

8.057 RECIPIENT APPEALS

8.057.1 DEFINITIONS

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 with regard to a Level II Screen finding for the preadmission screening and annual resident review requirements.

Adverse determination means a determination with regard to a Level II Screen finding for the preadmission screening and annual review requirements 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.

Authorized representative means a person designated by the applicant or recipient to act on his/her behalf. Such authorization shall be in writing in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations located at 45 C.F.R. parts 160 and 164. A written designated power of attorney may substitute for the HIPAA compliant release.

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 preadmission screening and annual resident review determination.

Notice, other than that required to be provided by a nursing facility seeking to transfer or discharge a resident, means a written statement which contains:

1. A statement of what action the Department or its designee intends to take;
2. The reasons for the intended action;
3. The specific regulations that support, or the change in federal or state law that requires the action;
4. An explanation of
 - a. The individual's right to request an evidentiary hearing if one is available; or
 - b. In cases of an action based on a change in law, the circumstances under which a hearing will be granted.
5. The method by which the individual may obtain a hearing;
6. That the individual may represent himself/herself or use legal counsel, a relative, a friend, or other spokesman at the hearing; and
7. An explanation of the circumstances under which Medicaid is continued if a hearing is requested.
8. [For notices concerning a medical assistance program eligibility determination under 10 CCR 2505-10 section 8.100.](#) An explanation of the applicant's or recipient's right to a county or service agency dispute resolution conference.

Notice required to be provided by a nursing facility seeking to transfer or discharge a resident means a written statement which contains, in addition to the requirements above:

1. The reason for transfer or discharge;
2. The effective date of the transfer or discharge;
3. The location to which the resident is transferred or discharged;

4. The name, address and telephone number of the State long term care ombudsman;
5. For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
6. For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

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

8.057.3 OPPORTUNITY FOR HEARING

8.057.3.F. Opportunity For County or Service Agency Dispute Resolution Conference. In addition to the opportunity for a hearing, an applicant/recipient shall have an opportunity to have their ~~approval, denial, termination, suspension, or reduction of Medicaid benefits~~ medical assistance program eligibility determination under 10 CCR 2505-10 section 8.100 resolved through an informal dispute resolution conference. County and service agencies shall afford recipients the opportunity for informal dispute resolutions as follows:

1. An applicant/recipient who disagrees with a decision regarding their eligibility may request dispute resolution either in writing or by phone within 60 calendar days of the eligibility determination date listed on the Notice of Action (NOA). If available through the County or service agencies, applicants/recipients may use email to make a request.
2. Within 10 calendar days after receipt of the request for dispute resolution the County or service agency, after a review of the case by for accuracy and completeness, shall notify the applicant/recipient, in writing, of the date, time, and location of the conference. The notification shall also include the applicant/recipient's rights to a state level appeal and a deadline date for requesting such an appeal.
3. The County or service agency shall hold the conference within no more than 25 calendar days from the date the request was received unless both parties agree, in writing, to extend the date of the conference.
4. The applicant/recipient shall have the choice to have the dispute conference held in person or by phone.
5. The dispute resolution conference facilitator shall, within 3 business days, notify the applicant/recipient of the finding from the conference via U.S. Mail.

6. If the finding is that the dispute has been resolved and the member has already filed an appeal, the County or service agency shall inform the applicant or recipient of the process for dismissing the appeal.

8.057.5 MAINTAINING SERVICES

8.057.5.A. Where the recipient requests a hearing ~~before the date of action~~within 60 calendar days of the date of the Notice, in accordance with Section 8.057.4.B.1, the recipient's services may not be terminated or reduced until a final agency 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~~If a member requests a hearing after the Date of action and within 60 calendar days of the date of Notice, in accordance with Section 8.057.4.B.1, benefits are reinstated back to the Date of action.
2. ~~The recipient is promptly informed that services are to be terminated or reduced pending the hearing decision.~~

~~8.057.5.B. Where the action of the Department or its designee is sustained by the final agency decision, the Department or its designee 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 regarding maintaining services.~~