MEDICAID SERVICES MANUAL
TRANSMITTAL LETTER

August 23, 2011

TO: CUSTODIANS OF MEDICAID SERVICES MANUAL

FROM: MARTA E. STAGLIANO, CHIEF, COMPLIANCE

SUBJECT: MEDICAID SERVICES MANUAL CHANGES
CHAPTER 3100 – HEARINGS

BACKGROUND AND EXPLANATION

Revisions to the Medicaid Services Manual (MSM), Chapter 3100, Hearings, are indicated to add specific reference to Nevada Check Up (NCU) enrollment and disenrollment Fair Hearings. Several Provider Sections which made reference to Sections within 3104, Recipient Sections, needed to be expanded to include language and policy specific to Providers.

The Definitions sections have been removed to be consistent with the MSM Chapters.

Throughout the chapter, grammar, punctuation, and capitalization changes were made, duplications removed, acronyms used and standardized, and language reworded for clarity. Renumbering and re-arranging of sections was necessary.

These policy changes are effective August 24, 2011.

MATERIAL TRANSMITTED	MATERIAL SUPERSEDED
MTL 18/11 CHAPTER 3100 – HEARINGS	MTL 17/03, 42/05 CHAPTER 3100 – HEARINGS

Manual Section	Section Title	Background and Explanation of Policy Changes, Clarifications and Updates
3100	**Introduction**	Added reference to Nevada Check Up applicant or representative enrollment/disenrollment eligibility grievances.
3101	**Regulatory Authority**	Added 42 CFR 457.1130 and NRS 422.3045
3102	**Definitions**	Moved all definitions to Definition Addendum.
3103	**Policy**	Added reference to NRS 422.276.

Manual Section	Section Title	Background and Explanation of Policy Changes, Clarifications and Updates
3104.1	**Fair Hearings**	Removed Reference to substantiation of good cause. Added Nevada Check Up Eligibility Fair Hearings section.
3104.2	**Disposition of a Fair Hearing Request**	Removed information stating withdrawal requests. Added policy on Primary insurance policy and access.
3104.3	**Hearing Notification, Scheduling and Location**	Added HPM Section and Clarified existing information.
3104.7	**Conduct of Hearing**	Removed "tape recorder" information and Moved Administering Oaths.
3105	**Medicaid Provider Hearings**	Removed references to Section 3104 throughout this whole section. Added language and policy expansion specific to providers in each subsection.
3105.1	**Request for a Medicaid Provider Fair Hearing**	Removed policy not applicable to providers and added provider specific reason for which a Fair Hearing may be requested.
3105.5	**Preparation/ Presentation**	Added language requiring providers or their representation to be present at a Fair Hearing.
3105.7	**Action or Incorrect Determination Notice**	Added Section.

DIVISION OF HEALTH CARE FINANCING AND POLICY

MEDICAID SERVICES MANUAL
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HEARINGS

3100 INTRODUCTION

The Division of Health Care Financing and Policy (DHCFP) (also referred to as agency) makes a Fair Hearing process available to any Nevada Medicaid or Nevada Check Up (NCU) recipient who disagrees with: any action resulting in the reduction, suspension, termination, denial or denial-in-part of a Medicaid service; any recipient who makes a request for a service and believes the request was not acted upon with reasonable promptness by DHCFP and/or the Health Plan; and any NCU applicant or authorized representative who chooses to formally aggrieve a denial and/or disenrollment eligibility determination. Also, the DHCFP makes available a Fair Hearing process for any Nursing Facility (NF) resident eviction.

The DHCFP makes available a Fair Hearing process whereby providers may request a hearing for any adverse action taken by the Division or its agents, which affects the provider's participation in the Medicaid program, reimbursement for services rendered to eligible Medicaid recipients recoupment of overpayments or disenrollment.

All Medicaid policies and requirements (such as prior authorization, etc.) are the same for NCU, with the exception of the four areas where Medicaid and NCU policies differ as documented in Chapter 3700.

