




COMMONWEALTH of VIRGINIA
Office of the Attorney General

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Attorney General

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TO: EMILY MCCLELLAN
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: ABRAR AZAMUDDIN 
Assistant Attorney General

DATE: October 13, 2017

SUBJECT: Regulations Regarding Client Appeals
12 VAC 30-110-10 – 12 VAC 30-110-370

I have reviewed the attached final regulations that would update the process for provider appeals. You have asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the final regulations and if they comport with state and federal law. Virginia Code §§ 32.1-324 and 32.1-325 gives the Director of DMAS the authority to make, adopt, promulgate and enforce such regulations as are necessary to carry out the provisions of Chapter 10 of Title 32.1 of the Code of Virginia.

It is my view that the Director, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code § 32.1-324, has the authority to promulgate these changes to the regulations and has not exceeded that authority. Further, it is my view that the attached regulations are exempt pursuant to Virginia Code § 2.2-4006(A)(4)(c) and Virginia Code § 2.2-4006(A)(3). If you have any questions or need any additional information, please call me at 786-2071.

Attachments

cc: Kim F. Piner
Senior Assistant Attorney General/Section Chief



Logged in as

Abrar Azamuddin

Final Text

Action: Client Appeals Amendments to Comply with Federal Regulatory ...

Stage: Final

9/22/17 2:43 PM [latest] ▼

Part I

Client Appeals

Subpart I

General

Article 1

Definitions

12VAC30-110-10. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Action" means a termination, suspension, or reduction in covered benefits or services, or a termination, suspension, or reduction of Medicaid eligibility or covered services-an increase in beneficiary liability, including a determination that a beneficiary must incur a greater amount of medical expenses in order to establish income eligibility in accordance with 42 CFR 435.121(e)(4) or 435.831 or is subject to an increase in premiums or cost-sharing charges under subpart A of 42 CFR 447. It also means (i) determinations by a skilled nursing facilities-facility and or nursing facilities facility to transfer or discharge a residents resident rand and (ii) an adverse determinations determination made by a state with regard to the preadmission screening and annual resident review requirements of § 1919(e) (7) of the Social Security Act.

"Adverse determination" means a determination made in accordance with § 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act 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.

"Agency" means:

1. An agency that, on the department's Department's behalf, makes determinations regarding applications for benefits provided by the department; or
2. The department Department itself.

"Appellant" means (i) an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an action regarding his benefits or his eligibility for benefits and (ii) a nursing facility resident who seeks to challenge a transfer or discharge. Appellant also means an individual who seeks to challenge an adverse determination regarding services provided by a nursing facility.

"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

determination made by a state with regard to the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Social Security Act.

"Department" means the Department of Medical Assistance Services.

"Division" means the ~~department's~~ Department's Appeals Division.

"Final decision" means a written determination by a hearing officer that is binding on the department, unless modified on appeal or review.

"Hearing" means the evidentiary hearing described in this regulation, conducted by a hearing officer employed by the ~~department~~ Department.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

"Send" means to deliver by mail or in electronic format consistent with 42 CFR §431.201 and 42 CFR §435.918.

Article 2 Appeal System

12VAC30-110-20. Appeals Division.

A. ~~The division~~ Division maintains an appeals system ~~for appellants to challenge (i) actions, as defined in 42 CFR 431.201, regarding services and benefits provided by the department, and (ii) adverse determinations regarding services provided by a nursing facility in accordance with § 1919(b)(3)(F) or 1919(e)(7)(B).~~ that complies with all federal legal authority for appellants to challenge actions, as defined in 42 CFR §431.201, regarding services and benefits provided by the Agency or a nursing facility. Appellants shall be entitled to a hearing before a hearing officer. See Subpart II (12VAC30-110-130 et seq.) of this chapter.

B. The appeals system shall be admissible to persons who are limited English proficient and persons who have disabilities, consistent with 42 CFR §435.905(b).

~~B. C.~~ C. In accordance with 42 CFR 435.918, the ~~agency~~ Agency makes electronic appeal correspondence available to applicants and recipients. Applicants and recipients may elect to receive appeal correspondence in electronic format or by regular mail and may change such election.

12VAC30-110-30. Time limitation for appeals.

