



PERMANENT ADMINISTRATIVE ORDER

DMAP 30-2021

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

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RULE SUMMARY: Making permanent rule change to align with the CCO grievance & appeal rule 410-141-3905, which was revised due to a Centers for Medicare & Medicaid (CMS) rule change.

CHANGES TO RULE:

410-120-1860

Contested Case Hearing Procedures ¶

(1) These rules apply to all contested case hearings provided by the Authority involving a client's health care benefits, except as otherwise provided in OAR 410-141-3245890. The hearings are conducted in accordance with ORS 183.411 ~~through~~ 183.497 and the Attorney General's model rules, OAR 137-003-0501 ~~through~~ 137-003-0700. When the term "agency" is used in the Attorney General's model rules, it shall refer to the Authority for purposes of this rule except for OAR 137-003-0528(1)(a). The method described in OAR 137-003-0520(8)-(10) is used in computing any period of time prescribed in this division of rules (OAR 410 division 120) applicable to timely filing of client requests for hearing. Due to operational conflicts, the procedures needing revision and the expense of doing so, OAR 137-003-0528(1)(a), which allows hearing requests to be treated as timely based on the date of postmark, does not apply to Authority contested cases.¶

(2) Medical provider appeals and administrative reviews involving the Division are governed by OAR 410-120-1560 through 410-120-1600.¶

(3) Grievances, complaints, and appeals for clients requesting or receiving medical assistance from an MCE shall be governed exclusively by the procedures in OARs 410-141-0230 ~~to~~ 3875 through 410-141-325915. This rule describes the procedures applicable when MCE clients request and are eligible for an Authority contested case hearing.¶

(4) Contested Case Hearing Requests:¶

(a) A client has the right to a contested case hearing in the following situations upon the timely completion of a request for a hearing:¶

(A) The Authority makes an adverse determination or action or-, as it relates to an MCE, an adverse benefit

determination such as denial of client services, payment of a claim, or to terminate, discontinue, or reduce a course of treatment, or issues related to disenrollment in an MCE; or-¶

(B) The right of a client to request a contested case hearing is otherwise provided by statute or rule, including OAR 410-141-3240885 when a client of an MCE may request a state hearing.-¶

(b) To be timely, a request for a hearing is complete when the following requirements are met:¶

(A) The Authority receives the Authority approved appeal and hearing forms not later than the 60th day following the date of the decision notice;-¶

(B) When enrolled in an MCE, the member files the request for contested case hearing within the time frames specified in OAR 410-141-3247900.¶

(c) In the event a request for hearing is not timely, the Authority shall determine whether the client showed there was good cause, as defined in OAR 137-003-0501(7), for their failure to timely file the hearing request. In determining whether to accept a late hearing request, the Authority requires the request to be supported by a written statement that explains why the request for hearing is late. The Authority may conduct such further inquiry as the Authority deems appropriate. If the Authority finds that the client has good cause for late filing, the Authority shall refer the case to the Office of Administrative Hearings (OAH) for a contested case hearing. The following factual disputes shall be referred to the OAH for a hearing:-¶

(A) Whether the hearing request was received timely;-¶

(B) Whether the client received the notice of adverse benefit determination or action;-¶

(C) The information included in the client's statement of good cause.-¶

(d) In the event the claimant is not entitled to a contested case hearing on an issue, the Authority may enter an order accordingly. The Authority may refer a hearing request to the Office of Administrative Hearings AH for a hearing on the question of whether the claimant has a right to a contested case hearing;-¶

(e) A client who requests a hearing shall be referred to as a claimant. The parties to a contested case hearing are the claimant and, if the claimant has requested a hearing about a decision of an MCE, the claimant's MCE;-¶

(f) A client may be represented by any of the individuals identified in ORS 183.458. An MCE that is a corporation may be represented by any of the individuals identified in ORS 410.190.-¶

(g) For clients enrolled in an MCE, the following applies:¶

(A) May request a contested case hearing with the state after receiving notice that the adverse benefit determination or MCE action is upheld or, in the case of an MCE that fails to adhere to the notice and timing requirements, the state may deem that the member has exhausted the MCE's appeals process and may initiate a state contested case hearing pursuant to OAR 410-141-3247(3)900;¶

(B) A request for an Authority administrative hearing made prior to an MCE appeal by the member or member's representative or provider shall be forwarded by the Authority to the MCE for review, except in the case where the Authority determines the MCE failed to act within required timelines.¶

(5) Expedited hearings:-¶

(a) A claimant who feels ~~his or her~~ their health care problem cannot wait for the normal review process may be entitled to an expedited hearing;-¶

(b) A request for an expedited hearing for a service that has already been provided (post-service) to the claimant will not be granted;¶

~~(b)~~ (c) Expedited hearings are requested using Authority Form 443 or other Division approved appeal and/or hearing request forms;-¶

~~(d)~~ (e) Authority staff shall request all relevant health care documentation and present the documentation obtained in response to that request to the Authority medical director or the medical director's designee for review. The Authority medical director or designee shall decide if the claimant is entitled to an expedited hearing within, as nearly as possible, two working days from the date of receiving the documentation applicable to the request;-¶