3101 REGULATORY AUTHORITY

The Fair Hearing process for recipients is a mandated service. The citation denoting the right to a hearing is found in 42 Code of Federal Regulations (CFR), §431, Subpart E; 42 CFR 457.1130 and Nevada Revised Statute (NRS) 422.3045. In addition, the citation denoting the appeals procedure for Nursing Facilities (NF) and Intermediate Care Facility for the Mentally Retarded (ICF/MR) is found in 42 CFR §431, Subpart D.

The Fair Hearing process for providers is cited at NRS Chapter 422.306 – Hearing to review action taken against provider of services under state plan for Medicaid regulations; appeal of final decision.

3102 RESERVED

3103 POLICY

3103.1 Pursuant to Code of Federal Regulations (42 CFR) at 431 Subpart E, the Division of Health Care Financing and Policy (DHCFP), will provide an opportunity for a Fair Hearing to any person whose claim for assistance is denied, reduced, suspended, terminated or not acted upon promptly. Pursuant to Nevada Revised Statute (NRS) 422.276, DHCFP will provide an opportunity for a Fair Hearing to any person whose claim for service was not acted upon promptly.

Pursuant to NRS 422.306, DHCFP will provide an opportunity for a Fair Hearing to review an adverse action taken against a provider of services.

DHCFP provides the Fair Hearing process pursuant to Sections 3104 and 3105 of this Chapter.

3104 RECIPIENT FAIR HEARINGS

3104.1 FAIR HEARINGS

3104.1A MEDICAID SERVICES FAIR HEARING

1. WHO MAY REQUEST

A recipient or his authorized representative may request a Fair Hearing. A request for a Fair Hearing must be made in writing and signed by the recipient or the recipient's authorized representative.

2. DATE OF REQUEST

The date of the request for a Fair Hearing is the date the request is received by the DHCFP office. The request must be received by the DHCFP office within 90 calendar days from the Notice Date, unless a recipient can substantiate "good cause" for not doing so. When the deadline falls on a weekend or holiday, the deadline is extended to the next working day.

The request for hearing must contain the recipient's name, address, telephone number and Medicaid number as well as the name, telephone number and address of the authorized representative, if applicable.

3. SUBJECT MATTER

DHCFP must grant an opportunity for a hearing to:

a. a recipient who requests it because his request for services is denied, reduced, suspended or terminated;

b. a recipient who requests it because his request for services is not acted upon with reasonable promptness;

c. a recipient who requests it because he believes the agency or Health Plan has taken an Action erroneously;

d. any resident of a nursing facility who believes the facility erroneously determined that he must be transferred or discharged;

e. any recipient who requests it because he believes the State has made an erroneous determination with regard to the Preadmission Screening and Annual Resident Review (PASARR) as outlined in Section 1917(e)(7) of the Social Security Act.

This includes an adverse determination that the recipient does not require specialized services as defined in 42 CFR §431.201; 431.206 and 431.220 as determined by a PASARR.

Pursuant to 42 CFR §204, the state will provide a system for a resident of a Nursing Facility (NF) to appeal a notice from the NF of intent to discharge or transfer the resident. Upon receipt of the discharge notice, the resident may request a Fair Hearing in writing by submitting a letter to DHCFP. DHCFP will inform the Department of Administration of the resident's request for a Fair Hearing. DHCFP does not take an adverse action against the resident; rather the facility takes the action via the discharge. DHCFP is not a party to the action.

3104.1B NEVADA CHECK UP ELIGIBILITY FAIR HEARINGS

1. WHO MAY REQUEST

Any Nevada Check Up (NCU) applicant or authorized representative (on behalf of the participant) that wishes to formally aggrieve a denial and/or disenrollment eligibility determination.

2. DATE OF REQUEST

Any individual that wishes to request a NCU hearing must do so in writing within thirty (30) calendar days following the date of the denial and/or disenrollment notice unless the applicant or authorized representative can substantiate "good cause" for not doing so. When the deadline falls on a weekend or holiday, the deadline is extended to the next working day.

a. Continued Enrollment:

All recipients have the right to continued enrollment throughout the Fair Hearing process. If the authorized representative (on behalf of the participant) chooses to continue enrollment, they must do so in writing no later than ten (10) calendar days following the date of the disenrollment notice. NCU reserves the right to recover any medical costs incurred while the recipient is receiving continued enrollment should the agency's decision be upheld.

