907 KAR 1:563. Medicaid covered services appeals and hearings unrelated to managed care.

RELATES TO: KRS Chapter 13B, 194A.025, 205.231, 205.237, 205.520, 205.8451, 210.270 42 C.F.R. 431.233, 431.244, Part 475, 475.101, 483.2, 483.12, 431 Subpart E, 483 Subpart E, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2) and (3), 205.6315, 42 U.S.C. 1396

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family 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. This administrative regulation establishes policies and requirements relating to an adverse action, an appeal, or a hearing regarding Medicaid covered services that are not the responsibility of a managed care organization.

Section 1. Definitions.

(1) "1915(c) home and community based waiver service" means a service available or provided via a 1915(c) home and community based waiver services program.

(2) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Administrative hearing" is defined by KRS 13B.010(2).

(4) "Appeal board" means the entity or individual designated by the secretary of the Cabinet for Health and Family Services to hear appeals of recommended orders or final orders following a decision by a representative of the designated hearing agency or hearing officer.

(5) "Applicant" means an individual who has applied for Medicaid covered services.

(6) "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the recipient or the applicant; or

(b) A legal guardian.

(7) "Cabinet" means the Cabinet for Health and Family Services.

(8) "Department" means the Department for Medicaid Services or its designee.

(9) "Designated hearing agency" means the entity designated by the secretary of the Cabinet for Health and Family Services to adjudicate administrative hearings.

(10) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program covered services.

(11) "Final order" is defined by KRS 13B.010(6).

(12) "Hearing officer" is defined by KRS 13B.010(7), and includes a representative from a designated hearing agency.

(13) "ICF IID" means intermediate care facility for an individual with an intellectual disability.

(14) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(15) "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(16) "Party" is defined by KRS 13B.010(3).

(17) "PASRR" means preadmission screening and resident review.

(18) "Patient liability" means the financial obligation of a recipient towards the cost of the recipient's nursing facility services or services provided pursuant to a 1915(c) waiver.
(19) "Provider" is defined by KRS 205.8451(7).
(20) "QIO" or "quality improvement organization" means an entity that meets the requirements established in 42 C.F.R. 475.101.
(21) "Recipient" is defined by KRS 205.8451(9).
(22) "Recommended order" is defined by KRS 13B.010(5).
(23) "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Administrative Hearing Rights.
(1) An applicant, recipient, or authorized representative shall be informed, in writing, of the applicant's or recipient's right to an administrative hearing if an adverse action is taken affecting covered services.
(2) An applicant, recipient, or authorized representative shall be informed of the method by which the applicant or recipient may obtain an administrative hearing and that the applicant or recipient may be represented by:
(a) Legal counsel;
(b) A relative;
(c) A friend;
(d) A spokesperson not listed in paragraph (a), (b), (c), (e), or (f) of this subsection;
(e) An authorized representative; or
(f) Himself or herself.
(3) An adverse action notice shall contain a statement of:
(a) The Medicaid adverse action;
(b) The reason for the action;
(c) The specific federal or state law or administrative regulation that supports the action; and
(d) An explanation of the circumstances under which payment for services shall be continued if an administrative hearing is requested in a timely manner pursuant to Section 5 of this administrative regulation.

Section 3. Notification Process.
(1) An adverse action notice regarding an applicant or a recipient shall be mailed to the applicant, recipient, or authorized representative of the applicant or recipient using:
(a) The United States Postal Service; and
(b) A return receipt requested format.
(2) Refusal by an applicant, a recipient, or an authorized representative to confirm receipt of an adverse action notice shall be considered receipt of the adverse action notice.

Section 4. Request for an Administrative Hearing.
(1) An applicant, recipient, or an authorized representative may request an administrative hearing by filing a written request with the department.
(2) If an applicant, recipient, or authorized representative requests an administrative hearing, the request shall:
(a) Be in writing and clearly specify the reason for the request;
(b) Indicate the date of service or type of service for which payments may be denied; and
(c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:
1. Discontinuance of services;
2. Adverse determination made with regard to the PASRR requirements of 42 U.S.C. 1396r(e); or

3. Patient liability.

Section 5. Continuation of Medicaid Covered Services.

