

Member Appeals Rule

MSB 25-01-07-B

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Current Section 1902(e)(14)(A) Waiver

- Under the current Social Security Act Section 1902(e)(14)(A) waiver and the corresponding Department rule at Section 8.057.5:
 - Members may appeal eligibility or benefit actions no later than sixty (60) days after the date of notice to maintain (or reinstate if appeal is made after the date of action) their benefits until a final agency decision is rendered
 - The Department received notice from the Center for Medicare and Medicaid Services (CMS) in November 2024 that the Section 1902(e)(14)(A) waiver will expire on June 30, 2025



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Revert to Federal and State Law

- Upon expiration of the Section 1902(e)(14)(A) waiver, the requirements for maintenance of benefits, and reinstatement of benefits, on appeal will revert to current federal and state law
 - C.R.S. 25.5-4-207(1)(a)(II) is the applicable state law
 - 42 C.F.R. 431.230 and .231 are the applicable federal laws



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Maintenance of Benefits on Appeal

- State law
 - C.R.S. 25.5-4-207(1)(a)(II)
- Federal law
 - 42 C.F.R. 431.230
- Department rule
 - Section 8.057.5.A



C.R.S. 25.5-4-207(1)(a)(II)

- “... *If the member files an appeal prior to the effective date of the intended action, existing medical assistance benefits must automatically continue unchanged* until the appeal process is completed, unless the member requests in writing that medical assistance benefits not continue during the appeal process...”



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42 C.F.R. 431.230

- (a) If the agency sends the 10-day or 5-day notice as required under § 431.211 or § 431.214 of this subpart, and *the beneficiary 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 at the hearing that the sole issue is one of Federal or State law or policy*; and
 - (2) The *agency promptly informs the beneficiary in writing that services are to be terminated or reduced pending the hearing decision.*



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Section 8.057.5.A

- “Where the member requests a hearing ~~no later than 60 calendar days after the date of the Notice~~ before the date of action, in accordance with Section 8.057.4.B.1., the member’s benefits or 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 policy; and
 - 2. The member is promptly informed in writing that services are to be terminated or reduced pending the hearing decision.



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Reinstatement and Continuation of Benefits on Appeal

- State law
 - C.R.S. 25.5-4-207(1)(a)(II)
- Federal law
 - 42 C.F.R. 431.231
- Department rule
 - Section 8.057.5.D.



C.R.S. 25.5-4-207(1)(a)(II)

- “... The *state department shall promulgate rules consistent with federal law* that *prescribe the circumstances* under which the county department or designated service agency *may continue benefits if an appeal is filed after the effective date of the intended action...*”



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42 C.F.R. 431.231

- (a) The agency *may reinstate services if a beneficiary requests a hearing not more than 10 days after the date of action.*
- (b) The *reinstated services must continue until a hearing decision unless, at the hearing, it is determined that the sole issue is one of Federal or State law or policy.*



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Section 8.057.5.D.

- “~~Continuation or Reinstatement~~ and Continuation of Benefits After the Effective Date Of The Action. Where the ~~recipient member~~ requests a hearing not more than 10 days after the date of the intended action, the ~~recipient’s member’s~~ services ~~may be continued or reinstated~~ must be reinstated back to the date of action and continued until a final agency decision is rendered after the hearing, unless it is determined at the hearing that the sole issue is one of federal or state law or policy ...”



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C.R.S. 25.5-4-207(1)(a)(II) (cont.)

- “... At a *minimum*, the rules *must allow for continuing benefits when* the [1] *member's health or safety is impacted*, the [2] *member was not able to timely respond due to the member's disability or employment*, the [3] *member's caregiver was unavailable due to the caregiver's health or employment*, or the [4] *member did not receive the county department's or designated service agency's notice prior to the effective date of the intended action.*”



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42 C.F.R. 431.231(c)

- (c) The agency *must reinstate and continue services* until a decision is rendered after a hearing *if—*
 - (1) *Action is taken without the advance notice* required under § 431.211 or § 431.214 of this subpart;
 - (2) The *beneficiary requests a hearing within 10 days from the date that the individual receives the notice of action*. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the beneficiary shows that he or she did not receive the notice within the 5-day period; and
 - (3) The *agency determines that the action resulted from other than the application of Federal or State law or policy*.



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Section 8.057.5.D. (cont. 1)

- ~~“... if the recipient provides verification, in the form of a signed statement with supporting documentation, of one of the following circumstances.~~
 - ~~1. The recipient’s life, health, or safety will be impacted by the loss of benefits~~ A member’s services must be reinstated and continued until a hearing decision is rendered after a hearing if:
 - a. Action is taken without the advance notice in section 8.057.2.A,
 - b. The member requests a hearing within ten (10) days from the date that the individual receives the notice of action. The date on which the notice is received is considered to be five (5) days after the date on the notice, unless the member shows that they did not receive the notice within the five (5) day period, and
 - c. The Department determines that the action resulted from other than the application of federal or state law or policy.



Section 8.057.5.D. (cont. 2)

- ~~• 2. The recipient was unable to request a hearing before the date of action due to the recipient's disability or employment.~~
- ~~• 3. The recipient's caregiver or their authorized representative was unable to request a hearing before the date of action due to their health or employment.~~
- ~~• 4. The recipient did not receive the County's or designated service agencies notice prior to the effective date of the intended action.~~



Stakeholder Engagement

- Stakeholders are welcome to take part in the upcoming Appeals Continuation of Benefits Stakeholder Engagement Meeting
 - When: Tuesday, February 25, 2025, 2:00-3:00pm
 - Where: Virtual on Zoom. Stakeholders can view the agenda and sign up [on the event web page](#)





Questions?



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Thank you!

