

Appeals of Actions and the Administrative Hearing Processes

a. The MCO shall have a timely and organized appeals process. The appeals process shall be available for resolution of disputes between the MCO and its Members concerning the MCO's actions. The appeal shall be commenced whenever the Member, the Member's Authorized representative or the Provider makes any clear expression to the MCO that they disagree with the MCO's action and wish to present their case to a reviewing authority. The date of the oral inquiry shall be preserved as the date for the appeal. The MCO must give the Member assistance in filing the grievance or appeal, but may not do anything to discourage the filing of the appeal which shall be a ministerial responsibility of the MCO in which the MCO exercises no discretion. The MCO shall maintain an adequately staffed consumer relations office which can receive telephone calls during regular business hours to accept appeals. No Member or Provider shall have to wait more than five (5) minutes to file an appeal.

b. The MCO shall develop written policies and procedures for its appeals process. Those policies and procedures must be prior approved by the DEPARTMENT in writing, be understandable at a 6th grade reading level as measured on the Flesh-Kincaid Grade Level Test and shall include the elements specified in this contract. The MCO shall not be excused from providing the elements specified in this contract, pending the DEPARTMENT's written approval of the MCO's policies and procedures. Information about the appeals process shall be provided to the Member: upon enrollment; each time a service is denied, reduced, suspended, delayed, or terminated; when the Member initially contacts the MCO about a problem or complaint; and, at every eligibility recertification.

c. The MCO shall maintain a record keeping system for appeals that shall include a copy of the appeal, the status of the appeal, a short summary of the nature of the service and issue appealed from, the response, the resolution, and supporting documentation. The MCO shall maintain this system in a manner approved by the DEPARTMENT and which is accessible to the DEPARTMENT at all times.

d. The MCO shall ensure that network providers and subcontractors are familiar with the appeal process and shall provide information on the process to providers and subcontractors. The MCO shall provide information on the appeal process to its providers and subcontractors at the time it enters into contracts or subcontracts. The MCO shall ensure that appeal forms are available at each primary care site. At a minimum, appeals assistance shall include providing forms on request, assisting the Member in filling out the forms upon request, and sending the completed form to the MCO and the DEPARTMENT upon request.

e. Consistent with Section xxx, Linguistic Access, and section xxx, Services for Members, the MCO shall develop and make available to Members and potential Members appropriate alternative language versions of all appeals materials. These materials include but are not limited to, the standard information contained in NOA and appeals forms. The DEPARTMENT must approve such materials in writing.

f. A Member may request an appeal either orally or in writing. When requesting an appeal orally, the MCO shall confirm the oral request in writing to the Member. The MCO shall use a unified process for pursuing an appeal and for

requesting an administrative hearing. The MCO and the DEPARTMENT shall treat the filing of an oral or written appeal as a simultaneous request for an administrative hearing. The MCO shall attempt to resolve appeals at the earliest point possible. If the MCO is not able to render a decision by the time the administrative hearing is scheduled, the Member will automatically proceed to the administrative hearing.

g. The Member, the Member's authorized representative, the Provider or the Member's conservator may, but is not required to, file an appeal on a form approved by the DEPARTMENT. Appeals shall be filed within ninety (90) days of the action. The Appeal form shall be provided with every action and shall be readable at a 6th grade reading level as measured by the Flesh-Kincaid Grade Level test. Written appeals shall be mailed or faxed to a single address within the MCO. The appeal form shall state: both the mailing address and fax number at the MCO where the form must be sent, that services that are being denied, terminated, reduced or delayed, will be maintained pending the resolution of the appeal, if the appeal is made within ten (10) days of the action; and, that the member will not be charged if the appeal is not successful. Upon receipt of the appeal, the MCO shall date stamp and fax the appeal to the appropriate fax number, or other electronic address, at the DEPARTMENT within two (2) business days. The MCO shall ensure that no punitive action is taken against a provider who requests an appeal or supports a Member's appeal.

h. Upon receipt of the appeal, The DEPARTMENT will schedule an administrative hearing to be held within forty-five (45) days of the receipt of the appeal and shall notify the Member, the Provider and MCO of the hearing date and location. If a Member is disabled, the hearing may be scheduled for the Member's home, if requested by the Member. The final hearing decision must be issued within ninety (90) days of the request for the fair hearing.

i. An individual or individuals having final decision-making authority shall conduct the MCO's review of the appeal. Any appeal stemming from an action based on a determination of medical necessity or involving any other clinical issues shall be decided by one or more physicians who were not involved in making that medical determination. All the documentation of the review conducted by the physicians shall be signed and entered into the hearing summary.