(1)

(a) Except as established in paragraphs (b) or (c) of this subsection or subsections (2), (3), or (4) of this section, if a request for an administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial, the individual shall remain eligible for the care, program participation, or service denied until the date that the final order is rendered in accordance with Section 12 of this administrative regulation.

(b) The individual shall not remain eligible for the care, program participation, or service denied if:

1.

a. It is determined at the administrative hearing that the sole issue is one of federal or state law or policy; and

b. The department promptly informs the individual in writing that the services shall be terminated or reduced pending the administrative hearing decision;

2. The individual's eligibility for time-limited benefits has expired; or

3. The individual receives in full the specified amount of care or number of services that were authorized by the department.

(c) Except as established in paragraph (d) of this subsection, a request for an amount of care or number of services subsequent to receiving a previously authorized amount of care or number of services in full shall not be considered a continuation of the previously authorized amount of care or number of services.

(d) The following shall qualify for continuation of services in accordance with paragraph (a) of this subsection if the care, program participation, or service was previously received by the individual within thirty (30) days of the request for continuation:

1. Denial that an individual meets patient status criteria to qualify for nursing facility services pursuant to 907 KAR 1:022;

2. Denial that an individual meets patient status criteria to qualify for ICF IID services pursuant to 907 KAR 1:022;

3. Denial that an individual meets nursing facility level of care criteria, nursing facility patient status criteria, or ICF IID patient status criteria pursuant to 907 KAR 1:022 to qualify for 1915(c) home and community based waiver services; or

4. Denial of a 1915(c) home and community based waiver service.

(2) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(3) Time-limited benefits shall not be extended based on a request for an administrative hearing.

(4) If a request for an administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, the department shall continue to reimburse for nursing facility services until the date that the final order is rendered.

Section 6. Notice of Scheduled Hearing.

(1) A scheduled administrative hearing notice shall contain:

(a) The date, time, and place of the scheduled administrative hearing; and

(b) A statement that the local Department for Community Based Services office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) An administrative hearing shall be conducted within thirty (30) days of the date of the request for an administrative hearing unless otherwise authorized by the representative of

the designated hearing agency.

(3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

(a) Legal counsel or other representation;

(b) Review the case record relating to the issue; and

(c) Submit additional information in support of the applicant's or recipient's claim.

(4)

(a) If an administrative hearing involves medical issues, a medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review.

(b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be established in writing.

Section 7. Conduct of an Administrative Hearing.

(1) An administrative hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(2) A hearing officer shall be impartial and shall disqualify himself or herself as required by KRS 13B.040.

(3) An administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) A representative of the designated hearing agency shall offer to transmit a recommended order by electronic format.

(5) If necessary to receive full information on the issue, a representative of the designated hearing agency may examine each party who appears and the party's witnesses.

(6)

(a) A representative of the designated hearing agency may reopen the administrative hearing and take additional evidence as is deemed necessary.

(b) Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Designation of Alternative Hearing Agency and Appeal Board.

(1) The secretary of the cabinet may:

(a) Select a designated hearing agency; or

(b) Create a designated hearing agency.

(2) A designated hearing agency shall:

(a) Be composed of cabinet employees who shall serve as hearing officers; and

(b) Follow all requirements established pursuant to KRS Chapter 13B.

(3) The secretary of the cabinet may:

(a) Select an appeals board; or

(b) Create an appeals board.

(4) An appeals board shall follow all requirements established pursuant to KRS Chapter 13B and KRS 194A.025.

Section 9. Withdrawal or Abandonment of Request.

(1) A recipient or authorized representative:

(a) May withdraw the appeal for an administrative hearing prior to the release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with the recipient's legal counsel or authorized representative prior to finalizing the action.

(2) An administrative hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the administrative

hearing.

Section 10. Recommended Order.

(1) After an administrative hearing is concluded, the hearing officer shall issue a recommended order in accordance with KRS 13B.110.

(2)

(a) A recommended order shall be issued within thirty (30) days of the administrative hearing date, except for a recommended order regarding:

1. A nursing facility level of care or patient status decision;
2. An ICF IID patient status decision;
3. A nursing facility level of care, nursing facility patient status, or ICF IID patient status decision related to 1915(c) home and community based waiver program participation; or
4. A 1915(c) home and community based waiver service.

