

Title of Rule: Revision to the Medical Assistance Act Rule concerning Member Appeals,
Sections 8.057.1 and 8.057.3-.5
Rule Number: MSB 23-11-29-A
Division / Contact / Phone: Health Policy Office / Russ Zigler / 303-866-5927

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

County informal dispute resolution conferences are available to members and applicants who are found to be ineligible for the Colorado medical assistance program - i.e., eligibility appeals under Section 8.100. Counties have no involvement in utilization management and medical necessity reviews for benefit appeals, and informal dispute resolutions conferences are not, and have never been, available to members for such appeals. The purpose of the rule change is to clarify that county or service delivery agency informal dispute resolution conferences are only for eligibility appeals under Section 8.100.

Separately, this proposed rule change removes language from Section 8.057 regarding possible recoupments from members who receive services during an unsuccessful appeal. This change is to comply with a Center for Medicare and Medicaid Services (CMS) waiver under Section 1902(e)(14)(A); and to harmonize with Department practices of not recouping in these circumstances.

Finally, the language in Section 8.057.4 is being updated to align with C.R.S. § 25.5-4-207(1)(a)(II), which states, "The applicant or recipient has sixty days after the date of the notice to file an appeal."

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
- for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

42 CFR Part 456; Social Security Act, Section 1902(e)(14)(A).

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2023);
Section 25.5-1-118(a), C.R.S. (2023);
Section 25.5-4-207(1)(a)(II), C.R.S. (2023)

Initial Review
Proposed Effective Date

05/10/24
07/30/24

Final Adoption
Emergency Adoption

06/14/24

DOCUMENT #10

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed rule clarifies that a county or service agency dispute resolution conference is only available for eligibility determination appeals, which reflects current Department practice.

The removal of recoupment language from the appeals rules, and clarifying the time for filing an appeal, impacts members filing appeals by clarifying that there will be no recoupment for the cost of services rendered to a member during the pendency of an unsuccessful appeal, and that the member has a full sixty days to file request for hearing after the Notice of Action.

The change regarding timely appeals from language stating members have 60 days "from" the date of the Notice of Action to 60 days "after" the date of the Notice of Action ensures a member has the full period of time allotted to members to appeal timely.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

A county or service agency dispute resolution conference appealing eligibility determinations is not available to applicants and members appealing Department determinations not related to eligibility.

Members appealing a notice of action have a full sixty days to file a request for hearing, in alignment with C.R.S. § 25.5-4-207(1)(a)(II), and no recoupment of services rendered during the pendency of an appeal will be recouped, in alignment with the CMS conditions for the grant of a Section 1902(e)(14)(A) waiver and with current Department practice.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

None.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

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The probable benefits of the proposed rule are: (1) compliance with federal law related to program benefits utilization management; (2) resolving confusion about the county dispute resolution conference process for medical assistance eligibility determinations; (3) removing outdated and impermissible language about recouping the costs of services from members who unsuccessfully appeal; and (4) aligning with C.R.S. § 25.5-4-207(1)(a)(II) concerning the timeframe for filing an appeal. There are no costs associated with the proposed rule changes. At the same time, there are no benefits of inaction. Costs of inaction include ongoing confusion related to the role of county dispute resolution – which is limited solely to medical assistance eligibility appeals – which has resulted in canceled appeal hearings while benefits and services continue to be rendered to members who may not meet medical necessity criteria. This situation risks future CMS audit findings and disallowances, as well as drawing limited resources away from members who have been determined to need ongoing services and benefits. Additional costs to inaction are: (1) continued misalignment between Department rules concerning recoupment of services rendered during the pendency of an unsuccessful appeal and with the Department's Section 1902(e)(14)(A) waiver, and (2) misalignment between Department rule and state statute concerning the time for filing a request for hearing after the Notice of Action.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

This is the least costly, least intrusive method for achieving the purposes of the rule change.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

Other resolution processes were discussed but were found not to be sufficient because they would lack the clinical judgment/medical necessity analysis required for utilization management.