3. SUBJECT MATTER

The agency must grant an opportunity for a hearing to an applicant or authorized representative (on behalf of the participant) in the event:

a. of a denial and/or disenrollment eligibility decision;

b. an application is not processed with reasonable promptness; or

c. one believes that the agency has taken an Action erroneously.

4. HEARING PREPARATION MEETING (HPM)

A HPM will be conducted by NCU. See NCU Chapter 1000 section 1003.17.

3104.2 DISPOSITION OF A FAIR HEARING REQUEST

A. DISMISSAL OF A HEARING REQUEST UPON

1. Withdrawal of a Hearing Request

A recipient may withdraw the request for a hearing at any time before a decision is rendered. Notification of the request for withdrawal will be submitted to the Hearing Officer who will dismiss the hearing request.

2. Abandonment of a Hearing Request

A hearing is considered abandoned and may be dismissed by the Hearing Officer when the recipient fails to appear for a scheduled hearing after having been properly notified. The recipient's request for hearing is considered abandoned unless they submit to the Hearing Officer substantiation for good cause for failing to appear. The Hearing Officer must receive the substantiation within ten (10) calendar days of the date of the scheduled hearing.

3. Agency Action

Medicaid/NCU may reverse its Notice of Decision (NOD) at any time during the hearing process. If a Medicaid/NCU reversal occurs, a report shall be submitted by the person conducting the review detailing the reason(s) for the reversal if a Fair Hearing has been calendared. The report must be forwarded to the Hearing Officer within five (5) business days following the reversal decision date or review date if a fair hearing has been scheduled. The Hearing Officer notifies the recipient the request for hearing is dismissed because Medicaid/NCU will not take action or has reversed the decision.

B. Denial of a Hearing Request

A hearing need not be granted when:

1. the sole issue is a Federal or State law requiring an automatic change adversely

affecting some or all recipients;

2. the request is not received timely;

3. the agency and/or Health Plan has not taken any Action affecting the recipient, or made an Adverse Determination, nor denied a request for services, or failed to act upon the request within reasonable promptness;

4. a recipient is not Medicaid/NCU eligible, except for PASRR determinations; or

5. the primary insurance policy and access (including appeal/hearing process) has not been exhausted. As Medicaid is the payer of last resort, all remedies under other insurance must be exhausted.

3104. 3 HEARING NOTIFICATION, SCHEDULING, AND LOCATION

A. HEARING PREPARATION MEETING (HPM)

Within ten (10) calendar days of a request for a hearing, the DHCFP Hearings Office shall contact the recipient to offer a HPM. The purpose is to provide the recipient an explanation of the action, which is the subject of the hearing request, and attempt to resolve the matter. Every effort is made to reconcile the disagreement without the necessity of a Fair Hearing. The right to a Fair Hearing is not affected by attendance at a HPM. The recipient may allow participation in the HPM by legal counsel, a friend or other spokesperson.

It is important the HPM be held at the earliest possible date, no later than twenty-one (21) working days after receipt of a hearing request. Rescheduling of an HPM shall be kept to a maximum of two (2), assuring completion within twenty-one (21) working days.

A HPM shall be conducted telephonically.

B. NOTICE OF A FAIR HEARING

The Department of Administration Hearing Officer shall notify all parties by mail as to the time, date and place the hearing has been scheduled. Recipients are given at least ten (10) calendar days advance notice of the scheduled hearing unless the recipient specifically requests a hearing in a shorter period of time based on an emergency.

At the discretion of the Hearing Officer, a Fair Hearing may be postponed if requested by either party.

If the recipient requests a postponement, the number of days postponed will extend the decision due date by an equal number of days.

C. FAIR HEARINGS BY TELEPHONE

Either party may request the Fair Hearing be conducted via telephonically. If a telephone hearing is held, the following procedures apply:

1. The Hearing Officer may hold teleconferences from the assigned Hearing Office. DHCFP representative(s), and/or Health Plan representative(s) must be at the location designated in the scheduling letter.

2. The recipient is advised at the time the hearing is scheduled that all other policies and procedures relative to hearings and program requirements still apply.

