DISABILITY RIGHTS
NORTH CAROLINA
Champions for Equality and Justice

Medicaid Appeals Involving Managed Care Organizations

If you receive services funded by Medicaid, you have the right to appeal any denial, reduction, suspension, or termination of services. In North Carolina, Managed Care Organizations (MCOs) administer behavioral health services. You can appeal the MCO's decision to do any of the following:

- Stop providing a service that you have been receiving;
- Cut the number of hours or units of the service you get;
- Deny a request for services; or
- Deny a request for a piece of equipment, a home modification, or assistive technology.

If you believe the service or equipment is medically necessary, you should appeal the MCO's decision. This guide provides step-by-step instructions for this process. This is general information for educational purposes only and should not be construed as legal advice.

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What is a Medicaid Appeal?

The Medicaid appeal process is how you fight a denial or reduction of services. You can make an appeal with or without an attorney. Although an attorney can be helpful, you can be successful in a Medicaid appeal on your own or with the help of a trusted relative or friend.

When Can I Appeal?

When the Managed Care Organization (MCO) takes an "action," you have the right to appeal. An action generally relates to services.

The following are examples of actions an MCO may take:

- Deny or terminate a service (say no to your request);
- Reduce or suspend a service (cut back on the number of hours or units of a service you receive); or
- Give limited authorization for a service (approve the service, but only for a certain number of weeks or months).

In these cases, you have the right to appeal the MCO's action.

What Do I Need to Prove in an Appeal?

You will need to show that the service or equipment is a medical need. Medicaid only provides services that are considered medically necessary.

The federal government defines medical needs as "health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine."

TERMS YOU NEED TO KNOW

Managed Care Organization (MCO) – The State of North Carolina pays MCOs to manage its behavioral health services. The MCOs' responsibilities include the following:

- Building and managing a network of service providers
- Providing care coordination to help the people they serve request appropriate services
- Authorizing or denying requests for services
- Paying providers for services

North Carolina has seven MCOs:

- Alliance Behavioral Health
- Cardinal Innovations
- Eastpointe
- Partners Behavioral Health
- Sandhills Center
- Trillium
- Vaya Health

Behavioral Health Services – This term refers to all services for mental health, developmental disabilities, and substance abuse.

MCOs manage behavioral health services that are paid for by the State and by Medicaid.

Step 1: The Notice

The MCO will send you a Notice saying that it has denied your request for a service, equipment, or a home modification. The MCO must also send you a Notice if it has decided to stop providing a service you currently get, or if it is cutting the number of hours or units of a service you receive.

The Notice must say why the service was denied or reduced. This explanation is called the clinical rationale. The clinical rationale should explain the medical reason why the MCO did not approve the service. However, in many cases, you will have to call the MCO to get the full clinical rationale.

The Notice should also include:

- The date when the service will end or change (if you receive the service now)
- Information about how to appeal the decision
- Contact information for Legal Aid of North Carolina or other legal services groups
- A Reconsideration Request Form

You have 30 days from the date on the notice to submit the Reconsideration Request Form. You should send in this form in right away in order to avoid a potential disruption in services. If you do not send in the form right away and you stop receiving the service, the MCO may use your ability to maintain the status quo without the service as an argument for why you do not need the service.

If you need more than 30 days because you are gathering additional documents to support the request, let the MCO know.

GRIEVANCES

The grievance process is for complaints that do not involve an "action" (a denial, reduction, suspension, or termination of services or equipment). For example, you can file a grievance if you are not happy with the quality of care or services you are getting.

Filing grievances is important. The State holds MCOs accountable for customer satisfaction. By filing a grievance, you let the MCO know how it needs to improve. If many people file grievances against an MCO, the State will know that MCO is not doing a good job.

A grievance does not trigger a formal process, but the MCO should respond. For example, a complaint about a Care Coordinator may result in the MCO assigning a new person to your case.

Go to our website and see the fact sheet called "Using Grievances as an Advocacy Tool" for information on filing grievances.

Step 2: Reconsideration

When you submit your Reconsideration Request Form, the MCO must take a second look at your request. Someone who was not involved in the original decision to deny or reduce the service will look at the request.

You do not get to participate in this process, but you can give the reviewer new information to consider. For example, you can give the MCO a letter from your doctor explaining why the service or equipment you asked for is a medical need.

The MCO must complete the reconsideration process within 45 days of when you submitted the Reconsideration Request Form. Sometimes, 45 days is too long—for example, if the life, health, or functional abilities of the person receiving services is in jeopardy. In such a case, you can request an Expedited Reconsideration. The MCO has 3 days to act on that request. If it accepts the request, the MCO has another 3 days to do the reconsideration and give you an answer.

You will get a letter in the mail about the result of the reconsideration. If the original decision is reversed, congratulations! You can work with your service provider to get the service started or re-started or to get the equipment you need.

