

160.000 ADMINISTRATIVE RECONSIDERATION AND APPEALS

161.200 Administrative Reconsideration

1-1-16

- A. Within 30 calendar days after notice of an adverse decision/action, the provider may request administrative reconsideration. Requests must be in writing and include:
1. A copy of the letter or notice of adverse decision/action
 2. Additional documentation that supports medical necessity

Administrative reconsideration does not postpone any adverse action that may be imposed pending appeal.

- B. Requests for reconsideration must be submitted as follows:
1. In situations where the adverse decision/action has been taken by a reviewing agent, the request must be directed to that reviewing agent. Contact information for the department's reviewing agents can be found in Section V of this manual. General rules regarding due process are contained in Section I of each provider manual; but some administrative reconsideration and appeal processes are program-specific and are set forth in Section II of the applicable program manual.
 2. When an adverse decision/action has been taken by the Division of Medical Services, the request for reconsideration must be directed to Office of Medicaid Inspector General (OMIG). [View or print the Office of Medicaid Inspector General contact information.](#) Within 20 calendar days of receiving a timely and complete request for administrative reconsideration, the Director of the Division of Medical Services will designate a reviewer, who did not participate in the initial determination leading to the adverse decision/action, who is knowledgeable in the subject matter of the administrative reconsideration, to review the reconsideration request and associated documents. The reviewer shall recommend to the Director that the adverse decision/action be sustained, reversed or modified. The Director may adopt or reject the recommendation in whole or in part.

A reconsideration request received within 35 calendar days of the written notice will be deemed timely. The request must be mailed or delivered by hand. Faxed or E-mailed requests will not be accepted.

No administrative reconsideration is allowed if the adverse decision/action is due to loss of licensure, accreditation or certification.

161.300 Administrative Appeals of Adverse Actions that are not Sanctions

9-15-09

In addition to sanction reconsiderations and appeal procedures set forth in Sections 160.000-169.000, providers may appeal any other decision of the Department of Human Services, its reviewers or contractors if that decision adversely affects a Medicaid provider or beneficiary with regard to receipt or payment of Medicaid-covered services. Such decisions and consequent actions are "non-sanction adverse actions."

Within 30 calendar days of receiving notice of non-sanction adverse action, the provider may appeal. An appeal must be in writing and must specify in detail all findings, determinations, and adverse decisions/actions that the provider alleges are not supported by applicable laws, including state and federal laws and rules, applicable professional standards, or both. Mail or deliver the appeal to the Office of Appeals and Hearings, Arkansas Department of Human Services, P.O. Box 1437, Slot N401, 7th and Main Streets, Little Rock, AR 72203-1437.

161.400 Sanction Appeals

9-15-09

Within 30 calendar days of receiving notice of adverse decision/action, or 10 calendar days of receiving an administrative reconsideration decision that upholds all or part of any adverse decision/action, whichever is later, the provider may appeal.

An appeal must be in writing and must specify in detail all findings, determinations, and adverse decisions/actions that the provider alleges are not supported by applicable laws; including state and federal laws and rules, applicable professional standards or both. Mail or deliver the appeal to the Director, Division of Medical Services, P.O. Box 1437, Slot S401, 7th and Main Streets, Little Rock, AR 72203-1437. No appeal is allowed if the adverse decision/action is due to loss of licensure, accreditation or certification.

161.500 Continued Services During the Appeal Process

9-15-09

The adverse action notice sent to the Medicaid beneficiary must comply with 42 CFR §431.230 entitled "Maintaining Services," which states in part:

(a) When the department mails the 10-day or 5-day notice, as required, and the beneficiary requests a hearing before the date of action, the department 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 department promptly informs the beneficiary in writing that services are to be terminated or reduced pending the hearing decision.

162.000 Notice of the Appeal Hearing

9-15-09

When an appeal hearing is scheduled, the Office of Hearings and Appeals shall notify the provider, or if the provider is represented by an attorney, the provider's attorney, in writing, of the date, time and place of the hearing. Notice shall be mailed not less than 10 calendar days before the scheduled date of the hearing. Hearings shall be conducted in accordance with DHS Policy 1098. The decision of the Office of Appeals and Hearings is the final agency determination.

162.100 Conduct of Hearing

9-15-09

- A. The hearing shall be conducted by a hearing officer who is authorized by the Director of the Division of Medical Services to conduct such hearings.
- B. Testimony shall be taken only under oath, affirmation or penalty of perjury.
- C. Each party shall have the right to call and examine parties and witnesses, to introduce exhibits, to question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination. Each party has the right to impeach any witness regardless of which party first called him to testify. Each party has the right to rebut the opposing evidence.
- D. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal actions.
- E. The hearing officer may provide for discovery by any means permitted by the Arkansas Rules of Civil Procedure and may assess the expense to the requesting party.

- F. The hearing officer may question any party or witness and may admit any relevant and material evidence.
- G. The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Before taking evidence, the hearing officer shall explain the issues and the order in which evidence will be received.
- H. The provider shall have the burden of proving by a preponderance of the evidence that it delivered all billed services in accordance with all applicable requirements.
- I. Except as provided in part H, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

162.200 Representation of Provider at a Hearing

9-15-09

Individual providers may represent themselves. A partner may represent the partnership. A limited liability company or corporation may be represented by an officer or the chief operating official. A professional association may be represented by a principal of the association. Representatives must be courteous in all activities undertaken in connection with the appeal and must obey the orders of the hearing officer regarding the presentation of the appeal. Failure to do so may result in exclusion from the appeal hearing, or in the entry of an order denying discovery.