3. The Hearing Officer may request DHCFP, the Health Plan and the recipient to provide copies of any evidence or exhibits to be presented during the hearing to the Hearing Officer and the other parties prior to a scheduled telephone hearing. This does not preclude additional information from being presented during the hearing, or if requested, after the close of the hearing.

4. All telephone hearings must be tape recorded by the Hearing Officer over the telephone. This recording is the official record.

3104.4 PROGRAM PARTICIPATION PENDING A HEARING DECISION

A. RECOVERY

If Medicaid/NCU services are continued until a decision is rendered, such cost of services are subject to recovery by DHCFP if the agency's action is sustained or the hearing request is withdrawn by the recipient.

B. MAINTAINING MEDICAID/NCU SERVICES

If the agency mails the notice as required, and the recipient requests a hearing before the Date of Action, DHCFP or Health Plan will not terminate or reduce services until a decision is rendered after the hearing unless:

1. the Hearing Officer makes a determination the sole issue is one of Federal or State law or policy and the agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision; or

2. the recipient requests in writing that benefits not be continued pending a hearing decision; or

3. the request for hearing is denied or dismissed.

C. REINSTATING MEDICAID SERVICES

1. Discretionary:

When a recipient requests a hearing no more than the 10th calendar day after the Date of Action, the agency may reinstate benefits if requested by the recipient. The reinstated services will continue until a hearing decision is rendered unless, at the hearing, it is determined that the sole issue is one of Federal or State law or policy.

2. Mandatory:

The agency must reinstate and continue services until a decision is rendered after a hearing if:

a. action is taken without the required advance notice;

b. the agency mails the 10-day or 5-day notice as required under 42 CFR §431.211 or 42 CFR §431.214, 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 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.

3104.5 HEARING PARTICIPATION

A. ATTENDANCE

Attendance at a hearing is limited to those directly concerned; namely, the Hearing Officer, recipient(s), and/or their witnesses, counsel or authorized representative(s), interpreter, witnesses and representatives of DHCFP, and if applicable, representatives from the Health Plan. Counsel for the agency and/or Health Plan may also attend as necessary.

Medicaid/NCU assures the availability for recipients, their authorized representatives and witnesses of necessary transportation to and from the hearing.

B. GROUP HEARINGS

A series of recipient requests for a hearing may be consolidated upon agreement of all parties by conducting a single group hearing in cases in which the sole issue involved is one of State and/or Federal law, regulation or policy.

3104.6 PREPARATION/PRESENTATION

A. AGENCY/HEALTH PLAN

It is the responsibility of the agency and/or Health Plan representative to be present at the hearing, in person or telephonically, and to provide testimony and/or evidence regarding the agency's and/or Health Plan's action. This includes the organization of oral and written evidence and preparation of a Basis of Action summary substantiating the decision to be presented at the hearing. This summary becomes part of the record at the end of the hearing.

B. RECIPIENT

1. Before the date of the hearing and during the hearing the recipient may examine and request copies of their own case information. Authorized representatives must provide a current signed release from the recipient to permit release of records. DHCFP and/or Health Plan will provide the copies free of charge. The recipient shall not have access to confidential information.

2. It is the responsibility of the recipient to provide testimony and/or evidence in support of their position either in person or telephonically. If the hearing involves a legal issue only, the recipient's presence, in person or telephonically, is not necessary. Testimony can be provided by a representative.

   Recipients are allowed to bring witnesses and submit evidence to establish all pertinent facts and circumstances relative to the issue and to present arguments without undue interference. They are also allowed to question or refute any testimony or evidence and confront and cross-examine adverse witnesses. New evidence not previously provided to DHCFP or Health Plan, but which is believed to have a bearing on the action taken, must be provided to DHCFP prior to the hearing for evaluation and any necessary action.

3. Recipients are provided a copy of all evidence presented at the hearing by DHCFP.

3104.7 CONDUCT OF HEARING

A. CONTROL

The Hearing Officer controls the hearing and ensures only relevant issues are considered. Disrespectful language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing constitutes grounds for immediate exclusion of such person from the hearing by the Hearing Officer and the hearing decision will be based on evidence submitted. The Hearing Officer shall record hearing proceedings. The Hearing Officer's Transcripts of Evidence constitutes the sole official record.