(b) A recommended order regarding an item listed in paragraph (a) of this subsection shall be issued within fifteen (15) calendar days of the administrative hearing date.

(3)

(a) A copy of the recommended order shall be:

1. Mailed to each party in accordance with KRS 13B.110(4); or
2. Sent by electronic means to any party which requests, during the administrative hearing, that the order be sent by electronic means.

(b) If requested during the administrative hearing, a copy of the recommended order shall be electronically transmitted to a site specified by the applicant or recipient on the date the recommended order is rendered.

Section 11. Exceptions to a Recommended Order.

(1) Filing an exception to a recommended order shall be the same as filing a request for review of a local evidentiary hearing decision as established in 42 C.F.R. 431.233.

(2)

(a) A party may file an exception to a recommended order in accordance with KRS 13B.110(4).

(b) If a party wishes to file an exception to the recommended order, the exception shall be filed with the Cabinet for Health and Family Services, Division of Administrative Hearings within fifteen (15) days from the date that the recommended order is mailed.

Section 12. Final Order or Review of Recommended Order.

(1) The secretary of the Cabinet for Health and Family Services or other party authorized by KRS 13B.010 shall issue a final order:

(a) Within ninety (90) days from the date of the request for an administrative hearing; or

(b) As established in 42 C.F.R. 431.244(f).

(2)

(a) In accordance with 42 C.F.R. 431.233, unless a recipient requests a de novo hearing, the review of a recommended order shall consist of a cabinet level review of the record of the administrative hearing.

(b) If an exception to a recommended order was not filed, the information in the record considered in the cabinet level review or final order shall be limited to the information considered at the administrative hearing.

(c) If a recipient requests a de novo hearing, at the de novo hearing either party may offer:

1. Evidence not presented at the hearing below; and
2. The evidentiary record of the fair hearing.

Section 13. Judicial Review of a Final Order.

(1) A further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the final order in accordance with KRS 13B.140 and 13B.150.

(2) Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1)(b) of this administrative regulation.

Section 14. Medicaid Case Actions Following Circuit Court Level Appeal Decision.

(1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to:

(a) Remain in a nursing facility or an ICF IID during the circuit court appeal process, the department shall reimburse for the nursing facility services or ICF IID services which occurred during the circuit court appeal process; or

(b) Receive a 1915(c) home and community based waiver service during the circuit court appeal process, the department shall reimburse for the service which occurred during the circuit court appeal process.

Section 15. Special Procedures Relating to a Managed Care Participant.

(1) For an adverse action toward an enrollee regarding a service that is within the scope of managed care, the requirements governing the MCO internal appeal process and the department's hearing process for the enrollee shall be as established in 907 KAR 17:010.

(2) For an adverse action by the department toward an enrollee regarding a service that is not within the scope of managed care, the appeals policies and requirements established in this administrative regulation shall apply.

Section 16. Limitation of Fees.

(1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) $175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court; or

(c) $300 for preparatory work and briefs and all other matters incident to an appeal to the:

1. Court of Appeals; or
2. Supreme Court of Kentucky.

(2)

(a) Enforcement of payment of a fee shall:

1. Not be a matter for the department or the cabinet; and
2. Be a matter between the counsel or agent and the recipient.

(b) The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

(3)

(a) The fee limitations stated in subsection (1) of this section shall:

1. Apply to the amount an attorney may charge a recipient or applicant; and
2. Not apply to the amount an attorney may collect from another entity or person who represents the recipient or applicant in all categories of Medicaid.

(b) The amount an attorney may collect from an entity or person who is not a recipient or applicant for representing the recipient or applicant in all categories of Medicaid shall:

1. Be a matter between the attorney and other entity or person; and
2. Not be a matter that involves the department or cabinet.

Section 17. Hearings and Appeals for Individuals with an Intellectual Disability Residing in State Institutions. A hearing or an appeal relating to a decision to reclassify or transfer a

person with an intellectual disability in a state institution shall be in accordance with the requirements of KRS 210.270 and 907 KAR 1:075.

Section 18. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).
(25 Ky.R. 731; Am. 1058; eff. 10-21-98; 40 Ky.R. 610; 1289; eff. 1-3-2014; 45 Ky.R. 1830, 2729, 2918; eff. 5-3-2019; TAm eff. 3-20-2020.)