

**907 KAR 17:040. Appeal and administrative hearing post external independent third-party review.**

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.646, 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.646 entitles a party to appeal a final decision of the external independent third-party review to the administrative hearing tribunal within the Cabinet for Health and Family Services. This administrative regulation establishes provisions regarding a Medicaid provider's and managed care organization's right to an administrative hearing following an external independent third-party review.

Section 1. Administrative Hearing Notice and Preliminary Requirements. (1) Upon the issuance of a final decision by an external independent third-party reviewer pursuant to 907 KAR 17:035, the department shall notify in writing the MCO and the provider of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to this administrative regulation.

(2)(a) A written request for an administrative hearing referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an administrative hearing shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

(3) A provider or MCO request for an administrative hearing shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the external independent third-party reviewer;

(b) State the basis on which the external independent third-party reviewer's decision on each issue is believed to be erroneous;

(c) Limit disputes to the information contained in the record on appeal, as required by 907 KAR 17:035, Section 2(7)(a), and any other information contained in the external independent third-party reviewer's decision;

(d) State the name, mailing address, and telephone number of individuals who may be contacted about the request for an administrative hearing; and

(e) State the mailing address, fax number, email address, or other contact information to which the MCO's confirmation of receipt of the request shall be sent.

(4) The department shall forward to the hearing officer an administrative record on appeal that shall include:

- (a) The notice of action taken;
- (b) The statutory or regulatory basis for the action taken;
- (c) The decision following the external independent third-party review; and
- (d) The record on appeal as required by 907 KAR 17:035, Section 2(7)(a).

(5) The department shall deny a request to initiate the administrative hearing appeal process, or a part thereof, if a party fails to:

(a) Exhaust the external independent third-party review process in accordance with 907

KAR 17:035; or

(b) Submit a timely request for administrative hearing in accordance with subsection (2) of this section.

Section 2. Administrative Hearing. (1)(a) A hearing officer shall establish the date, time, and location of an administrative hearing.

(b) The administrative hearing shall be held in Frankfort, Kentucky.

(c) The hearing officer shall comply with the notice requirements established in KRS 13B.050.

(d) An administrative hearing date shall be scheduled to occur no later than sixty (60) calendar days from the date that the administrative hearing request was received by the department.

(e) An administrative hearing date may be extended beyond sixty (60) calendar days upon agreement of both parties.

(2) If a pre-hearing conference is requested by a party and granted by the hearing officer, the conference shall comply with KRS 13B.070.

(3) An administrative hearing may be withdrawn if:

(a) The hearing officer receives a written statement from the appealing party requesting the withdrawal; or

(b) The appealing party makes a statement on the record at the hearing withdrawing the request for an administrative hearing.

(4) Upon the agreement of all parties, an administrative hearing may be conducted telephonically or by other electronic means.

(5) A hearing officer shall preside over an administrative hearing and shall conduct the administrative hearing in accordance with:

(a) KRS 13B.080; and

(b) KRS 13B.090.

(6) The issue considered at the hearing shall be limited to the administrative record on appeal, as required by Section 1(4) of this administrative regulation.

(7) The hearing officer's decision shall be issued within sixty (60) calendar days after the close of the official record of the administrative hearing and shall include:

(a) The findings of facts, conclusions of law, and the final order solely based on the evidence on the record;

(b) The party that shall pay an administrative hearing fee in accordance with Section 3 of this administrative regulation; and

(c) Notice that judicial review on a final order is available to the parties in accordance with Section 4 of this administrative regulation.

(8) In accordance with KRS 205.646(4), a hearing officer's decision shall constitute the final order in the matter for purposes of appeal.

Section 3. Administrative Hearing Fee. The party that receives an adverse final order shall pay a fee of \$600 to the department within thirty (30) calendar days of the issuance of the final order.

Section 4. Judicial Review of the Final Order. (1) Judicial review of the hearing officer's final order is available pursuant to KRS 13B.140 and KRS 13B.150.

(2) Within twenty (20) days after the service of the petition for judicial review under subsection (1) of this section, the administrative hearings branch shall transmit a certified copy of the official record of the proceeding under review. (43 Ky.R. 1353; 1789; 1980; eff. 6-2-2017.)