Hearing officer appeals shall be scheduled and conducted to comply with the ~~90-day time limitation~~ limitations for standard and expedited appeals imposed by federal regulations, unless ~~waived in writing by the appellant or the appellant's representative.~~

1. The Agency cannot reach a decision because the appellant requests a delay or fails to take a required action; or

2. There is an administrative or other emergency beyond the Agency's control.

All instances in which there is a delay shall be documented in the appellant's record.

12VAC30-110-35. Expedited Appeals.

A. An appellant may request and the Agency shall provide an expedited appeals process for claims for which the Agency determines that the 90-day timeframe for conducting an appeal could jeopardize the individual's life, health, or ability to attain, maintain, or regain maximum function.

B. If an expedited appeal request is granted, the following timeframes for conducting the appeal apply from receipt of the appeal request:

1. Seventy-two hours for:

- a. a claim related to services or benefits described in 42 CFR § 431.220(a)(1);
- b. any MCO, PIHP, or PAHP enrollee who is entitled to a hearing under subpart F of part 438 of the Code of Federal Regulations;
- c. any enrollee in a non-emergency medical transportation prepaid ambulatory health plan who has an action; and
- d. any enrollee who is entitled to a hearing under subpart B of part 438 of the Code of Federal Regulations.

2. Seven business days for:

- a. Eligibility claims;
- b. Nursing facility claims related to transfer or discharge; or
- c. Nursing facility claims related to the Agency's preadmission determination or annual resident review.

C. The Department shall notify the individual whether the request is granted or denied as expeditiously as possible. Such notice may be provided orally or through the electronic means found in 12VAC30-110-130.

12VAC30-110-60. Designation of representative.

A. Agents. An agent must be designated in a written statement which is signed by the appellant. If the appellant is physically or mentally unable to sign a written statement, the ~~division~~ Division may allow a family member or other person acting on appellant's behalf to represent the appellant.

B. Attorneys. If the agent is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that he is authorized to represent the appellant prepared on the attorney's letterhead, shall be accepted as a designation of representation.

C. Substitution. A member of the same law firm as a designated representative shall have the same rights as the designated representative.

D. Revocation. An appellant may revoke representation by another person at any time. The revocation is effective when the ~~department~~ Department receives written notice from the appellant.

Article 4

Notice and Appeal Rights

12VAC30-110-70. Notification of adverse agency action.

The ~~agency~~ Agency that takes action or makes an adverse determination shall inform the applicant or recipient in a written notice:

1. What action or adverse determination the ~~agency~~ Agency intends to take and the effective date of such action;
2. ~~The~~ A clear statement of the specific reasons for supporting the intended action or adverse determination;
3. The specific regulations that support or the change in law that requires the action or adverse determination;

4. The right to request an evidentiary hearing, and the methods and time limits for doing so;

5. The right to request an expedited evidentiary hearing;

~~5- 6.~~ The circumstances under which benefits are continued if a hearing is requested (see 12VAC30-110-100); and

~~6- 7.~~ The right to representation.

12VAC30-110-80. Advance notice.

When the ~~agency~~ Agency plans to terminate, suspend, or reduce an individual's eligibility or covered services, the ~~agency~~ Agency must send the notice described in 12VAC30-110-70 at least 10 days before the date of action, except as otherwise permitted by federal law in 42 CFR §431.213 and 42 CFR §431.214.

12VAC30-110-90. Right to appeal.

An individual has the right to file an appeal when:

1. His application for benefits administered by the ~~department~~ Department is denied. However, if an application for State and Local Hospitalization coverage is denied because of a lack of funds which is confirmed by the hearing officer, there is no right to appeal;
2. The ~~agency~~ Agency takes action or proposes to take action that will adversely affect, reduce, or terminate his receipt of benefits;
3. His request for a particular medical service is denied, suspended, reduced, or terminated, in whole or in part;
4. The ~~agency~~ Agency fails to take an application and/or fails to act with reasonable promptness on his application for benefits or request for a particular medical service;
5. The ~~agency~~ Agency takes action or proposes to take action regarding the recovery of applicable medical assistance payments from a decedent's estate;
6. The ~~agency~~ Agency takes action or proposes to take action regarding the recovery of expenditures for services received by ineligible individuals;
7. The ~~agency~~ Agency takes action or proposes to take action regarding the recovery of expenditures paid on behalf of individuals whose coverage was continued during the appeals process; or
8. Federal regulations require that a fair hearing be granted.

12VAC30-110-100. Maintaining services.

