



# Medicaid/CHIP Eligibility Appeals

Webinar with states  
Center for Medicaid and CHIP Services

December 8, 2016



# Final and NPRM Appeals Overview

- November 30, 2016 CMS published final appeals rule and companion NPRM.
- Public comment period for NPRM closes January 23, 2017.
- Key Provisions:
  - Coordination with Exchange and other insurance affordability programs
  - Expedited fair hearing
  - Expansion of delegation authority
  - Modernization and transparency of fair hearing process

# Coordination with Exchange *Agreement*

Requires Medicaid and CHIP agencies to enter into agreements with the Exchange/appeals entity and other programs/appeals entity to:

- Minimize burden on individuals seeking to appeal a denial or determination related to one or more programs.
- Provide for a combined eligibility notice and opportunity to submit a joint request to appeal multiple program decisions at the same time.
- Provide for a combined appeals decision in appropriate situations.

435.1200(b), 457.348

# Coordination with Exchange

## *Joint Fair Hearing Request Notice*

If an applicant or beneficiary receives a combined eligibility notice including a determination of Medicaid/CHIP ineligibility, the Exchange or other program/appeals entity must:

- Provide individual with an opportunity to submit joint fair hearing request; and
- Notify the Medicaid/CHIP agency of any joint fair hearing request to be conducted by the agency and transmit the individual's electronic account to the agency.

435.1200(g)(1), 457.351

# Alignment with Exchange Timeframes

## *NPRM*

- Exchange regulation- 90 day timeframe, but can have shorter timeframe to align with Medicaid.
- Current regulation- appeals period not exceeding 90 days.
- Proposed rule:
  - Minimum of 30 days and a maximum of 90 days to request a Medicaid or CHIP appeals.
  - States to treat request for a Medicaid or CHIP appeals as timely filed if timely filed with an Exchange or Exchange appeals entity as part of a joint request.

# Coordination with Exchange

## *Transfer of Information*

Medicaid and CHIP agencies to establish a secure electronic interface through which –

- The Exchange or appeals entity can notify the agency that an individual has submitted an appeal;
- The individual's electronic account can be transferred from one program or appeals entity to the other; and
- The agency can notify the Exchange or other program or appeals entity that an individual has appealed a Medicaid/CHIP denial and whether benefits pending the outcome will be provided.

Note: Delayed implementation date

435.1200(g), 457.351

# Coordination with Exchange *Scenarios*

Individuals:

- Determined ineligible for Medicaid/CHIP by the agency.

Agency must transmit to the Exchange/Exchange appeals entity:

- Notice that the individual has requested an appeal;
- Whether benefits will be furnished pending final decision; and
- The hearing decision.

435.1200(g)(5), 457.351

# Coordination with Exchange

## *Scenarios*... cont'd

### **Individuals:**

- Determined ineligible for Medicaid/CHIP
- Who submit a joint fair hearing request to the Exchange/Exchange appeals entity; and
- Who request that the state agency conduct the hearing.

### **Exchange/Exchange appeals entity must:**

- Notify the agency that the individual has requested an appeal;
- Transmit the individual's electronic account/other relevant information to the agency

### **The state agency must:**

- Accept and act upon the appeal.
- Notify the Exchange of the hearing decision.



# Coordination with Exchange

## *Scenarios – Determination States*

### Individuals:

- Determined ineligible for Medicaid/CHIP by the Exchange;
- Who did not request an appeal of such determination, but do file an Exchange-related appeal; and
- Whom the Exchange appeals entity determines are eligible for Medicaid/CHIP

### Agency must:

- Accept the determination of eligibility if the agency has delegated authority to the Exchange to make Medicaid/CHIP eligibility determinations.

435.1200(g)(6), 457.351

# Coordination with Exchange

## *Scenarios – Assessment States*

Individuals:

- Determined ineligible for Medicaid/CHIP by the agency,
- Who did not request an appeal of such determination, and
- Whom the Exchange appeals entity determines are eligible for Medicaid/CHIP

Agency must either:

- Accept the determination by the Exchange appeals entity as a determination of Medicaid or CHIP eligibility; or
- Consider the determination by the Exchange appeals entity as an assessment of Medicaid/CHIP eligibility and make a new determination of eligibility, taking into account information provided to or obtained by the Exchange appeals entity.

# Expedited Fair Hearings

## *Final Rule*

- Requires states to establish and maintain an expedited fair hearing process.
- Establishes a standard for expedited fair hearings:
  - If the agency determines that the standard timeframe for adjudicating an appeal could jeopardize the individual's life, health or ability to attain, maintain, or regain maximum function
- Creates a timeframe for final action if request for expedited hearing is granted:
  - 7 days for eligibility-related matters
  - 3 days for benefit or services related matters

431.224, 431.244(f)

# Expedited Fair Hearings

## *NPRM*

- Timeframe for taking final action for expedited fair hearings on eligibility-related matters reduced to 5 working days from 7 in final rule. Considering as short as 3 days.
- Individuals denied an expedited fair hearing to receive notice on the reason for the denial and an explanation that their hearing will be handled in the standard time frame.
- Agency to develop and submit to the Secretary upon request an expedited fair hearing plan describing policies and procedures.