1 **8.057 RECIPIENT APPEALS**

2 **8.057.1 DEFINITIONS**

- 3 1. Action means a termination, suspension or reduction of Medicaid, eligibility or covered services. It
 4 also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge
 5 residents and adverse determinations with regard to a Level II Screen finding for the preadmission
 6 screening and annual resident review requirements.
- 7 2. Adverse determination means a determination with regard to a Level II Screen finding for the
 8 preadmission screening and annual review requirements that the individual does not require the level
 9 of services provided by a nursing facility or that the individual does or does not require specialized
 10 services.
- 11 3. Authorized representative means a person designated by the applicant or recipient member to act on
 12 his/hers/their behalf. Such authorization shall be in writing in compliance with the Health Insurance
 13 Portability and Accountability Act of 1996 (HIPAA) privacy regulations located at 45 C.F.R. parts 160
 14 and 164. A written designated power of attorney may substitute for the HIPAA compliant release.
- 15 4. Date of action means the intended date on which a termination, suspension, reduction, transfer or
 16 discharge becomes effective. It also means the date of the preadmission screening and annual
 17 resident review determination.
- 18 5. Notice, other than that required to be provided by a nursing facility seeking to transfer or discharge a
 19 resident, means a written statement which contains:
- 20 a. ~~1.~~ A statement of what action the Department or its designee intends to take;
- 21 b. ~~2.~~ The reasons for the intended action;
- 22 c. ~~3.~~ The specific regulations that support, or the change in federal or state law that
 23 requires the action;
- 24 d. ~~4.~~ An explanation of
- 25 i. ~~a.~~ The individual's right to request an evidentiary hearing if one is available; or
- 26 ii. ~~b.~~ In cases of an action based on a change in law, the circumstances under
 27 which a hearing will be granted.
- 28 e. ~~5.~~ The method by which the individual may obtain a hearing;
- 29 f. ~~6.~~ That the individual may represent himself/herself/themselves or use legal counsel, a
 30 relative, a friend, or other spokesman-representative at the hearing; and
- 31 g. ~~7.~~ An explanation of the circumstances under which Medicaid is continued if a hearing
 32 is requested.
- 33 h. ~~8.~~ For notices concerning a medical assistance program eligibility determination under
 34 section 8.100, A an explanation of the applicant's or recipient's member's right to a county or
 35 service delivery agency dispute resolution conference.
- 36 6. Notice required to be provided by a nursing facility seeking to transfer or discharge a resident means
 37 a written statement which contains, in addition to the requirements above:
- 38 a. ~~1.~~ The reason for transfer or discharge;
- 39 b. ~~2.~~ The effective date of the transfer or discharge;

- 1 c. ~~3.~~—The location to which the resident is transferred or discharged;
- 2 d. ~~4.~~—The name, address and telephone number of the State long-term care ombudsman;
- 3 e. ~~5.~~—For nursing facility residents with developmental disabilities, the mailing address and
4 telephone number of the agency responsible for the protection and advocacy of
5 developmentally disabled individuals established under Part C of the Developmental
6 Disabilities Assistance and Bill of Rights Act; and
- 7 f. ~~6.~~—For nursing facility residents ~~who are mentally ill~~ living with a mental illness, the
8 mailing address and telephone number of the agency responsible for the protection and
9 advocacy of ~~mentally ill~~ individuals living with a mental illness established under the
10 Protection and Advocacy for Mentally Ill Individuals Act.
- 11 7. Request for a hearing means a clear expression by the applicant or ~~recipient~~ member, or ~~his/her~~ their
12 authorized representative that ~~he/she~~ they wants an opportunity to present ~~his/her~~ their case to a
13 reviewing authority.
- 14 8. Service delivery agency or designated service agency means a department-designated, certified
15 medical assistance site contracted with the department to accept and process medical assistance
16 applications approved by the federal Centers for Medicare and Medicaid Services, as authorized by
17 C.R.S. § 25.5-4-205. Service delivery agencies utilize the Colorado Benefits Management System
18 (CBMS) to determine eligibility for Child Health Plan Plus (CHP+) and Health First Colorado
19 (Colorado Medicaid) medical assistance programs.

