Appeals Training for Alliance: Pre Meeting Materials

Videos on appeals
https://www.youtube.com/watch?v=oXKVMC1Ee4s&t=32s
https://www.youtube.com/watch?v=lARXEK7ISfI&t=4s

Self Help Forms and Info:
https://oac.colorado.gov/self-represented-parties
https://cclponline.org/resource/medicaid-appeals-guides-las-guias-de-apelaciones-de-medicaid/
https://oac.colorado.gov/resources/oac-forms

Steps to appeal:

1) Adverse action
2) File -One page form plus non-attorney authorization if needed.
3) Appeal is set (if you cannot do the date file a motion to continue). When set you get a case number. Notice who the appellee is. If it is wrong, it is their job to correct it. Example, the county is listed as the appellee, but this was a case that did not involve the county.
4) Client/you get a hearing packet 10 days ahead of the hearing. (Rarely do you get it this early). This is supposed to have their justification. You must provide your evidence ahead of the hearing. On eligibility this is usually the notices and proof of what the client provided. Also, emails. Hearing packet should have rules and what they think they got.
5) If hearing, prepare the client for testimony. Usually very little is needed.

D: Preparing appeal:

a) Eligibility is EASIEST
    i) Bad notice=client wins
    ii) Evidence save envelopes to prove your point
    iii) Copy Joelle Morrison joelle.morrison@state.co.us for her to turn on benefits.
    iv) If CDASS billing issue copy Daniele Comstock at danielle.comstock@state.co.us
    v) If someone needs medical care and are cut off and need intervention or are told that they cannot get reimbursement contact Adela Flores Brennan, the Medicaid director at adela.flores-brennan@state.co.us
    vi) If someone needs intervention at the pharmacy level contact Tom Leahey at thomas.leahey@state.co.us
    vii) Anything else HCBS related Bonnie Silva bonnie.silva@state.co.us (like clients on IDD waivers not getting notices and not having services)
    viii) If you do not get a response from HCPF the Governor's health policy person is Elisabeth Arenales elisabeth.arenales@state.co.us and disability policy person is Josh Winkler josh.winkler@state.co.us

PLEASE SHARE BAD NOTICES WITH US dsablan@ccdconline.org and let us know if this FYI or if you are requesting technical assistance.

KEY APPEALS REGULATIONS (WITH SOME STUFF REMOVED)

8.057 RECIPIENT APPEALS

8.057.1 DEFINITIONS Action means a termination, suspension or reduction of Medicaid, eligibility or covered 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.

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. An explanation of the applicant's or recipient's right to a county or service agency dispute resolution conference.

8.057.2 ADVANCE NOTICE

8.057.2.A. Notice shall be mailed at least 10 calendar days before the date of the intended action except as permitted in 8.057.2.B and 8.057.2.C. Notice for any action other than when a nursing facility seeks to transfer or discharge a resident, may be mailed less than 10 calendar days before the date of the intended action if:

1. The Department or its designee has factual information confirming the death of a recipient;

2. The Department or its designee receives a clear written statement signed by a recipient that

a. The recipient no longer wishes services; or

b. The recipient gives information that requires termination or reduction of services and indicates that he/she understands that this must be the result of supplying that information;

c. The recipient has been admitted to an institution where he/she is ineligible for further services;

d. The recipient's whereabouts are unknown and the post office return agency mail directed to him/her indicating no forwarding address;

e. The recipient has been accepted for Medicaid services by another State, territory or commonwealth;

f. A change in the level of medical care is prescribed by the recipient's physician;

8.057.3 OPPORTUNITY FOR HEARING

8.057.3.A. An individual shall have an opportunity for a hearing where:

1. An application for services is denied or is not acted upon with reasonable promptness;

2. The recipient requesting the hearing believes the action is erroneous;

8.057.3.B. An individual does not have the right to an opportunity for hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.

8.057.3.D. A provider of medical assistance or any other provider of goods and services to an applicant or recipient, shall not have the right to a hearing concerning an action or an adverse determination to an applicant or recipient.

8.057.3.E. A member of a Managed Care Organization shall exhaust the internal appeals process described at 8.209 prior to requesting a fair hearing.