A. If the ~~agency~~ Agency sends the 10-day notice described in 12VAC30-110-80 and the appellant files his Request for Appeal before the date of action, his services shall not be terminated or reduced until the hearing officer issues a final decision unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the appellant is promptly informed in writing that services are to be terminated or reduced pending the final decision.

B. If the ~~agency's~~ Agency's action is sustained on appeal, the ~~agency~~ Agency may institute any available recovery procedures against the appellant to recoup the cost of any services furnished to the appellant, to the extent they were furnished solely by reason of subsection A of this section.

Article 5
Miscellaneous Provisions

12VAC30-110-110. Appeals Division records.

A. Removal of records. No person shall take from the ~~division's~~ Division's custody any original record, paper, document, or exhibit that has been certified to the ~~division~~ Division except as the Director of the Appeals Division authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Confidentiality of records. Information in the appellant's record can be released only to a properly designated representative or other person or persons named in a release of information authorization signed by an appellant, his guardian, or power of attorney.

C. Fees. The fees to be charged and collected for any copies will be in accordance with Virginia's Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) or other controlling law.

D. Waiver of fees. When copies are requested from records in the ~~division's~~ Division's custody, the required fee shall be waived if the copies are requested in connection with an individual's own review or appeal.

Subpart II
Hearing Officer Review

Article 1
Commencement of Appeals

12VAC30-110-130. Request for appeal.

A. An appeal may be filed by any of the following methods:

1. By telephone;

2. Via email;

3. In person; and

4. Through other commonly available electronic means supported by the Agency.

B. Any ~~written~~ communication in the formats specified above from an appellant or his representative ~~which~~ that clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request. This communication should explain the basis for the appeal.

12VAC30-110-150. Filing date.

The date of filing shall be the date the request is postmarked, if mailed, or the date the request is received by the ~~department~~ Department, if delivered other than by mail.

12VAC30-110-160. Time limit for filing.

A Request for Appeal shall be filed within 30 days of the appellant's receipt of the notice of an action or adverse determination described in 12VAC30-110-70. It is presumed that appellants will receive the notice five days after the ~~agency~~ Agency mails the notice unless the appellant shows that he did not receive the notice within the five-day period. A Request for Appeal on the grounds that an ~~agency~~ Agency has not acted with reasonable promptness may be filed at any time until the ~~agency~~ Agency has acted.

12VAC30-110-170. Extension of time for filing.

An extension of the 30-day period for filing a Request for Appeal may be granted for good cause shown. Examples of good cause include, but are not limited to, the following situations:

1. Appellant was seriously ill and was prevented from contacting the ~~division~~ Division;
2. Appellant did not receive notice of the ~~agency's~~ Agency's decision action or adverse determination;
3. Appellant sent the Request for Appeal to another government agency in good faith within the time limit;
4. Unusual or unavoidable circumstances prevented a timely filing.

12VAC30-110-180. Provision of information.

Upon receipt of a Request for Appeal, the ~~division~~ Division shall notify the appellant and his representative of general appeals procedures and shall provide further detailed information upon request.

Article 2
Prehearing Review

12VAC30-110-190. Review.

A hearing officer shall initially review an assigned case for compliance with prehearing requirements and may communicate with the appellant or his representative and the ~~agency~~ Agency to confirm the ~~agency~~ Agency action and schedule the hearing.

12VAC30-110-200. Medical assessment.

A. A hearing officer may order an independent medical assessment when:

1. The hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision; and
2. The hearing officer determines it necessary to have an assessment by someone other than the person or team who made the original decision, for example, to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence.

B. A medical assessment ordered pursuant to this regulation shall be at the ~~department's~~ Department's expense and shall become part of the record.

12VAC30-110-210. Prehearing action.

A. Invalidation. A Request for Appeal may be invalidated if it was not filed within the time limit imposed by 12VAC30-110-160 or extended pursuant to 12VAC30-110-170.

1. If the hearing officer determines that the appellant has failed to file a timely appeal, the hearing officer shall notify the appellant and the appellant's representative of the opportunity to show good cause for the late appeal.
2. If a factual dispute exists about the timeliness of the Request for Appeal, the hearing officer shall receive evidence or testimony on those matters before taking final action.

3. If the individual filing the appeal is not the appellant or an authorized representative of the appellant under the provisions of 12VAC30-110-60 A, the appeal shall be determined invalid.

