Appeals, and are acknowledged upon receipt. The local office prepares a summary of evidence and a copy is provided to the claimant. The claimant is notified ten (10) days in advance of the hearing date and the hearing is scheduled at a time and place convenient to the claimant.

If an issue of fact or judgment is involved, the Hearing Officer determines if the action is to be delayed pending the hearing decision and the claimant is informed of this determination.

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The claimant can be represented by anyone of his choice. The State Hearing Officer was appointed by the Secretary of the Department of Health and Hospitals to conduct fair hearings for applicants and beneficiaries. The local office staff responsible for the decision attends the hearing and presents facts and policy relating to the issue. The claimant has opportunity to present his evidence, review documents and question any witness. The Hearing Officer may request additional information before a decision is made. When the hearing involves a medical issue, a medical assessment other than that of the person or the persons involved in making the original decision is obtained and made a part of the record if the Hearing Officer or the claimant considers this necessary.

A final hearing decision is made by the Secretary of the Department of Health and Hospitals in accordance with time frames specified by 42 CFR 431.244(f). The decision is the final decision of the Secretary on the issue presented and the claimant is notified of the decision in writing. If a corrected payment is applicable this authorization is made in the decision. The official record is available to the claimant for review. The local office is bound by the hearing decision and action as directed in the decision must be taken within thirty (30) days.

B. Notification and Time Limit to Request a Fair Hearing

1. Reduction, Termination or Discontinuance

a. Timely notice (advance notice of adverse action) is mailed at least ten (10) days before the date of action and shall be given when:

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(1) The client becomes ineligible for a vendor payment because of increased income or resources above the maximum.

(2) It is the agency's decision to reduce, terminate, or discontinue either vendor payments or Medicaid eligibility.

(3) Medical assistance is terminated because of SSI discontinuance.

When medical assistance benefits are discontinued because of SSI discontinuance, the notice shall give the effective month of closure.

b. If the beneficiary requests a fair hearing within the ten (10) day timely notice period, the local office shall not take the action proposed until a decision is rendered after a hearing unless:

(1) A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in federal or state law or policy.

(2) A change affecting the client's eligibility occurs while the hearing decision is pending and the client fails to request a hearing after receiving notice of the change.

c. In certain instances timely notice is not necessary but adequate notice (a written notice sent not later than the date of action) is required. The notice includes a statement of what action the agency intends to take, the reasons for the intended action.

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explanation of the individual's right to request a fair hearing, and the circumstances under which assistance is continued. Adequate notice shall be given no later than the date of action when the agency receives a clear, written statement signed by a beneficiary that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the beneficiary has indicated in writing that he understands that this must be the consequence of supplying such information.

Timely and adequate notice are given by form.

A change requiring only adequate notice may be made on the date adequate notice is given.

The beneficiary has thirty (30) days from the date that the timely or adequate notice is mailed to request a fair hearing.

The Appeals Bureau shall advise the aggrieved of any rights he or she may have and of procedures required to pursue civil remedies under Judicial Review subsequent to a negative decision by the Bureau.

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(2) Certification and Rejections

When a decision is made to approve or reject an application for medical assistance under Title XIX or nursing home vendor payments, the client shall be notified by Form 18-N.

The client has 30 days from the date of adequate notice or notification by Form 18-N in which to request a fair hearing.

C. Denial or Dismissal of Request for a Fair Hearing

A request for a fair hearing is dismissed or denied when:

(1) It has been withdrawn by the claimant or his representative in writing.

(2) The sole issue is one of state or federal law or regulation requiring automatic adjustment in assistance for classes of recipients.

(3) It is abandoned. A hearing is considered abandoned when the claimant fails to attend the scheduled hearing without good cause (see 19-726 (4) for "good cause").

(4) It was not filed within 30 days from the date the notice was mailed.