8.057.3.F. Opportunity For County or Service Agency Dispute Resolution Conference. (THERE IS MORE LANGUAGE HERE, WE DO NOT RECOMMEND THIS OPTION AND TOOK OUT THE DETAILS)

8.057.4 REQUEST FOR HEARING

8.057.4.A. The request for a hearing shall be in writing and contain:

1. The recipient or applicant's name, address and State Identification Number, if applicable;

2. The action, denial or failure to act promptly on which the requested appeal is based; and

3. The reason for appealing the action, denial or failure to act promptly.

8.057.4.B. The request for a hearing shall be filed with the Office of Administrative Courts: Within 60 calendar days of the date of the notice of action.(YOU HAVE TO APPEAL BEFORE THE DATE OF ACTION TO GET CONTINUED BENEFITS)

8.057.4.C. The recipient or applicant or his/her authorized representative shall be entitled to examine the complete case file and any other documents to be used at hearing at a reasonable time before the hearing or during the hearing. Documents and information that are confidential as a matter of law shall be exempt from this requirement unless they are to be offered as evidence during the hearing.

8.057.4.D. If the recipient or applicant makes an oral request for a hearing to the Department or its designee, the Department or its designee shall prepare a written request for the individual's signature or have the individual prepare such a request.

8.057.4 E. Expedited Hearings (I did not include this but we can discuss this at a later date)
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8.057.5 MAINTAINING SERVICES

8.057.5.A. Where the recipient requests a hearing before the date of action, 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
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 to the recipient, to the extent they were furnished solely by reason of this section regarding maintaining services.

8.057.5.C. Continued Benefits During an SSA Appeal. If an individual receiving Medicaid based upon disability is determined by SSA not to be disabled, and he or she is not eligible for Medicaid on some other basis, Medicaid is continued during the 60-day period within which an SSA appeal may be filed. If the individual does not appeal the SSA decision within the 60-day period, Medicaid shall be terminated. If an SSA hearing is requested within the 60-day period, Medicaid may not be terminated until a final decision is made after the SSA hearing. A final administrative decision occurs when the Medicaid recipient has no right to further administrative appeal with the SSA. The Department shall provide 10-days notice to the individual that Medicaid shall be terminated after the 60-day period if the individual fails to appeal the SSA decision.

8.057.5.D. Continuation or Reinstatement of Benefits After The Effective Date Of The Action. Where the recipient requests a hearing not more than 10 days after the date of the intended action, the recipient's services may be continued or reinstated until a final agency decision is rendered after the hearing 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
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.

8.057.6 DENIAL OR DISMISSAL OF REQUEST FOR HEARING

8.057.6.A. The request for hearing shall be denied or dismissed if:

1. The applicant or recipient withdraws the request in writing; or
2. The applicant or recipient fails to appear at a scheduled hearing without good cause. Good cause shall mean a sudden severe illness, an accident, or other particular occurrence which, by its emergent nature and drastic effect, prevented appearance at the hearing.

8.057.6.B. The applicant or recipient shall have 10 calendar days from the date of the notice of dismissal scheduled hearing to explain, in a letter to the Administrative Law Judge, the reason for his/her failure to appear. If the Administrative Law Judge finds that there was good cause for the nonappearance, the Administrative Law Judge shall schedule another hearing date. 8.057.7

FAIR HEARINGS 8.057.7.A. A hearing shall cover:

1. Action, denial or failure to act with reasonable promptness regarding eligibility or services;
2. Decisions regarding changes in the type or amount of services;
3. Decision by a nursing facility to transfer or discharge a resident; and
4. Determination with regard to the preadmission screening and annual resident review requirements.

8.057.7.B. Conference telephone hearings may be conducted as an alternative to face-to-face hearings. All applicable provisions of the face-to-face hearing shall apply to telephone hearings.

8.057.7.C. Upon receipt of notice of a Department hearing of an appeal, the county department shall arrange for a suitable hearing room appropriate to accommodate the number of persons, including witnesses, who are expected to be in attendance.

8.057.7.D. Except as otherwise specifically provided in these rules, the provisions of Section 24-4105, C.R.S., as amended, shall apply to the conduct of fair hearings.

8.057.7.E. Hearings related to an applicant or recipient's disability determination, level of care determination or target group eligibility shall be held within 20 calendar days after the Office of Administrative Courts receives the request for a fair hearing unless the client demonstrates good cause for postponement of the hearing. Under no circumstances shall the hearing be conducted more than 45 calendar days after receipt of the request for a fair hearing

8.057.7.F. In hearings which involve medical issues such as those concerning a diagnosis, an examining physician's report or a medical review team's decision, the Administrative Law Judge may order a medical assessment other than that in the record of the Department or its designee making the disability determination if the Administrative Law Judge considers such medical assessment necessary. The assessment shall be at the expense of the Department or its designee and shall be made part of the record.

8.057.7.G. The hearing shall be private unless the applicant or recipient requests, on the record, that the hearing be open to the public.

8.057.7.H. If the appellant is not fluent in English or has a language difficulty, the Department will arrange with county assistance to have present at the hearing a qualified interpreter who will be sworn to translate correctly.