21 8.057.3 OPPORTUNITY FOR HEARING

22 8.057.3.F. Opportunity For County or Service Delivery Agency Dispute Resolution Conference. In
23 addition to the opportunity for a hearing, an applicant ~~or/recipient- member~~ shall have an opportunity
24 to have their ~~approval, denial, termination, suspension, or reduction of Medicaid benefits~~ medical
25 assistance program under section 8.100 resolved through an informal dispute resolution conference.
26 An informal dispute resolution does not extend the period of time within which a member can timely
27 file a formal appeal pursuant to 8.057.4.B.; nor does a request for an informal dispute resolution
28 conference result in a continuation of benefits. Filing a formal appeal pursuant to 8.057.4. is the only
29 way to receive a continuation of benefits, if applicable.

30 _____ County and service delivery agencies shall afford ~~recipients-applicants and members~~ the opportunity
31 for informal dispute resolutions as follows:

- 32 1. An applicant ~~recipient or member~~ who disagrees with a decision regarding their eligibility may
33 request dispute resolution either in writing or by phone within no later than 60 calendar days
34 of the eligibility determination after the date ~~listed on~~ of the Notice of Action (NOA). If available
35 through the County or service delivery agencies, applicants ~~recipients and members~~ may use
36 email to make a request.
- 37 2. Within No later than 10 calendar days after receipt of the request for dispute resolution the
38 County or service delivery agency, after a review of the case ~~by~~ for accuracy and
39 completeness, shall notify the applicant ~~recipient or member~~, in writing, of the date, time, and
40 location of the conference. The notification shall also include the applicant ~~recipient or~~
41 member's rights to a state level appeal and a deadline date for requesting such an appeal.
- 42 3. The County or service delivery agency shall hold the conference within no more than 25
43 calendar days from the date the request was received unless both parties agree, in writing, to
44 extend the date of the conference.
- 45 4. The applicant ~~recipient or member~~ shall have the choice to have the dispute conference held
46 in person or by phone.

1 5. The dispute resolution conference facilitator shall, within 3 business days, notify the
2 applicant/~~recipient or member~~ of the finding from the conference via U.S. Mail.

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

6 **8.057.4 REQUEST FOR HEARING**

7 8.057.4.B. The request for a hearing shall be filed with the Office of Administrative Courts:

8 1. ~~Within~~ No later than 60 calendar days ~~of~~ after the date of the ~~notice~~ Notice of ~~action~~ Action.

9 **8.057.5 MAINTAINING SERVICES**

10 8.057.5.A. Where the ~~recipient~~ member requests a hearing ~~before the date of action~~ no later than 60
11 calendar days after the date of the Notice, in accordance with Section 8.057.4.B.1., the ~~recipient's~~
12 member's services may not be terminated or reduced until a final agency decision is rendered after
13 the hearing. ~~unless:~~

14 1. ~~It is determined at the hearing that the sole issue is one of federal or state law or policy; and~~
15 ~~If a member requests a hearing after the d~~ Date of action and no later than 60 calendar days
16 after the date of Notice, in accordance with Section 8.057.4.B.1., benefits will be continued
17 from the ~~D~~date of action.

18 2. A request for an informal dispute resolution conference concerning eligibility determinations,
19 in accordance with Section 8.057.3.F., does not maintain services or continue benefits. ~~The~~
20 ~~recipient is promptly informed that services are to be terminated or reduced pending the~~
21 ~~hearing decision.~~

22 ~~8.057.5.B. — Where the action of the Department or its designee is sustained by the final agency decision,~~
23 ~~the Department or its designee may institute recovery procedures against the applicant or recipient to~~
24 ~~recoup the cost of any services furnished the recipient, to the extent they were furnished solely by~~
25 ~~reason of this section regarding maintaining services.~~