162.300 Right to Counsel

10-13-03

Any party may appear and be heard at any proceeding described herein through an attorney-at-law. All attorneys shall conform to the standards of conduct practiced by attorneys before the courts of Arkansas. If an attorney does not conform to those standards, the hearing officer may exclude the attorney from the proceeding.

162.400 Appearance in Representative Capacity

9-15-09

A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying himself or herself by name, address and telephone number; and identifying the party represented. He or she shall have written authorization to appear on behalf of the provider. The Division of Medical Services shall notify the provider in writing of the name and telephone number of the division's representative.

163.000 Form of Papers

4-1-06

All papers filed in any proceeding shall be typewritten on legal-sized white paper using one side of the paper only. They shall bear a caption clearly showing the title of the proceeding and the docket number, if any.

The party and/or his authorized representative or attorney shall sign all papers, and all papers shall contain his/her address and telephone number. At a minimum, an original and two copies of all papers shall be filed with the Office of Hearings and Appeals.

163.100 Notice, Service and Proof of Service

9-15-09

- A. All papers, notices and other documents shall be served by the party filing the same upon all parties to the proceeding. Proof of such service upon all parties shall be filed with the Office of Hearings and Appeals.

- B. Service shall be made by delivering, in person or by mail, properly addressed with postage prepaid, one copy to each party entitled thereto. When any party or parties have appeared by an attorney, service upon the attorney shall be deemed service upon the party or parties.
- C. Proof of service of any paper shall be by certificate of attorney, affidavit or acknowledgement.
- D. Service by mail is presumptively complete upon mailing. When service is permitted upon an attorney, such service may be put into effect by electronic transmission, provided the attorney being served has facilities within his office to receive and reproduce verbatim electronic transmissions.

164.000 Witnesses

10-13-03

A party shall arrange for the presence of his or her witnesses at the hearing.

165.000 Amendments

4-1-06

At any time prior to the completion of the hearing, amendments to the adverse decision/action, the provider's notice of appeal, or both, may be allowed on just and reasonable terms to add or discontinue any party, change the allegations or defenses, or add new causes of action or defenses.

Where the Division of Medical Services seeks to add a party or a cause of action or change an allegation, notice shall be given pursuant to Section 154.000, "Notice of Violation," and Section 163.100, "Notice, Service and Proof of Service," to the appropriate parties except that the provisions of Section 161.200, "Administrative Reconsideration," and Section 162.000, "Notice of the Administrative Appeal Hearing," shall not apply.

Where a party other than the Division of Medical Services seeks to add a party or change a defense, notice shall be given pursuant to Section 163.100, "Notice, Service and Proof of Service."

The hearing officer shall continue the hearing for such time as he deems appropriate, and notice of the new date shall be given pursuant to Section 166.000, "Continuances or Additional Hearings."

166.000 Continuances or Additional Hearings

4-1-06

- A. The hearing officer may continue a hearing to another time or place or order additional hearings on his or her own motion or upon showing of good cause at the request of any party.
- B. When the hearing officer determines that additional evidence is necessary for the proper determination of the case, he or she may, at his or her discretion:
 - 1. Continue the hearing to a later date and order one or both parties to produce additional evidence, or
 - 2. Conclude the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence so submitted shall be made available to both parties, and each party shall have the opportunity for rebuttal.

Written notice of the time and place of a continued or additional hearing shall be given, except that when a continuance or additional hearing is ordered during a hearing, oral notice may be given to each party present.

167.000 Failure to Appear

4-1-06

If a party fails to appear at a hearing, the hearing officer may dismiss the appeal or enter a determination adverse to the non-appearing party. A copy of the decision shall be mailed to each party. The hearing officer may, upon motion, set aside the decision and reopen the hearing for mistake, inadvertence, surprise, excusable neglect, fraud, or misrepresentation.

168.000 Record of Hearing

10-13-03

The Division of Medical Services (DMS) shall tape-record the hearings, or cause the hearings to be tape-recorded. If the final DMS determination is appealed, the tape recording shall be transcribed, and copies of other documentary evidence shall be reproduced for filing under the Administrative Procedure Act.

169.000 Decision

4-1-06

- A. At the conclusion of the hearing, the hearing officer shall take the matter under consideration and shall submit a proposed decision to the Director of the Division of Medical Services.
- B. The proposed decision shall be in writing and shall contain findings of fact and conclusions of law, separately stated, and a proposed order.
- C. The director may adopt the proposed decision, or he may reject the proposed decision and have a decision prepared based upon the record, or he may remand the matter to the hearing officer to take additional evidence. In the latter case, the hearing officer, thereafter, shall submit to the director a new proposed decision.
- D. The director's decision is the final agency determination under the Administrative Procedure Act. The director shall cause a copy of the decision to be mailed to the provider at the provider's last known address, or, if the provider was represented by an attorney, to the address provided by the attorney.

169.100 Recovery of the Costs of Services Continued During the Appeal Process

9-15-09

42 CFR §431.230 entitled "Maintaining Services," which states in part:

- (b) If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or beneficiary to recoup the cost of any services furnished the beneficiary, to the extent they were furnished solely by reason of this section.

Federal regulation does not distinguish between beneficiary-filed and provider-filed appeals.

Providers filing appeals shall be subject to the same recovery procedures as beneficiaries. When both the provider and beneficiary appeal, liability shall be joint and several.