If the MCO stands by its original decision, you will need to file an appeal. You will have 30 days to file an Appeal Notice with the Office of Administrative Hearings. However, you should file the Appeal Notice right away to avoid an interruption of services.

Keeping Services during Reconsideration and Appeal

If the MCO has decided to reduce or terminate a service that you are receiving now, you need to act fast to make sure you keep getting the service during the reconsideration and appeal process.

File the Reconsideration Request Form within 10 days of receiving the Notice that the service has been reduced, suspended, or terminated. If the MCO sends you a letter saying it has done the Reconsideration and is standing by its original decision, file the Appeal Notice within 10 days of receiving that letter.

The letter about the reconsideration results will say you may have to pay for the service you receive during the appeal process if you ultimately lose at the hearing. However, this rarely happens. Do not let that scare you away from demanding that the service continue or from pursuing the appeal.

Allowing the service to stop during the appeal process is a bad strategy! The judge may think you do not really need to service.

You must file the Appeal Notice with your MCO, the NC Department of Health and Human Services, and the Office of Administrative Hearings. If possible, you should fax the Appeal Notice to each of these offices. Even if you do fax, make sure you also mail copies of the Appeal Notice to each office.

Step 3: Mediation

If you file an Appeal Notice, the MCO will likely invite you to mediation. Mediation is an informal process where you and the MCO will talk out your disagreements.

Mediations are usually held over the phone. You can present new information or evidence at the mediation, and so can the MCO. A neutral mediator will guide the discussion in hopes of reaching a settlement.

A settlement could mean the MCO reverses or adjusts its decision. Another possible outcome is that you and the MCO agree to postpone the appeal so the MCO can collect or review new information.

Even if you and the MCO do not reach a settlement, mediation can be a helpful experience for the following reasons:

- Both sides can negotiate without fear that any statements will be used against them later. (The mediation is confidential. Any admission or offer discussed in mediation cannot be brought up during a hearing later.)
- Both sides can brainstorm about other services that might meet your needs.
- You will learn more about why the MCO denied or reduced the service and what the MCO will argue at the hearing.

You do not have to agree to the mediation. However, if you tell the MCO you will go the mediation, make sure you are there for the appointment or phone call. If you are not, and you do not have a "good cause" for missing the mediation, your appeal will be dismissed.

You do not have to agree to a settlement in mediation. If no settlement is reached, your appeal continues with an administrative hearing.

Step 4: The Appeal Hearing

This hearing is also called a "state fair hearing." This is your opportunity to make your case before an Administrative Law Judge. You and the MCO will get to present evidence, including documents and witness testimony. Your goal is to show the judge that there is a medical need for the service or equipment you requested.

You will receive a letter by certified mail with your hearing date. If you need more time to prepare, or if you have a scheduling conflict, you can ask the judge for a later court date.

This is called a continuance. You need to show “good cause” for why you need a continuance. Examples of good cause include having a scheduled medical procedure or trying to arrange for a witness, like a doctor, to testify at the hearing. To request a continuance, you have to write a letter to the judge and send a copy to the attorney representing the MCO.

Most hearings are done over the phone. However, you can request an in-person hearing, which would take place in Raleigh. You can request that the hearing be held closer to your home if traveling to Raleigh will be a hardship. However, that request may be denied.

The MCO must share with you any documents it intends to submit at the hearing. These documents must get to you in a “reasonable time” before the hearing. How many days qualify as a reasonable time depends on the number of documents. If the documents are sent at least 5 days before the hearing, that is considered a reasonable time.

You have the same obligation to share any documents you want to present at the hearing with the MCO. You will need to mail two copies of your documents to the Office of Administrative Hearings and one copy to the MCO. See the letter with your hearing date for addresses and more information about submitting your documents.

Preparing for Mediation and the Appeal Hearing

It is a good idea to prepare for the mediation as if it were a hearing. The keys to being successful are to know your rights and to be organized. Remember, your goal is to show that there is a medical need for the service or equipment you requested.

Here are the steps you should take before the mediation or appeal hearing:

1) Gather documents. Organize any information or records you have documenting the medical need for the service. If the service was reduced or discontinued in the past and that had a negative effect, gather any documents you have showing that effect.

2) Request documents. You have the right to see all of the information in your file, including any information the MCO used when it made the decision to deny, terminate, or reduce the service. Contact the MCO to request a copy of your entire file. You want the entire file because, although the MCO will have used your most recent assessments to make its decision, the file may include past assessments that will help you show that the newest assessments do not reflect your needs.

3) Share documents. If you are going to mediation, send to the mediator any new documents the MCO should see before the mediation. The mediator will give it to the MCO. Get these documents to the mediator at least several days before the mediation.