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II. Provider Appeals

A. A provider or his representative may request a fair hearing (orally or in writing) in the following manner.

(1) Notice of Violation

Should the agency have substantial information that indicates that a provider

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may have submitted bills for payment or received payment to which he may not be properly entitled, or has been practicing in a manner inconsistent with program regulations, the agency shall give appropriate notification to the provider of the discrepancies noted, except in such cases where the sanctions may involve further review or investigation. The notification shall set forth:

(a) The nature of the discrepancies or violations;

(b) Notification of further actions to be taken or sanctions to be imposed by the agency;

(c) Notification of any actions required of the provider; and

(d) Notification of the provider's right to an informal discussion and/or his right to an administrative hearing.

(2) Right To An Informal Discussion

Within 15 calendar days of the agency's notice of violation, the provider may request an informal discussion. Such request must be made to the agency in writing. A meeting will be arranged within 20 days of such a request. The informal discussion is designed to provide an opportunity for the provider to informally review the situation; for the agency to offer alternatives based on corrections or clarifications, if any; and for the provider to evaluate the necessity for seeking an administrative hearing. During this informal discussion, the provider will be afforded the opportunity to talk with agency personnel involved in the situation, to review pertinent documents on which the alleged violation is based, to ask questions, to seek clarifications, and to provide additional information.

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Following the informal discussion, the agency shall inform the provider in writing of the results which could range from cancelling, modifying, or upholding the action stated in the original violation notification. The provider has the right to request an administrative hearing within 30 days of the written notice of the results of the informal discussion.

(3) Right To Request Administrative Hearing

Within 30 calendar days after notice of the agency's notice of violation or the notice of results of informal discussion, the provider may request an administrative hearing. Such request must be in writing to the Appeals Section. The request must contain a statement and be accompanied by supporting documents setting forth with particularity those asserted violations and discrepancies which the provider contends are in compliance with the agency's regulations and the reasons for such contentions.

Unless a timely and proper request is received by the Appeals Section, the findings of the agency shall be considered a final and binding administrative determination.

(a) Right To Counsel

Any party may appear and be heard at any proceeding described herein through an attorney at law or through a designated representative. All persons appearing in proceedings before the Appeals Section shall conform to the standards of conduct practiced by attorneys before the courts of the state. If a person does not conform to those standards, the Hearing Officer may decline to permit the person to appear in the proceeding, or may exclude the person from the proceeding.

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(b) Appearance in Representative Capacity

A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying himself by name, address, and telephone number, and identifying the party represented, and shall have a written authorization to appear on behalf of the provider. The Appeals Section shall notify the provider in writing of the name and telephone number of the agency's representatives.

(c) Form of Papers

All papers filed in any proceeding shall be typewritten. All papers shall be signed by the party or his authorized representative or attorney and shall contain his address and telephone number. At least an original and two copies of all papers shall be filed with the Appeals Section.

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(4) Preliminary Conference

(a) Upon receipt of a request for an administrative hearing, the Appeals Section may schedule a preliminary conference within 20 calendar days of receipt of such request. The purposes of the preliminary conference include but are not limited to the following:

(i) Clarification, formulation and simplification of issues;

(ii) Resolution of matters in controversy;

(iii) Exchange of documents and information;

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(iv) Review of any audit findings;

(v) Reconsideration of any suspension or withholding of payments;

(vi) Stipulations of fact so as to avoid unnecessary introduction of evidence at the formal review;

(vii) The identification of witnesses; and

(viii) Such other matters as may aid disposition of the issues.

When the Appeals Section schedules a preliminary conference, it shall notify the provider in writing. The notice shall direct any parties and their attorneys to appear at a specified date, time and place.

(5) Results Of Preliminary Conference

(a) Where the preliminary conference resolves all or some matters in controversy, the agency shall send a written summary of the findings agreed to at the conference, the results of the conference and a statement of further actions required of the provider are to be initiated by the agency.

(b) Where the preliminary conference does not resolve all matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference, or at a time mutually convenient to all parties.