j. The MCO shall decide an appeal on the basis of the written documentation available unless the Member requests an opportunity to meet with the individual or individuals making that determination on behalf of the MCO and/or requests the opportunity to submit additional documentation or other written material. The Member shall have a right to review his or her MCO record, including medical records and any other documents or records considered during the appeal process. The Member's right to access medical records shall be consistent with HIPAA privacy regulations and any applicable state or federal law.

k. If the Member wishes to meet with the decision maker, the meeting can be held via the telephone or at a location accessible to the Member, including the Member's home if requested by a disabled Member or any of the DEPARTMENT's office locations through video conferencing, subject to approval of the DEPARTMENT's Regional Offices. The MCO shall invite a representative of the DEPARTMENT to attend any such meeting.

l. The MCO shall mail to the Member a written appeal decision, described below, with a copy to the DEPARTMENT, by the date of the DEPARTMENT's administrative hearing as expeditiously as the Member's health condition requires, but no later than thirty (30) days from the date on which the appeal was received by the DEPARTMENT. The hearing will go forward unless the Member is satisfied with the MCO's decision regarding the denial, reduction, suspension, or termination of contract services. If the MCO grants the requested service, and informs the DEPARTMENT, then the DEPARTMENT shall contact the Member to cancel the hearing unless the Member requests orally or in writing that the hearing proceed.

m. The MCO's written appeal decision shall be written at a 6th grade reading level as measured on the Flesh-Kincaid Grade Level Test and shall include the Member's name and address; the provider's name and address; the MCO name and address; a complete description of the information or documents reviewed by the MCO; a complete statement of the MCO's findings and conclusions, including the section number and text of any contractual provision or DEPARTMENTAL policy provision that is relevant to the appeal decision; and a clear statement of the MCO disposition of the appeal.

o. As part of its written appeal decision, the MCO shall remind the Member that:

1. If the Member is dissatisfied with the MCO's appeal decision, the DEPARTMENT has already reserved a time to hold an administrative hearing concerning that decision;

2. The Member has the right to automatically proceed to the administrative hearing, and that the MCO shall continue previously authorized contract services pending the administrative hearing decision, provided the Member filed their appeal within ten (10) days of the date of receipt of the NOA and that the Member will not be charged an overpayment if the Member does not prevail on the appeal;

3. If the appeal pertains to the denial, suspension, reduction, or termination of services which have been maintained during the appeals process, and the MCO's appeals decision affirms the suspension, reduction, or termination of contract services, those contract services will not be suspended, reduced, or terminated in accordance with the MCO's appeals decision unless the Member declines to proceed to an administrative hearing;

4. If the Member wishes to withdraw the request for an administrative hearing, he or she may contact the DEPARTMENT Office of Administrative Hearings; and

5. If the Member fails to appear at the administrative hearing and does not have a valid reason for his or her absence, the Member's reserved hearing time will be cancelled and any disputed contract services that were maintained will be suspended, reduced, or terminated in accordance with the MCO's appeals decision.

n. If the Member proceeds to an administrative hearing, the MCO shall make its entire file concerning the Member and the appeal, including any

materials considered in making its decision, available to the DEPARTMENT and to the Member, sufficiently in advance (at least 5 business days) of the hearing in order to prepare for the hearing. The parties to an administrative hearing shall include the MCO and the Member or representatives of a deceased Members estate.

o. If the MCO fails to issue an appeal decision by the date that an administrative hearing is scheduled, but no later than thirty (30) days following the date the appeal was received by the DEPARTMENT, an administrative hearing will be held as originally scheduled. At the hearing, the MCO shall prove good cause for having failed to issue a timely decision regarding the appeal. Good cause for the MCO's failure to issue a timely decision shall include, but not be limited to, documented efforts to obtain additional medical records necessary for the MCO's decision on the appeal and the Member's refusal to sign a release for medical records necessary for the decision on the appeal.

1. The MCO's inability to prove good cause shall constitute a sufficient basis for upholding the appeal, and the hearing officer, in his or her discretion, may uphold the appeal solely on that basis.

