

Community Pathways Waiver

Appendix F: Participant Rights

Appendix F-1: Opportunity to Request a Fair Hearing

The state provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified in Item 1-F of the request; (b) are denied the service(s) of their choice or the provider(s) of their choice; or, (c) whose services are denied, suspended, reduced or terminated. The state provides notice of action as required in 42 CFR §431.210.

Procedures for Offering Opportunity to Request a Fair Hearing. Describe how the individual (or his/her legal representative) is informed of the opportunity to request a fair hearing under 42 CFR Part 431, Subpart E. Specify the notice(s) that are used to offer individuals the opportunity to request a Fair Hearing. State laws, regulations, policies and notices referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The **Maryland Department of Health DDA** informs the individual and their family or their legal representative of the opportunity to request a Medicaid Fair Hearing by providing a written explanation of the right to appeal certain adverse decisions made by the DDA or the Maryland Department of Health. The types of decisions or actions of the DDA and Maryland Department of Health for which there is a right to a Medicaid Fair Hearing are described in 42 Code of Federal Regulations § 431.220; Maryland Annotated Code Health-General Article § 7-406; and Code of Maryland Regulations 10.01.04. Specifically, an individual will have an opportunity for a Medicaid Fair Hearing if they bring a claim that:

1. Their application for eligibility for this **Medicaid waiver Waiver** program was denied;
2. They dispute the DDA's determination of their priority on the waiting list;
3. The DDA or Maryland Department of Health did not provide a determination on their application within 60 days from the date of application;
4. Their request for services has been erroneously denied or not acted upon with reasonable promptness; or
5. The DDA or Maryland Department of Health acted erroneously **towards a program recipient**. See Maryland Annotated Code Health-General Article § 7-406; and Code of Maryland Regulations 10.01.04.02.

Upon making a decision affecting an individual's receipt of services funded by the **Medicaid waiver Waiver** program, the Maryland Department of Health provides a written letter notifying the individual of its adverse decision including Notice: Medicaid Fair Hearing Rights, as further described below. A copy of the final,

To ensure the individual is informed of their rights, this letter is mailed to the

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individual's address of record, and, if applicable, ~~their family or~~ their legal representative, and specifies:

1. The Maryland Department of Health's decision,
2. The legal and factual basis of the Maryland Department of Health's decision;
~~A description of how to submit additional information for reconsideration;~~
3. An explanation of the individual's right to appeal the decision by requesting a Medicaid Fair Hearing ("an appeal") as explained in an enclosed notice; and
4. Their right to continue to receive services pending the appeal.

The Coordination of Community Services and authorized ~~representatives~~ ~~representative~~ are copied on this letter to the individual. This letter is designed to be understandable so that individuals and their families have a full understanding of the applicant's or participant's rights.

The notice of the applicant's or participant's rights in a Medicaid Fair Hearing that is enclosed with the ~~Maryland Department of Health~~ ~~DDA~~'s decision letter is entitled, Notice: Medicaid Fair Hearing Rights. This form describes:

1. How to request a hearing;
2. The timeframe within which the hearing must be requested;
3. What a Medicaid Fair Hearing is;
4. That the individual may represent ~~themselves~~ ~~himself or herself~~ or use legal counsel or appoint an Authorized Representative pursuant to Code of Maryland Regulations 10.01.04.12; and
5. How to settle some (or all) of the issues in the appeal without having to go to hearing, including the option of a Case Resolution Conference as described in Appendix F-2 below.

The Maryland Department of Health has a dedicated website - "Request a Fair Hearing. File an Appeal" that includes plain language information related to:

1. Your Fair Hearing Rights;
2. Notice of Hearing Date and Location;
3. Before the Hearing;
4. During the Hearing;
5. Hearing Decision;
6. Frequently Asked Questions;
7. The option to submit a fair hearing request online for anyone applying for or enrolled in Medicaid who thinks a decision to deny, suspend, end, or reduce their Medicaid eligibility or services is wrong has the right to ask for a fair hearing about that decision; and
8. Ability to submit a Request for Fair Hearing via mobile request form.

The website can be viewed at

<https://health.maryland.gov/mmcp/Pages/medicaid-appeal.aspx>.

~~Also attached to the letter is a pre-addressed Hearing Request Form that the individual can use to request a Medicaid Fair Hearing to contest the decision by the DDA.~~

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If an individual requires assistance in pursuing a Medicaid Fair Hearing, their Coordinator of Community Service will assist. Per DDA's policy, a Coordinator of Community Services can provide the following assistance to an individual in the appeal process:

1. Explain the appeal process to an individual, family, guardian, or authorized representative;
2. Assist with the completion of the required forms for appealing a DDA determination; and
3. Assist the individual in completing and sending a request for reconsideration.

A Coordinator of Community Services cannot provide legal advice or assist in preparing for, facilitate, or represent the individual in a Medicaid Fair Hearing.

Appendix F: Participant-Rights

Appendix F-2: Additional Dispute Resolution Process

- a. **Availability of Additional Dispute Resolution Process.** Indicate whether the state operates another dispute resolution process that offers participants the opportunity to appeal decisions that adversely affect their services while preserving their right to a Fair Hearing. *Select one:*

☐ **No. This Appendix does not apply**

☒ **Yes. The state operates an additional dispute resolution process**

- b. **Description of Additional Dispute Resolution Process.** Describe the additional dispute resolution process, including: (a) the state agency that operates the process; (b) the nature of the process (i.e., procedures and timeframes), including the types of disputes addressed through the process; and, (c) how the right to a Medicaid Fair Hearing is preserved when a participant elects to make use of the process: State laws, regulations, and policies referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The DDA also offers a dispute resolution process called a Case Resolution Conference (CRC), where the applicant or participant, their legal representative and/or other individuals supporting the applicant or participant with their consent (if applicable), and the DDA engage in discussions surrounding the decision or action in question. A Case Resolution Conference is offered for **DDA's eligibility determination any type of dispute for which an applicant or participant may request a Medicaid Fair Hearing (see Appendix F-1)**. A Case Resolution Conference provides an opportunity for an applicant/participant, their family, and their legal representatives to speak directly with the DDA staff to resolve a

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dispute before their Medicaid Fair Hearing. Only one Case Resolution Conference is available per matter ~~for which a Medicaid Fair Hearing~~ is requested. The individual is informed that a Case Resolution Conference is not required prior to or as a substitute for a Medicaid Fair Hearing.