B. OPENING THE HEARING

At the opening of the hearing, the Hearing Officer shall:

1. Introduce their self;
2. Explain the reason for the hearing and the role of the Hearing Officer;
3. Assure all persons in attendance at the hearing are identified by name and purpose of attendance;
4. Advise all persons in attendance that the hearing is being tape-recorded.

C. ADMINISTERING OATHS

Testimony under oath shall be required at the discretion of the Hearing Officer.

D. TESTIMONY AND EVIDENCE

Nevada Rules of Evidence do not apply in the hearing. The Hearing Officer:

1. Excludes irrelevant, immaterial or unduly repetitious evidence;
2. Provides the parties an opportunity to present their case, to present witnesses, introduce evidence and cross-examine witnesses and examine evidence; and
3. Collects and logs relevant evidence exhibits.

E. Closing the Hearing

At the close of the hearing, the Hearing Officer advises persons in attendance:

1. When a decision is expected to be made;

2. That the decision will be made based on program policy and exclusively on the testimony and evidence presented at the hearing; and

3. The parties will be advised in writing by certified mail of the decision.

3104.8 ACTION ON INCORRECT NOTICE OF DECISION (NOD)

A. If, prior to the hearing, it becomes apparent the recipient has received an incorrect NOD for Prior Authorization Request from DHCFP or the Health Plan, a corrected notice must be sent to the recipient if the proposed action remains unchanged.

B. If, after a hearing has begun, it becomes apparent the recipient received an incorrect NOD for Prior Authorization Request (i.e., the notice quotes incorrect factual and legal reason(s) or omits additional factual and legal reason(s) pertinent to the issue), the Hearing Officer may offer the recipient the choice of either accepting the incorrect notice, with the necessary corrections noted for the record and continuing with the hearing; or setting the hearing to a later date to allow DHCFP or the Health Plan time to prepare and serve the corrected NOD.

3104.9 SUBMISSION OF ADDITIONAL EVIDENCE

During a hearing, additional evidence related to the hearing issue may be submitted. The Hearing Officer, recipient, DHCFP or Health Plan may request additional evidence be submitted which is not available at the hearing.

The Hearing Officer shall:

a. Recess the hearing if additional evidence has been submitted, to allow for review by the recipient, DHCFP or Health Plan; or

b. Continue the hearing to a later date and order further investigation or request either party to review or produce the additional evidence; or

c. Close the hearing, but hold the record open to permit submission of any additional evidence.

3104.10 MEDICAL ISSUES

When the hearing involves medical issues such as those concerning a diagnosis or an examining physician's report, the Hearing Officer may require an additional medical assessment other than that of the person involved in making the original assessment. The request is directed to DHCFP or the Health Plan for evaluation and follow-up. Any additional assessment determined to be necessary is obtained at DHCFP or the Health Plan's expense. The hearing may be held open for a specified length of time pending receipt of such requested information. This additional assessment must be made part of the record.

3104.11 HEARING DECISION

The Hearing Officer's decision must be in writing and comply with Medicaid/NCU program policy. The decision is based exclusively on evidence introduced at the hearing. Changed physical or social factors following the DHCFP or Health Plan action being appealed cannot be considered in rendering the hearing decision.

a. BASIS

Decisions by the Hearing Officer shall:

1. Be based exclusively on the evidence introduced at the hearing;

2. Comply with applicable regulations in effect at the time of the agency or Health Plan's action;

3. Summarize the findings of fact;

4. Identify and cite supporting evidence and regulation;

5. Be submitted in written format, to the Deputy Administrator, DHCFP or designee.

b. APPEAL IS DENIED

Denied decisions are adverse to the recipient. When the appeal is denied, the Hearing Officer will notify DHCFP or the Health Plan and the recipient of the right to judicial review.

Recipient withdrawals and abandonments are equivalent to a denied appeal. DHCFP may institute recovery procedures against the recipient to recoup the cost of any services furnished by Medicaid/NCU.

c. APPEAL IS SUSTAINED

Sustained decisions are favorable to the recipient. DHCFP or the Health Plan must take corrective action promptly, retroactive to the date an incorrect action was taken. If appropriate, the agency must provide for admission or readmission of a recipient to a facility if the hearing decision is favorable to the recipient or if DHCFP decides in the recipient's favor before the hearing.

d. DECISION DUE DATE

Within ninety (90) calendar days after the date of the request for a hearing has been received by the DHCFP office, the recipient, and the Hearings Unit must be notified of the Hearing Officer's decision specifying the factual and legal reasons for the decision and identifying the supporting evidence relied upon to reach the decision. A copy of the decision must be delivered by certified mail to each party and to their attorney or other authorized representative.