# Medicaid Fair Hearing Request

## *Final Rule*

- States must accept fair hearing requests (including for expedited decision) through all modalities (delayed implementation for some modalities) (431.221)
- Requires states to accept withdrawal of a fair hearing request through any modality available for fair hearing requests. (431.223)
- Clarifies circumstances when an applicant or beneficiary can request a fair hearing. (431.220)
- Fair hearing system must (431.205)
  - Be accessible to individuals who are limited English proficient and individuals with disabilities
  - Comply with anti-discrimination statutes and regulations

# CHIP Alignment with Medicaid

## *NPRM*

- Requests for review and withdraw of request through all modalities required for Medicaid. (457.1185)
- States to include an opportunity for applicants or beneficiaries to request expedited completion of their review as part of their request for review. (457.1185)
- Information provided to enrollees and applicants regarding the matters subject to review must be accessible to individuals who are limited English proficient and to individuals with disabilities. (457.1180)

# Timeliness and Operational Issues

## *NPRM*

- States to establish timeliness and performance standards in Medicaid and CHIP for taking final administrative action on standard and expedited appeal requests. (431.247, 457.1160)
- Medicaid and CHIP agency to send written confirmation within 5 business days of receiving an appeal request or receipt of withdrawal request. (431.221, 431.233, 457.1185)

# Exceptions to Timeframes

## *Final Rule*

Exceptions to time limits on final action (for standard and expedited hearings):

- The agency cannot reach a decision because the appellant requests a delay or fails to take a required action; or
- There is an administrative or other emergency beyond the agency's control.

431.244(f)(4)



# **Other NPRM Provisions**

# New Medicaid Delegations

- New eligibility determination delegations: (431.10(c)(1)(i)(A)(4))
  - Another state agency
  - Local agency
  - Tribal entity
- New fair hearing delegations: (431.10(c)(1)(ii))
  - Local agency
  - Tribal entity

# Restrictions on All Delegations

- The agency must find that delegating is at least as effective as maintaining direct responsibility for the delegated function and will not jeopardize the interests of applicants or beneficiaries or the objectives of the Medicaid program. (431.10(c)(2))
- The agency must ensure that delegated entity does not re-delegate any administrative function or authority associated with such delegation. (431.10(c)(5))
- Delegated entity must be a governmental agency which maintains personnel standards on a merit basis. (current regulations at 431.10(c)(3)(i))

# Restrictions on Eligibility Determination Delegations

- Another state agency, local agency and tribal entity:
  - The agency must determine such entity is capable of making eligibility determinations.
- An Exchange:
  - State or local door must be available through all modalities so that individuals can file an application with, and have their eligibility determined by, the Medicaid agency or another state or local agency or tribal entity to which the agency has delegated authority to determine eligibility.

431.10(c)(1)(i)(A)

# Restrictions on Fair Hearing Delegations

- All:
  - Must specify to which agency the delegation applies and specify the individuals for whom authority to conduct fair hearings is delegated.
  - Individuals retain right to have Medicaid agency conduct fair hearing (current regulations).
  - Any review by agency limited to conclusions of law and must be conducted by an impartial official not directly involved in the initial agency determination. (current regulations)
- Local agency and tribal entity:
  - The subject of the fair hearing request is a claim related to an eligibility determination made by the local agency or tribal entity under a delegation and the entity is located within the State.

431.10(c)(1)(ii)

# New review authority

- Individuals to have the right to request the Medicaid agency review a delegated entity's hearing decision for errors in the application of law, clearly erroneous factual findings or abuse of discretion within 30 days of the date the individual receives the hearing decision.
- Agency to issue a written decision upholding, modifying or reversing the hearing officer's decision within 45 days from the date of the individual's request.

431.246

# Modernization of Fair Hearings

## *Content and evidence*

- Eligibility fair hearings must cover eligibility as of the date of application or renewal, as well as during the months between such date and the date of the fair hearing. (431.241)
- Individuals have the right to submit evidence related to any relevant fact, factor or basis of eligibility or otherwise related to their claim. (431.242)
- If a hearing officer determines that evidence offered or an argument made is not relevant, the fair hearing decision must explain why. (431.244)

# Modernization of Fair Hearings

## *Hearing officials and transparency*

- Officials who conduct fair hearings must be employees of a government agency or tribal entity that maintains personnel standards on a merit basis. (431.240)
- Hearing officials must be trained in nationally-recognized standards of conduct or in state-based standards that conform to nationally-recognized standards. (431.240)
- States must provide the public with free access to fair hearing decisions. (431.244)



# Additional information

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The final rule is available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-30/pdf/2016-27844.pdf>.

The NPRM is available at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-30/pdf/2016-27848.pdf>.

# Questions?

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