

59G-1.100 Medicaid Fair Hearings.

(1) Purpose.

This rule establishes procedures applicable to Fair Hearings conducted by the Agency for Health Care Administration (Agency) pursuant to section 409.285(2), Florida Statutes (F.S.).

(2) Definitions.

The following definitions are applicable to this rule:

(a) Action – In the case of a recipient receiving services through the fee-for-service (FFS) delivery system, any of the following:

1. The reduction, suspension, or termination by the Agency of a previously authorized service, or
2. The denial, in whole or in part, of a requested service or supplies by the Agency.

(b) Adverse Benefit Determination – In the case of a managed care plan enrollee, any of the following:

1. The denial, in whole or in part, of a requested service or supplies by the plan,
2. The reduction, suspension, or termination by the plan of a previously authorized service,
3. The failure of the plan to provide services in a timely manner as specified in the Agency's contract with the plan, or
4. The denial by the plan of an enrollee's request to dispute a Florida Medicaid financial liability, including, copayments and coinsurance.

(c) Authorized Representative – A person designated to request or represent the interests of the recipient or enrollee in a fair hearing.

(d) Benefit(s) – Florida Medicaid-covered services and supplies, as set forth in the Florida Medicaid State Plan, coverage policies, handbooks, fee schedules, or applicable waiver for Florida Medicaid waiver benefits. For managed care plan enrollees, benefits include expanded benefits covered by a plan as set forth under the terms and conditions of the plan's contract with the Agency.

(e) Business Day – Any day in which the Agency conducts business, excluding Saturdays, Sundays, and holidays as defined in section 110.117, F.S.

(f) Corrective Action – Corrective payments, or if appropriate, admission or readmission of a recipient or enrollee to a facility, in accordance with Title 42, Code of Federal Regulation (CFR), Section 431.246.

(g) Day – A calendar day.

(h) Disenrollment Denial – The Agency's denial of an enrollee's request for disenrollment from a plan pursuant to section 409.969, F.S.

(i) Enrollee – Recipient who is a member of a managed care plan.

(j) Fair Hearing (Hearing) – Proceedings conducted by the Agency pursuant to section 409.285(2), F.S.

(k) File(d) – Received by the Office of Fair Hearings or by the Hearing Officer during the course of a hearing.

(l) Final Order – A written order rendered by the Agency constituting final agency action in a fair hearing.

(m) Fee-For-Service Recipient (FFS recipient) – Florida Medicaid recipient receiving benefits under the FFS delivery system.

(n) Good Cause – An incident or occurrence which is beyond the control of the movant and which prevents compliance. The Fair Hearing Officer will determine good cause based on the facts and circumstances the movant presents in support of the application for the relief sought.

(o) Hearing Officer – The presiding officer appointed by the Agency to conduct a fair hearing.

(p) Hearing Request – A clear, written or oral expression to the Agency requesting review of:

1. An action,
2. A plan appeal of an adverse benefit determination,
3. A disenrollment denial, pertaining to the enrollee, or
4. A matter within the fair hearing jurisdiction of the Agency.

(q) Legal Holiday – As designated in section 110.117, F.S.

(r) Medical Supplies (Supply or Supplies) – As defined in rule 59G-4.070, F.A.C.

(s) Notice of Action (NOA) – Written notice from the Agency to a FFS recipient regarding an action.

(t) Notice of Adverse Benefit Determination (NABD) – Written notice from a plan to an enrollee regarding an adverse benefit determination.

(u) Notice of Plan Appeal Resolution (NPAR) – Written notice from a plan to an enrollee resolving the enrollee's plan appeal.

(v) Office of Fair Hearings (Office) – The hearing authority within the Agency designated to conduct fair hearings.

(w) Plan – Managed medical assistance and long-term care plans as defined in rule 59G-1.010, F.A.C.

(x) Plan Appeal – A review by the plan of an adverse benefit determination.

(y) Recipient – Individual determined to be eligible for Florida Medicaid-covered services by the Department of Children and Families or the Social Security Administration, and who is enrolled in the Florida Medicaid program.

(z) Send (Sent) – Delivery by U.S. mail, email, facsimile transmission, or hand delivery.