The time period for a hearing decision may be extended for a period equal to the total delay if the recipient requests a delay or postponement of the hearing proceedings and waives his right to have a decision rendered within 90 days after the date of the request for a hearing.

3104.12 RIGHT TO APPEAL HEARING DECISION

The Decision of the Hearing Officer is final. The Hearing Decision may be appealed by any party, within ninety (90) days after the date on which the written notice of decision is mailed, to the appropriate District Court of the State of Nevada. The day after the mailing is the first day of the 90-day period.

3104.13 HEARING RECORD

A. CONTENT

A hearing record is maintained by the Department of Administration, Hearing Office. The record consists of all papers and requests filed in the proceeding, the transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing, all exhibits received or considered and the Decision letter.

B. RETENTION OF HEARING RECORD

Administrative hearing files and taped recordings must be retained no less than six (6) years from the date the hearing decision was rendered.

If a hearing decision is appealed, the hearing record must be retained until the court action is resolved or the designated retention period, whichever is later.

C. COPYING THE HEARING RECORD

Copies of the Hearing Record are made as follows:

1. The requestor may secure a copy of the recording and/or transcript of a Fair Hearing by written request to the Department of Administration. Please note that the requestor shall be invoiced from the Department of Administration for this service and the requestor is responsible for the payment of these records.

2. An official typed transcription of the recording of the hearing is prepared for the District Court and recipient when a hearing decision is appealed. Within 90 days after the service of the petition for judicial review, DHCFP or its designee shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, including, without limitation, a transcript of the evidence resulting in the final decision of the Hearing Officer.

   * The requested recording and/or transcript is free of charge to the recipient in the event that the recipient appeals to District Court.

3105 MEDICAID PROVIDER HEARINGS

3105.1 REQUEST FOR A MEDICAID PROVIDER FAIR HEARING

A. WHO MAY REQUEST

A Nevada Medicaid/NCU provider may request a Fair Hearing when they disagree with an adverse determination taken against them by the agency, the Quality Improvement Organization (QIO) vendor/fiscal agent or the Health Plan. An adverse determination may include, but is not limited to:

1. an outcome of the Fiscal Agent's provider appeal determination regarding a denied claim;
2. a determination to suspend payment;
3. lockout;
4. recoupment of an overpayment; or
5. disenrollment or denied renewal of a provider contract.

The provider must exhaust any internal grievance process available through the QIO vendor/Fiscal Agent, Health Plan or third party Health Plan Administrator prior to a DHCFP Fair Hearing.

B. DATE OF REQUEST

The date of request for a hearing is the date the request is received by the DHCFP Hearings Office. A request for a Fair Hearing must be received by the DHCFP Hearings Office within 90 calendar days from the date of the adverse determination notification. When a determination notification provides a specific timeframe in which a Fair Hearing may be requested, the timeframe specified in the notification is the applicable timeframe. When the deadline falls on a weekend or holiday, the deadline is extended to the next working day.

C. REQUEST FOR A FAIR HEARING

A request for a Fair Hearing must be submitted to DHCFP Hearing Office in writing and must include the provider name, Medicaid provider number, correspondence address, contact telephone number, the reason(s) why the provider disagrees with the determination and a copy of the determination notification from the agency, Fiscal Agent, Health Plan or third party plan administrator

3105.2 DISPOSITION OF A MEDICAID PROVIDER FAIR HEARING REQUEST

A. DISMISSAL OF A HEARING REQUEST UPON:

1. Withdrawal of a Hearing Request

   A provider may withdraw a request for a Fair Hearing at any time before a decision is rendered. A request to withdraw a hearing must be submitted in writing to the Hearing Officer who may dismiss the hearing request.