~~(d)~~ (e) An expedited hearing shall be allowed if the Authority medical director or the designee determines that the claimant has a health care condition that could jeopardize the claimant's life, health, or ability to maintain or regain maximum function and claimant has been denied a health care service;-¶

(ef) Expedited hearing requests shall be completed as expeditiously as the ~~enrollee~~ claimant's health condition

requires with the following timelines:¶¶

(A) For expedited hearing requests responding to any claim requiring review of an MCE written notice of expedited appeal resolution, hearing requests shall be no later than three working days after the agency receives from the MCE the case file and information for any appeal of a denial of a service as indicated by the MCE;¶¶

(B) For expedited state contested hearing requests, no later than seven working days after the agency receives a request for expedited fair hearing responding to any request for the following reasons:¶¶

(i) Claim for services is denied or is not acted upon with reasonable promptness;¶¶

(ii) Requests because the claimant believes the agency has taken an action erroneously;¶¶

(iii) Requests because the claimant believes a skilled nursing facility or nursing facility has erroneously determined that ~~he or she~~ they must be transferred or discharged;¶¶

(iv) Requests because the claimant believes the state has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act; or¶¶

(v) For expedited state administrative hearing for claims related to prompt determinations of eligibility and enrollment in the appropriate program without undue delay, consistent with timeliness standards established under CFR 435.912, based on the date the application is submitted to any insurance affordability program.¶¶

(fg) The Authority shall take final administrative action on a contested hearing request within the time limits set forth in 42 CFR Part 431 and Part 435 except in unusual circumstances when:¶¶

(A) The Authority cannot reach a decision because the appellant requests a delay or fails to take a required action; or¶¶

(B) There is an administrative or other emergency beyond the Authority's control.¶¶

(6) Informal conference:¶¶

(a) The Authority hearing representative and the claimant, and their legal representative if any, may have an informal conference without the presence of the Administrative law Judge (ALJ) to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:¶¶

(A) Provide an opportunity for the Authority and the claimant to settle the matter;¶¶

(B) Provide an opportunity to make sure the claimant understands the reason for the action that is the subject of the hearing request;¶¶

(C) Give the claimant and the Authority an opportunity to review the information that is the basis for that action; ¶¶

(D) Inform the claimant of the rules that serve as the basis for the contested action;¶¶

(E) Give the claimant and the Authority the chance to correct any misunderstanding of the facts;¶¶

(F) Determine if the claimant wishes to have any witness subpoenas issued for the hearing; and¶¶

(G) Give the Authority an opportunity to review its action.¶¶

(b) The claimant may at any time prior to the hearing date request an additional informal conference with the Authority representative, which may be granted if the Authority representative finds in ~~his or their~~ sole discretion that the additional informal discussion will facilitate the hearing process or resolution of disputed issues;¶¶

(c) The Authority may provide to the claimant the relief sought at any time before the Final Order is served;¶¶

(d) Any agreement reached in an informal conference shall be submitted to the ALJ in writing or presented orally on the record at the hearing.¶¶

(7) A claimant may withdraw a hearing request at any time. The withdrawal is effective on the date it is received by the Authority or the ALJ, whichever is first. The ALJ shall send a Final Order confirming the withdrawal to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth day following the date such an order is effective.¶¶

(8) Contested case hearings are closed to non-participants in the hearing; however, a client may choose to have another individual present.¶¶

(9) Proposed and Final Orders:¶¶

(a) In a contested case, an ALJ assigned by the Office of Administrative Hearings shall serve a proposed order on all parties and the Authority, unless prior to the hearing the Authority notifies the ALJ that a final order may be served. The proposed order issued by the ALJ shall become a final order if no exceptions are filed within the time

specified in subsection (b)(A) below, unless the Authority notifies the parties and the ALJ that the Authority shall issue the final order;¶

(b) If the ALJ issues a proposed order, a party adversely affected by the proposed order may file exceptions to the proposed order or present argument for the Authority's consideration:¶

(A) The exceptions must be in writing and reach the Authority not later than ten working days after date the proposed order is issued by the ALJ;¶

(B) After receiving the exceptions, if any, the Authority may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Authority shall issue an amended proposed order.¶

(10) A hearing request is dismissed by order when neither the party nor the party's legal representative, if any, appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Authority shall cancel the dismissal order on request of the party upon the party being able to show good cause, as defined in OAR 137-003-0501(7), as to why they were unable to attend the hearing and unable to request a postponement.¶

(11) The final order is effective immediately upon being signed or as otherwise provided in the order. A final order resulting from the claimant's withdrawal of the hearing request is effective the date the claimant withdraws. When the claimant fails to appear for the hearing and the hearing request is dismissed by final order, the effective date of the order is the date of the scheduled hearing.¶

(12) All contested case hearing decisions are subject to judicial review under ORS 183.482 in the Court of Appeals.¶

[NOTE: Forms referenced are available from the agency.]

Statutory/Other Authority: ORS 183.341, 413.042

Statutes/Other Implemented: ORS 183.411 - 183.471, 411.408, 414.025, 414.065