(6) Notice Of Administrative Hearing

When an administrative hearing is scheduled, the Appeals Section shall

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notify the provider and/or his attorney in writing of the date, time and place of the hearing. Notice shall be mailed not less than 10 calendar days before the scheduled date of the hearing. The agency shall also include a summary of the results of the preliminary conference.

(a) Conduct of Hearing

(i) The hearing shall be conducted by a Hearing Officer who is authorized to conduct such hearings.

(ii) Testimony shall be taken only on oath, affirmation or penalty of perjury.

(iii) Each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

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(iv) Any relevant evidence 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 existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil or criminal actions.

(v) The Hearing Officer may question any party or witness and may admit any relevant and material evidence.

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(vi) The Hearing Officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the Hearing Officer shall explain the issues and the order in which evidence will be received.

(vii) A party has the burden of proving whatever facts it must establish to sustain its position except that a provider has the burden of proof to show that services were in fact rendered as billed.

(viii) The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(b) Witnesses and Subpoenaes

(i) A party shall arrange for the presence of his witnesses at the hearing.

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(ii) A subpoena to compel the attendance of a witness may be issued by the Hearing Officer upon written request by a party and a showing of the need therefore.

(iii) A subpoena may be issued by the Hearing Officer on his own motion.

(iv) An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records shall be made by affidavit to the Hearing

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Officer, giving the name and address of the person or entity upon whom the subpoena is to be served. It shall describe the documents, papers, books, account letters, photographs, objects, or tangible things not privileged that are desired to be produced and a showing of the materiality thereof to the issue involved in the proceeding. It shall also include a statement, that to the best of the applicant's knowledge the witness has such items in his possession or under his control.

(c) Amendments

At any time prior to the completion of the hearing, amendments may be allowed on just and reasonable terms to add any party who ought to have been joined, discontinue as to any party, change the allegations or defenses, or add new causes of action or defenses. Where the agency seeks to add a party or a cause of action or change an allegation, notice shall be given to the appropriate parties. Where a party other than the agency seeks to add a party or change a defense, notice shall be given pursuant to section 19-927 B. The Hearing Officer shall continue the hearing for such time as he deems appropriate, and notice of the new date shall be given pursuant to section 19-927.

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(d) Continuances or Further Hearings

(1) The Hearing Officer may continue a hearing to another time or place, or order a further hearing on his own motion or upon showing of good cause, at the request of any party.

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(ii) Where the Hearing Officer determines that additional evidence is necessary for the proper determination of the case, he may at his discretion:

(x) Continue the hearing to a later date and order the party to produce additional evidence; or

(xx) Close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence so submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

(iii) Written notice of the time and place of a continued or further hearing shall be given except that when a continuance or further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.

(e) Record of Hearing

A complete record of the proceedings shall be made. The testimony shall be transcribed and copies of other documentary evidence shall be reproduced when directed by the Hearing Officer. The record will also be transcribed and reproduced at the request of a party to the hearing provided he bears the cost of the copy of the transcript.

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(7) Decision

(a) At the conclusion of the hearing, the Hearing Officer shall take the matter under submission and shall submit to the Secretary of DHHR a proposed decision.

(b) The proposed decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and an order.

(c) The Secretary of the agency may adopt the proposed decision or he may reject the proposed decision and have a decision prepared based upon the record, or he may remand the matter to the Hearing Officer to take additional evidence. In the latter case, the Hearing Officer thereafter shall submit to the Secretary a new proposed decision.

(d) The decision shall be final upon adoption by the Secretary of the agency subject only to judicial review by the courts. Copies of the decision shall be mailed to the provider at his last known address and to any representative thereof.

(8) Failure to Appear

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(a) If a provider fails to appear at a hearing, a decision may be issued by the Appeals Section dismissing the hearing. A copy of the decision shall be mailed to each party together with a statement of the provider's right to reopen the hearing.

(b) Any dismissal may be rescinded if the provider makes application to the Hearing Officer in writing within 10 calendar days after the mailing of the decision, showing good cause for his failure to appear at the hearing.