Not all issues can be resolved in the Case Resolution Conference process. If there is partial agreement, that agreement will be recorded and, if the case goes to the Medicaid Fair Hearing, only the remaining issues will be decided by the Maryland Office of Administrative Hearing (OAH). If there is no agreement, the participant and their family and/or legal representatives (if applicable) may proceed to a Medicaid Fair Hearing.

Notification of Opportunity for a Case Resolution Conference & Requesting a Case Resolution Conference

All applicants/participants and their families and/or legal representatives (if applicable) are informed of the opportunity to engage in the Case Resolution Conference process when they receive the letter from the DDA informing them of an adverse action pertaining to the ~~DDA eligibility determination Waiver program services, for which the applicant or participant may request a Medicaid Fair Hearing, as described in Appendix F-1 above. As noted in Appendix F-1 above, the Hearing Request Form permits the individual to request a Case Resolution Conference in addition to a Medicaid Fair Hearing.~~ If the applicant or participant selects it, the DDA schedules the Case Resolution Conference prior to the Medicaid Fair Hearing.

Attached to the letter from the DDA are two documents:

1. Notice: Medicaid Fair Hearing Rights; and
2. A Hearing Request Form.

In addition to describing the Medicaid Fair Hearing process, the Notice: Medicaid Fair Hearing Rights describes the Case Resolution Conference process and informs the applicant or participant of their opportunity to request a Case Resolution Conference.

The Hearing Request Form includes a box to check if the applicant or participant wants to have a Case Resolution Conference as well as a Medicaid Fair Hearing.

Case Resolution Conference Discussion

The Case Resolution Conference is a forum in which the parties engage in discussion in order to reach some resolution as to the underlying matter. The following are potential areas of discussion:

- a. The positions of the applicant/participant and the DDA, and the bases for them;

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b. Whether the information submitted is sufficient for the DDA to make a determination on the request; and

c. Whether the applicant/participant and the DDA are correctly interpreting and applying statutes, regulations, and policies to the facts presented.

Case Resolution Conference Structure & Processes

The Case Resolution Conference typically lasts approximately 1 hour, and the overall structure of the Case Resolution Conference is as follows:

a. The moderator, a staff member of the DDA who was not involved in the initial decision, introduces themselves and explains the process.

b. The applicant/participant and their family and/or legal representatives (if applicable), have 10 minutes to explain the request, and why they think it should be granted.

c. The DDA Regional Office representative has 10 minutes to explain why the request was denied.

d. If the moderator thinks that the facts are not clear, or are misunderstood, they may ask that the parties discuss the facts at that time, so that everyone is working with the same set of facts. If this discussion resolves some or all of the disputes, the moderator summarizes the parties' areas of agreement and documents them.

e. If there are disputes still remaining, the moderator may meet separately with the applicant/participant (and any representative) and with the Regional Office representative (referred to as "separate sessions"). In each of these separate sessions, the moderator may explain and discuss the law, regulations, and policies that apply to the services requested, and may discuss whether they believe that the facts meet the criteria and why. The other person(s) will also discuss why they believe the facts do or do not meet the criteria, and why. The moderator may ask the parties to consider other facts or policies, but the final decision on whether there is any agreement belongs to the parties in dispute, rather than the moderator. Each separate session is limited to 10 minutes.

Nothing that is discussed in the separate sessions is revealed to the other side without the expressed approval of the parties in that session. This allows all parties to be completely open with their comments and questions, without concern that the other party will hear those comments and questions. Also, during the Case Resolution Conference, the DDA Regional Office representatives may call or consult with their supervisors at any time to discuss any issue, and the moderator may call any DDA staff for clarification of policy or other matter.

f. In the remaining time, the parties meet together, with the moderator, to discuss

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whether their positions have changed and, if so, whether there are any issues that can be resolved. If there is resolution of part or all of the disputes, the moderator reflects back the areas of agreement and documents them. The parties sign the agreement. The moderator does not sign the agreement, since it is solely between the parties.

Case Resolution Conferences are scheduled by the DDA's Operations Office. The Maryland Department of Health grants 1 Case Resolution Conference to occur before an individual's Medicaid Fair Hearing. Case Resolution Conferences usually occur at ~~a~~-DDA Regional Offices or other locations within a region. Separately, the Office of Administrative Hearing schedules Medicaid Fair Hearings based on requirements in Code of Maryland Regulations 10.01.04. Medicaid Fair Hearings occur at the Office of Administrative Hearing locations or locations convenient for participants, per Office of Administrative Hearing permission.

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Appendix F-3: State Grievance/Complaint System

a. **Operation of Grievance/Complaint System.** *Select one:*

☒ **No. This Appendix does not apply**

☐ **Yes. The state operates a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under this waiver**

b. **Operational Responsibility.** Specify the state agency that is responsible for the operation of the grievance/complaint system:

c. **Description of System.** Describe the grievance/complaint system, including: (a) the types of grievances/complaints that participants may register; (b) the process and timelines for addressing grievances/complaints; and, (c) the mechanisms that are used to resolve grievances/complaints. State laws, regulations, and policies referenced in the description are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).