2. Abandonment of a Hearing Request

   A provider hearing is considered abandoned and may be dismissed by the Hearing Officer when the provider fails to appear for a scheduled hearing after having been properly notified. The provider's request for hearing is considered abandoned unless they submit to the Hearing Officer substantiation for good cause for failing to appear. The Hearing Officer must receive the substantiation within ten (10) calendar days of the date of the scheduled hearing.

3. Agency, Fiscal Agent or Health Plan Action

   The agency, Fiscal Agent or Health Plan may reverse its adverse action determination at any time during the hearing process. If a determination reversal occurs, notification of the reversal must be made to the Hearing Officer, if a Fair Hearing had been scheduled. The Hearing Officer notifies the provider the request for hearing is dismissed because Medicaid, the Fiscal Agent or Health plan will not take the action or has reversed the decision.

B. DENIAL OF A HEARING REQUEST

A hearing need not be granted when:

1. the sole issue is a Federal suspension or ban of regulation at the Federal level effecting providers.

2. the request is not received timely.

3. the provider has not exhausted the Appeal process available through the Fiscal Agent, the Health Plan or a third party plan administrator.

3105.3 FAIR HEARING NOTIFICATION, SCHEDULING AND LOCATION

A. HEARING PREPARATION MEETING (HPM)

Nevada Medicaid Hearings Office will offer a HPM with the provider to allow an opportunity to have an informal discussion regarding the determination being disputed, and to attempt to resolve the disputed matter. A provider may refuse a HPM if they choose. The right to a Fair Hearing is not affected by attendance at a HPM. A provider may designate participation in the HPM by legal counsel or a representative.

A HPM shall be conducted telephonically.

B. NOTICE OF A FAIR HEARING

The Department of Administration Hearing Officer shall notify all parties by mail as to the date, time and location of the Fair Hearing.

At the discretion of the Hearing Officer, a Fair Hearing may be postponed if requested by either party.

C. HEARINGS BY TELEPHONE

1. A representative of each party must be in attendance at a Provider Fair Hearing.

2. The Hearing Officer may allow testimony from witnesses telephonically.

3. Telephonic testimony is recorded by the Hearing Officer and is part of the official record.

3105.4 HEARING PARTICIPATION

A. ATTENDANCE

Attendance at a hearing is limited to those directly concerned, namely the:

1. Hearing Officer;

2. provider;

3. provider’s witnesses, counsel or authorized representative(s) for the provider;

4. interpreter;

5. witnesses, counsel and representatives of Medicaid; and

6. representatives, counsel and witnesses from the Health Plan.

B. GROUP HEARINGS

At the discretion of the Hearing Officer, a series of provider requests for a hearing may be consolidated by conducting a single group hearing in cases in which the sole issue involved is one of State and/or Federal law, regulation, or policy.

3105.5 PREPARATION/PRESENTATION

A. AGENCY/HEALTH PLAN

1. It is the responsibility of the agency and/or health plan representative to be present at the Fair Hearing, unless permission has been granted prior to the Fair Hearing by the Hearing Officer to participate telephonically.

2. The agency or the Health Plan must provide testimony and/or evidence regarding the agency's and/or Health Plan's action. This includes the organization of oral and written evidence and preparation of a Basis of Action summary substantiating the decision to be presented at the Fair Hearing. This summary becomes part of the record at the conclusion of the Fair Hearing. Witness testimony may be provided telephonically at the discretion of the Hearing Officer.

3. All documents being presented at a Fair Hearing by the agency or Health Plan must be made available to the provider or representative and to the Hearing Officer at least five (5) days prior to the Fair Hearing.

B. PROVIDER

1. It is the responsibility of the provider or representative to be present at the Fair Hearing, unless permission has been granted prior to the Fair Hearing by the Hearing Officer to participate telephonically.

2. Providers must provide testimony and/or evidence in support of their position. Testimony may be provided telephonically at the discretion of the Hearing Officer. Providers may bring witnesses and submit evidence to establish all pertinent facts and circumstances relative to the issue and to present arguments without undue interference. They may also question or refute any testimony or evidence and confront and cross-examine adverse witnesses. New evidence not previously provided to DHCFP or the health plan, but which is believed to have a bearing on the action taken, must be provided to all parties prior to the hearing for evaluation and any necessary action.

