

STATE OF DELAWARE



**DELAWARE HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID & MEDICAL ASSISTANCE
POLICY & PLANNING UNIT**

ADMINISTRATIVE NOTICE A-11-2023

TO: All DMMA and DSS Staff

DATE: August 10, 2023

PROGRAM(S): All Medicaid Programs

SUBJECT: Fair Hearing Requirements Upon Conclusion of the COVID-19 Public Health Emergency

BACKGROUND

A fair hearing is an informal proceeding before a hearing officer based on a member's appeal of an agency action. The principles of a fair hearing include timely and adequate notice, the right to confront and cross-examine witnesses, the opportunity to be heard, the right to an impartial decision maker, and the opportunity to obtain counsel. A member is defined as a participant in Delaware Medicaid, Medical Assistance, or the Delaware Healthy Children Program. When members disagree with an action taken by Delaware Medicaid on the facts of their case, they can dispute the action taken by requesting an appeal of the decision. Members must request a fair hearing within 90 days from the date an action was taken by Delaware Medicaid regarding their Medical Assistance benefits.

In compliance with the March 3, 2022 Centers for Medicare & Medicaid Services (CMS) State Health Official (SHO) letter #22-001, "*Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency*," Delaware has requested a waiver to temporarily extend the timeframe permitted for the state to take final administrative action on fair hearing requests. Under section 1902(e)(14)(A) of the Social Security Act, Delaware Medicaid received waiver approval on July 8, 2022, to promote the enrollment and retention of eligible individuals by easing the fair hearing administrative burden states may experience including system limitations and other resource challenges.

DISCUSSION

A member may ask for a fair hearing regarding any actions taken on Medical Assistance benefits. Members must file a fair hearing request with either the Division of Medicaid & Medical Assistance (DMMA) or the Division of Social Services (DSS). Per 42 CFR Part 431 Subpart E -

- Fair Hearings for Applicants and Beneficiaries, requests can be submitted **by telephone, via mail, in person, and through other commonly available electronic means such as e-mail and fax**. Staff may not limit or interfere with the member's freedom to make a request for a fair hearing. Staff may assist the member in submitting and processing the member's request.

Delaware Medicaid anticipates operational, and systems challenges in the timely completion of eligibility and enrollment actions. These challenges include conducting fair hearings timely, in large part due to unprecedented renewal caseloads, coupled with significant limited resources.

Delaware Medicaid is Approved to Extend the Timeframe to Take Final Administrative Action on Fair Hearing Requests:

Effective June 1, 2023, through April 30, 2025, the timeframe for Delaware Medicaid to take final administrative action on fair hearing requests has been extended beyond the 90-day time limit. However, in doing so, Delaware Medicaid must ensure that:

1. There is not a delay in resolving expedited fair hearings described in the Division of Social Services Manual (DSSM) 5304.3;
2. Benefits are provided pending the outcome of a fair hearing decision to all members who request a fair hearing within the reasonable time provided by the state under DSSM 5305 and regardless of whether the member has requested benefits pending the outcome of their fair hearing;
3. If a member requests a fair hearing after the date of action and within the reasonable time provided by the state, reinstate benefits back to the date of action;
4. If benefits cannot be reinstated back to the date of action because the fair hearing is challenging a denial of eligibility for an applicant, then final administrative action must be taken within the 90-day maximum permitted under the regulations for fair hearing requests;
5. There is no recoupment from the member for the cost of benefits provided pending final administrative action, even if the agency's action is sustained by the hearing decision and;
6. This authority is not used as a justification to delay taking final action, and only exceed the 90 days permitted for taking final agency action under DSSM 5500 to the extent to which the state is unable to take timely final agency action on a given fair hearing request.

ACTION REQUIRED

Effective June 1, 2023, through April 30, 2025, staff will continue to follow their division's fair hearing operational procedures for processing fair hearing requests submitted **by telephone, via mail, in person, and through other commonly available electronic means such as e-mail and fax**. (Delaware Medicaid is reviewing the DSSM and internal procedures and will issue a future administrative notice and DSSM update on the additional modes permitted for submitting

a fair hearing request for both applicants and recipients.) Staff must take the following action when a member requests a fair hearing within 90 days from the date on the notice:

- Continue Medicaid benefits back to the date of action until their fair hearing is decided even if the member did not request to continue receiving Medicaid benefits.
- Not recoup the cost of Medicaid benefits from the member even if they lose the hearing.
- Not delay acting on fair hearing requests. Staff are required to act on fair hearings timely. Fair hearing decisions that exceed 90 days should only occur when staff are unable to take timely action.

DIRECT INQUIRIES TO

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August 10, 2023
Date

DocuSigned by:
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Kimberly Xavier, Chief
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