2. If the MCO proves good cause for having failed to issue a timely appeal decision, the hearing officer may order a continuance of the hearing pending the issuance of the appeal decision by a certain date, or the hearing officer may proceed with the hearing.

p. The individual who issued the MCO's original or final decision shall prepare and/or approve the summary for the administrative hearing, subject to approval by the DEPARTMENT prior to the hearing, and the MCO shall present proof of all facts supporting its initial action if the administrative hearing proceeds in the absence of an appeal decision. The MCO shall submit a draft hearing summary seven (7) business days prior to the scheduled hearing date and a final, signed hearing summary to the DEPARTMENT and the Member no later than five (5) business days prior to the scheduled hearing date. The hearing summary shall include reference to any relevant provisions of this contract or any DEPARTMENT policies that support its decision.

q. If a representative of the MCO fails to attend a scheduled session of an administrative hearing, the MCO's failure to attend shall constitute a sufficient basis for upholding the appeal, and the hearing officer, in his or her discretion may close the hearing and uphold the appeal solely on that basis. This provision shall not apply unless the MCO receives notice of the hearing at least five (5) business days prior to the administrative hearing.

r. If the DEPARTMENT's Office Administrative Hearings is advised in writing that the Member does not intend to proceed to an administrative hearing, the DEPARTMENT will fax, or otherwise immediately transmit, such notice to the MCO and the DEPARTMENT liaison.

s. The MCO representative attending the administrative hearings should either be the individual who issued the MCO's final decision or another individual with appropriate medical training.

t. The MCO shall designate one primary and one back-up contact person for its appeal/administrative hearing process.

u. If the DEPARTMENT's hearing officer reverses the MCO's decision to deny, limit or delay services that were not furnished while the appeal was pending, the MCO shall authorize or provide the disputed services promptly, and as expeditiously as the Member's health condition requires.

4.06 Expedited Review and Administrative Hearings

a. The appeal process shall allow for expedited review. If the appeal contains a request for expedited review, it will be forwarded immediately by fax, or other electronic means to the MCO within one business day of receipt by the DEPARTMENT. The transmission by fax or otherwise will include the date the Member requested the appeal. If the appeal was made by mail, then the postmark on the envelope will be used to determine the date the appeal was mailed. If the MCO receives an oral request for expedited appeal, the MCO shall notify the DEPARTMENT liaison by fax or telephone within one business day of the oral request.

b. The MCO shall determine, within one business day of receiving the appeal which contains a request for an expedited review from the DEPARTMENT, or within one business day of receiving an oral request for an expedited appeal, whether to expedite the appeal or whether to perform it according to the standard timeframes. If the Member's provider indicates or the MCO determines that the appeal meets the criteria for expedited review, the MCO shall notify the DEPARTMENT immediately that the MCO will be conducting the appeal on an expedited basis.

c. The MCO shall perform an expedited appeal when the standard timeframes for determining an appeal could seriously jeopardize the life or health of the Member or the Member's ability to attain, maintain or regain maximum function. The MCO shall expedite its review in all cases in which the Member's provider indicates, in making the request for expedited review on behalf of the Member or supporting the Member's request, that taking the time for a standard appeal review could seriously jeopardize the Member's life or health or ability to attain, maintain, or regain maximum function and/or if the DEPARTMENT requests the MCO to conduct an expedited review because the DEPARTMENT believes a specific case meets the criteria for expedited review.

d. The MCO shall perform an expedited review and issue an appeal decision within a time-frame appropriate to the condition or situation of the Member, but no more than three (3) business days from the DEPARTMENT's receipt of the written appeal or three (3) business days from an oral request received by the MCO.

e. The MCO may extend the timeframe for decisions in paragraph d by up to fourteen (14) days if:

1) The Member requests the extension; or

2) The MCO can demonstrate that the extension is in the Member's interest because additional information is needed to decide the appeal and if the timeframe is not extended, the appeal will be denied. The DEPARTMENT may

request this documentation from the MCO.

f. The MCO shall ensure that no punitive action is taken against a provider who requests an expedited appeal or supports a Member's appeal.

g. The MCO shall issue a written appeal decision for expedited appeals. The written notice of the resolution shall meet the requirements of Section XXXXX and XXX, Appeals and Administrative Hearing Processes, . The MCO shall also promptly provide the Member and the Member's Provider oral notice of an expedited appeal decision.

i. The DEPARTMENT shall provide expedited administrative hearings for Members, where required. The DEPARTMENT will issue a hearing decision as expeditiously as the Member's health condition requires, but no later than three (3) business days after the DEPARTMENT receives from the MCO, the administrative case file and information for any appeal that meets the requirements for an expedited hearing. The MCO shall forward the case file and information to the DEPARTMENT within one business day of the MCO's decision. A Member is entitled to an expedited hearing for the denial of a service if the denial met the criteria for expedited appeal but was not resolved within the expedited appeals timeframe or was resolved within the expedited appeals timeframe, but the appeals decision was wholly or partially adverse to the Member.

Sanction: If the MCO fails to provide expedited appeals in appropriate circumstances, the DEPARTMENT may impose a Class B sanction pursuant to Section XXXXX, Monetary