4. If a Request for Appeal is invalidated, the hearing officer shall issue a decision pursuant to 12VAC30-110-370.

B. Administrative dismissal. Request for Appeal may be administratively dismissed without a hearing if the appellant has no right to appeal under 12VAC30-110-90.

1. If the hearing officer determines that the appellant does not have the right to an appeal, the hearing officer shall issue a final decision dismissing the appeal and notify the appellant and appellant's representative of the opportunity to seek judicial review.

2. If a Request for Appeal is administratively dismissed, the hearing officer shall issue a decision pursuant to 12VAC30-110-370.

C. Judgment on the record. If the hearing officer determines from the record that the ~~agency's~~ Agency's determination was clearly in error and that the case should be resolved in the appellant's favor, he shall issue a decision pursuant to 12VAC30-110-370.

D. Remand to ~~agency~~ Agency. If the hearing officer determines from the record that the case might be resolved in the appellant's favor if the ~~agency~~ Agency obtains and develops additional information, documentation, or verification, he may remand the case to the ~~agency~~ Agency for action consistent with the hearing officer's written instructions. The remand order shall be sent to the appellant and any representative.

Article 3 Hearing

12VAC30-110-220. Evidentiary hearings.

A hearing officer shall review all ~~agency~~ Agency determinations which are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; and issue a written final decision sustaining, reversing, or remanding each case to the ~~agency~~ Agency for further proceedings.

12VAC30-110-270. Location.

The hearing location shall be determined by the ~~division~~ Division. If for medical reasons the appellant is unable to travel, the hearing may be conducted at his residence.

The ~~agency~~ Agency may respond to a series of individual requests for hearings by conducting a single group hearing:

1. Only in cases in which the sole issue involved is one of federal or state law or policy; and
2. Each person must be permitted to present his own case or be represented by his authorized representative.

12VAC30-110-280. Client access to records.

Upon the request of the appellant or his representative, at a reasonable time before the date of the hearing, as well as during the hearing, the appellant and his representative may examine the content of appellant's case file and all documents and records the ~~agency~~ Agency will rely on at the hearing.

12VAC30-110-285. Appeals Division access to agency records.

A hearing officer shall have access to ~~agency~~ Agency information necessary to issue a proper hearing decision that is sound and legally supportable, including information concerning state policies and regulations.

12VAC30-110-290. Subpoenas.

Appellants who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request issuance of a subpoena in writing. The request must be received by the ~~division~~ Division at least five business days before the hearing is scheduled. Such request must include the witness' name, home and work address, county or city of work and residence, and identify the sheriff's office which will serve the subpoena.

12VAC30-110-330. Record of hearing.

All hearings shall be recorded either by court reporter, tape recorders, or whatever other means the ~~agency~~ Agency deems appropriate. All exhibits accepted or rejected shall become part of the hearing record.

12VAC30-110-340. Oath or affirmation.

All witnesses shall testify under oath which shall be administered by the court reporter or the hearing officer, as delegated by the ~~department's~~ Department's director.

12VAC30-110-350. Dismissal of Request for Appeal.

A. Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request ~~in writing via any of the methods in 12VAC30-110-130. For telephonic appeal withdrawals, the Agency shall record the individual's statement and telephonic signature;~~ or
2. The appellant or his representative fails to appear at the scheduled hearing without good cause and does not reply within 10 days after the hearing officer sends an inquiry as to whether the appellant wishes further action on the appeal.

B. Subsequent to the dismissal, the appellant shall receive the written order of dismissal via regular mail or electronic notification in accordance with the individual's election under 42 CFR §435.918(a).

12VAC30-110-370. Final decision and transmission of the hearing record.

A. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision which either sustains or reverses the ~~agency~~ Agency action or remands the case to the ~~agency~~ Agency for further action consistent with his written instructions. The hearing officer's final decision shall be considered as the ~~agency's~~ Agency's final administrative action pursuant to 42 CFR; §431.244(f). The final decision shall include:

1. A description of the procedural development of the case;
2. Findings of fact that identify supporting evidence;
3. Conclusions of law that identify supporting regulations and law;
4. Conclusions and reasoning;
5. The specific action to be taken by the ~~agency~~ Agency to implement the decision;

6. The deadline date by which further action must be taken; and

7. A cover letter stating that the hearing officer's decision is final, and stating that the final decision may be appealed directly to circuit court as provided in 12VAC30-110-40.

B. The hearing record shall be forwarded to the appellant and his representative with the final decision.