If you are going to a hearing, mail two copies of your documents to the Office of Administrative Hearings and one copy to the MCO. If you share new documents close to

the hearing date, the court may postpone the hearing to give the MCO time to review the documents. The court may postpone the case from 15 to 30 days.

4) Invite others. You should invite medical professionals, such as your doctor, to help explain the medical need for the requested service. Others involved in providing care, such as direct care workers, also can be good witnesses. If they cannot attend the mediation or hearing, they can write a letter explaining the medical need for the service.

5) Read the Service Definition and Clinical Coverage Policy. You can find a list of the Clinical Coverage Policies at http://dma.ncdhhs.gov/behavioral-health-clinical-coverage-policies (Policy 8P is for the Innovations Waiver). These policies describe the eligibility criteria and factors used to evaluate requests for services. You also can get the Clinical Coverage Policies from your MCO.

6) Have a Plan. During the mediation, the MCO may offer to provide some of the services you requested, but not as much as you wanted. This is a settlement offer. Have in mind the number of hours or units of the service you feel would meet your medical need. If you are willing to settle for fewer units, you may be able to reach a settlement and avoid a hearing. If you feel you need the number of units originally requested, be prepared to provide evidence of that need.

Proving Your Case

You need to present evidence that proves to the judge that the service or equipment you asked for is medically necessary. Help the judge understand the type of service you need and the level or number of hours you need. Demonstrate how the service has helped you, or will help you. Also, try to show how not getting the service will affect your life.

To prove your case, you will need to present evidence. Evidence can include witness testimony, records, documents, and other objects.

Witnesses can include anyone who can testify to your medical need for the service or equipment. Your treating physician or other medical professional can be helpful in proving your case. He or she should be prepared to describe the service requested, how it helps you, how many hours or units of the service you need, and what the effect of not having the service would be.

Your case manager, service provider, or community guide can also be helpful in proving your case. He or she can tell the judge why the service you requested in medically necessary. Also, he or she may be able to explain how the service helped you to get better or learn new things, or if you would get worse without the service.

Witnesses can testify by phone. You must provide the judge with the phone numbers where your witnesses can be reached before the hearing. Check your witnesses'

schedules to make sure they are available on the day of your hearing. If a witness is only available to testify at a certain time or on a certain day, let the judge know that before the hearing date. If one of your witnesses is not available, that may be "good cause" for a requesting a continuance (a later court date).

Records and documents that will help the judge understand what the service or equipment is and why you need it are essential to proving your case. These may include letters from your doctor, medical records, school records, and information about the service or equipment.

To speed up the process of getting these documents, be selective. For example, you probably do not need your child's entire school record to prove a need for in-home skill-building services. However, a recent occupational therapy evaluation may be helpful.

Objects are any evidence other than witness testimony, records, or documents. For example, if you requested certain equipment, you could show the judge a picture of it.

Dos and Don'ts at the Hearing

Do!

Call the judge "your honor," "judge," "ma'am," or "sir."

Call the attorney representing the State or the MCO "Mr." or "Ms." and their last name.

Stand up when you talk to the judge. If you cannot stand, tell the judge and ask if you may remain seated.

Ask the judge's permission when you move around, such as when you want to go toward a witness. ("Your honor, may I approach the witness stand?")

Don't!

Do not accuse witnesses of lying. You can point out evidence that contradicts the witness's testimony when it is your turn to question the witness.

Do not interrupt. If you have a question or comment, wait until the witness or other attorney is finished speaking.

Do not take things personally. Remember, the attorney and witnesses for the other side are trying to prove their case. They are not attacking you. Do not get upset.

Avoid "Red Herrings"

A Medicaid appeal hearing can only address the issue of the denial, suspension, reduction, or termination of services. This is not the time to bring up other issues you have with the MCO or your service provider, or any frustrations or dissatisfaction you have. In Disability Rights NC's experience, it does not help your case to divert the judge's attention from the question at hand. It is better to stay focused.

After the Hearing

You will receive the Final Notice of Decision, which will have the judge's decision. The judge will answer these three questions:

- Did the MCO do something wrong when it denied or changed the service?
- Did the MCO have a good reason for its decision?
- Did the MCO follow all laws when it made the decision?

This decision is final and cannot be reversed without a hearing in Superior Court. You can appeal the Administrative Law Judge's decision to the Superior Court. You have 30 days from the date on the Final Notice of Decision to file a Petition for Judicial Review in the Superior Court in the county where you live. You can appeal your case without an attorney. However, Disability Rights NC recommends that you contact an attorney to help you with this process.

Getting Help with Your Appeal

Anyone you trust, such as a friend or relative, can help you during your appeal. The agency that provides your services may be willing to help you.

You can also call Legal Aid of North Carolina for help. Their number is 1-866-219-5262.

Disability Rights NC may be able to help you with your appeal, depending on the details and merits of your case.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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