8.057.8 INITIAL DECISIONS

8.057.8.A. The Administrative Law Judge shall promptly prepare and issue a written Initial Decision and file it with the Office of Appeals of the Department. Initial decisions shall be based exclusively on evidence introduced at the hearing.

8.057.8.B. The Administrative Law Judge shall issue the Initial Decision following a disability determination hearing, a level of care denial hearing or a target group eligibility hearing within 20 calendar days of the hearing date.

8.057.8.C. The Initial Decision shall be in writing and shall:

1. Summarize the facts;
2. Identify the regulations and evidence supporting the decision;
3. Advise the applicant or recipient that failure to file exceptions to the provisions of the Initial Decision shall waive the right to seek judicial review of a final agency decision affirming those provisions.

8.057.8.D. The Administrative Law Judge shall be bound by the Department's interpretation of statutes where the Department has regulations implementing such statutes.

8.057.8.E. The Administrative Law Judge shall have no jurisdiction or authority to determine issues of constitutionality or legality of the Department's regulations.

8.057.8.F. In hearings concerning disability determinations, the only factual issue to be determined by the Administrative Law Judge is whether the applicant or recipient meets the

Medicaid definition of disability or blindness set forth in section 8.100.1. The Administrative Law Judge's determination shall be limited to whether or not the applicant or recipient met the definition of disability or blindness on the date that the disability determination was completed.

8.057.8.G. In hearings concerning level of care determinations, the only factual issue to be determined by the Administrative Law Judge is whether the applicant or recipient meets the level of care screen applicable to the program at issue. The Administrative Law Judge's determination shall be limited to whether or not the applicant or recipient met the level of care on the date that the level of care determination was completed.

8.057.9 REVIEW BY THE OFFICE OF APPEALS

8.057.9.A. The Department's Office of Appeals shall promptly serve the Initial Decision upon each party to the fair hearing by first class mail. Party shall include the Department even if the Department has not previously appeared as a party to the appeal.

8.057.9.B. Any party seeking to reverse, modify or remand the Initial Decision shall file exceptions with the Office of Appeals within 15 calendar days, plus 3 calendar days for mailing, of the date the Initial Decision is mailed to the parties. THERE IS MORE HERE THAT I REMOVED)

8.057.10 FINAL AGENCY DECISIONS I REMOVED SOME LANGUAGE HERE

8.057.10.A. The Final Agency Decision shall be based on the record except that the Office of Appeals may remand for rehearing if a party establishes in its exceptions that material evidence has been discovered which the party could not, with reasonable diligence, have produced at the hearing.
8.057.10.D. The Office of Appeals shall issue a Final Agency Decision within 90 calendar days, except as stipulated in 8.057.10.E, from the date the request for a hearing is received unless an extension has been granted to the applicant or recipient in which case the 90 calendar day period shall be increased accordingly..

8.057.10.E. The Office of Appeals shall issue a Final Agency Decision within 3 calendar days from the date the request for an expedited hearing is received.

8.057.11 NOTIFICATION OF DECISION

8.057.11.A. The applicant or recipient shall be provided, in writing, with:

1. A copy of the Final Agency Decision; and
2. Notification of his/her right to seek judicial review and the effective date of the Final Agency Decision for purposes of requesting judicial review.

8.057.11.B. For purposes of requesting judicial review, the effective date of the Final Agency Decision shall be the third day after the date the decision is mailed to the parties, even if the third day falls on Saturday, Sunday or a legal holiday.

8.057.12 CORRECTIVE ACTION 8.057.12.A. If the Final Agency Decision is favorable to the applicant or recipient, corrective action shall be taken, within three working days after the effective date of the Final Agency Decision, retroactive to the date the incorrect action was taken.

8.057.13 RECONSIDERATION OF FINAL AGENCY DECISION 8.057.13.A. A party may file a motion for reconsideration of a Final Agency Decision with the Office of Appeals:

1. Upon a showing of good cause for failure to file exceptions to the Initial Decision within the allowed 15 calendar day period; or
2. Upon a showing that the Final Agency Decision is based upon a clear or plain error of fact or law. 8.057.13.B. The motion for reconsideration shall be filed, in writing, with the Office of Appeals within 15 calendar days of the date that the Final Agency Decision is mailed to the parties. The motion shall state the specific grounds for reconsideration.

8.057.13.C. The Office of Appeals shall promptly serve a copy of the motion for reconsideration on each party by first class mail. Each party may file a written response to a motion for reconsideration filed by another party within 10 calendar days from the date the motion was mailed to the parties.

8.057.13.D. The Office of Appeals shall promptly serve a copy of its decision on the motion for reconsideration on all parties by first class mail.