3. All documents being presented at a Fair Hearing by the provider or representative must be made available to the agency or Health Plan and to the Hearing Officer at least five (5) days prior to the Fair Hearing.

3105.6 CONDUCT OF A FAIR HEARING

A. CONTROL

The Hearing Officer controls the hearing and ensures only relevant issues are considered. Disrespectful language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing constitutes grounds for immediate exclusion of such person from the hearing by the Hearing Officer and the hearing decision will be based on evidence submitted. A recorder shall be used by the hearing officer to record hearing proceedings. The Hearing Officer's Transcripts of Evidence constitutes the sole official record.

B. OPENING THE HEARING

At the opening of the hearing, the Hearing Officer shall:

1. introduce their self;

2. explain the reason for the hearing and the role of the Hearing Officer;

3. assure all persons in attendance at the hearing are identified by name and purpose of attendance; and

4. advise all persons in attendance that the hearing is being recorded.

C. ADMINISTERING OATHS

Testimony under oath shall be required at the discretion of the Hearing Officer.

D. TESTIMONY AND EVIDENCE

Nevada Rules of Evidence do not apply in the hearing. The Hearing Officer shall:

1. exclude irrelevant, immaterial or unduly repetitious evidence;

2. provide the parties an opportunity to present their case, to present witnesses, introduce evidence and cross-examine witnesses and examine evidence; and

3. collect and log relevant evidence exhibits.

E. CLOSING THE HEARING

At the close of the hearing, the Hearing Officer shall advise persons in attendance:

1. when a decision is expected to be made;

2. that the decision will be made based on program policy and exclusively on the testimony and evidence presented at the hearing; and

3. the parties will be advised in writing by certified mail of the decision.

3105.7 ACTION ON INCORRECT DETERMINATION NOTICE

If the agency, fiscal agent or health plan recognizes an incorrect or inaccurate determination Notice has been issued, a corrected Amended Notice will be issued by the agency, Fiscal Agent or Health Plan. The action and effective date remain unchanged unless otherwise notified in the Amended Notice.

3105.8 SUBMISSION OF ADDITIONAL EVIDENCE

During a hearing, additional evidence related to the hearing issue may be submitted. The Hearing Officer, provider, DHCFP or Health Plan may request additional evidence be submitted which is not available at the hearing. The Hearing Officer may:

a. recess the hearing if additional evidence has been submitted, to allow for review by the provider, DHCFP or Health Plan;

b. continue the hearing to a later date and order further investigation or request either party to review or produce the additional evidence; or

c. close the hearing, but hold the record open to permit submission of any additional evidence.

3105.9 HEARING DECISION

The Hearing Officer's decision must be in writing and comply with Nevada Medicaid or the Health Plan's program policy. The decision is based exclusively on evidence introduced at the hearing.

a. BASIS

Decisions by the Hearing Officer shall:

1. be based exclusively on the evidence introduced at the hearing;

2. comply with applicable regulations in effect at the time of the agency's or health plan's action;

3. summarize the findings of fact;

4. identify and cite supporting evidence and regulation; and

5. be submitted in written format, to the Deputy Administrator, Medicaid or designee.

b. APPEAL IS DENIED

Denied decisions are adverse to the provider. When an appeal is denied, the Hearing Officer will notify DHCFP or the Health Plan and the provider of their right to judicial review.

Provider withdrawals and abandonments are equivalent to a denied appeal. DHCFP may institute recovery procedures against the provider to recoup the cost of any services furnished.

c. APPEAL IS SUSTAINED

Sustained decisions are favorable to the provider. DHCFP or the Health Plan must take corrective action promptly, retroactive to the date an incorrect action was taken. If appropriate, the agency must provide for admission or readmission of a recipient to a facility if the hearing decision is favorable to the provider or if DHCFP decides in the provider's favor before the hearing.

d. DECISION DUE DATE

Within thirty (30) calendar days following the Fair Hearing, or the date the record is closed, whichever is later, the Hearing Officer shall issue a final Decision.

3105.10 RIGHT TO APPEAL HEARING DECISION

Reference NRS 422.306

3105.11 HEARING RECORD

Reference NRS 442.306