(aa) Service(s) – Any diagnostic or treatment procedure(s) or other medical or allied care claimed to have been furnished to a recipient and listed in an itemized claim for payment; or, in the case of a claim based on costs, any entry in the cost report, books of account, or other documents supporting such claim.

(3) Jurisdiction and Right to a Hearing.

The Agency has jurisdiction and must provide a fair hearing for:

(a) A FFS recipient who makes a hearing request regarding:

1. The reduction, suspension, or termination by the Agency of a previously authorized service,
2. The denial, in whole or in part, of a requested service or supply by the Agency, or
3. The failure of the Agency to provide a timely NOA subsequent to the Agency's failure to provide all medically necessary services to the recipient with reasonable promptness.

(b) An enrollee who makes a hearing request regarding:

1. A notice of plan appeal resolution indicating that the plan appeal did not result in the reversal of a prior denial of a new service, or the reduction, suspension, or termination of a previously authorized service, if timely challenged by the enrollee in accordance with the plan appeal procedures following the timely issuance of the plan's NABD to the enrollee,

2. The failure of the plan to adhere to notice and timing requirements applicable to plan appeals, or

3. The failure of the plan to timely notice the enrollee through a NABD, subsequent to the plan's failure to provide medically necessary services requested by the enrollee to the enrollee with reasonable promptness.

(c) An enrollee who makes a hearing request regarding a disenrollment denial.

(d) A recipient who receives notification from the Agency pursuant to rule 59G-5.110, F.A.C., that a reimbursement request is denied in whole or in part.

(e) A recipient entitled to a fair hearing pursuant to section 409.285(2), F.S.

(f) The Agency need not grant a fair hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.

(g) A recipient who makes a hearing request regarding a denial or reduction to a medically necessary Florida Medicaid service and seeks corrective action.

(4) Parties.

(a) The parties to a fair hearing regarding FFS benefits are the FFS recipient and the Agency.

(b) The parties to a fair hearing regarding managed care benefits are the enrollee and the plan. Upon request by the Agency, the Agency may be granted party status by the Hearing Officer.

(c) The parties to a fair hearing regarding a disenrollment denial are the enrollee and the Agency.

(d) The parties to a fair hearing regarding a reimbursement request pursuant to rule 59G-5.110, F.A.C., are the recipient and the Agency.

(e) The parties to any fair hearing pursuant to section 409.285(2), F.S., not specified herein, are the recipient and the appropriate state agency or its designee.

(5) Pleadings, Papers, Addresses, and Service.

(a) Any pleading or paper received by the Office before 5:00 p.m. on a business day shall be filed as of that day. A pleading or paper received after 5:00 p.m. on a business day, or on a Saturday, Sunday, or legal holiday shall be filed as of 8:00 a.m. on the next business day.

(b) A recipient or their authorized representative, must provide and maintain a mailing address of record with the Office, or if they elect service via email, must provide and maintain a valid email address of record with the Office. A plan and legal counsel to a party must provide and maintain a valid mailing and email address on file with the Office and consent to service via email. Service at the mailing address, or email address, if applicable, of record is presumed to be valid service.

(c) Each plan, and legal counsel to a party, must maintain a designated email address with the Office. Recipients may designate an email address with the Office. The Office shall provide all fair hearing-related communications to a party with a designated email

address at that email address. Service on a party's, an authorized representative's, or legal counsel's designated email address is presumed to be valid service.

(d) Unless the Hearing Officer orders otherwise, every pleading and paper filed in a fair hearing, except applications for witness subpoenas, shall be served on each party at the mailing address of record or designated email address.

(e) Service on counsel of record or on an authorized representative at the mailing address of record or designated email address is presumed to be valid service on the party.

(6) Computation of Time.

(a) In computing any period of time under this rule, by order of a Hearing Officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run until the end of the next business day. When the period of time allowed is less than seven days, only business days shall be included in the computation.

(b) Five days shall be added to the time limits when service is made by U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by email, facsimile transmission, or hand delivery.

(7) Appearances, Authorized Representatives, and Withdrawal.

(a) Recipients may represent themselves in a fair hearing, they may be represented by a non-attorney authorized representative, or, they may be represented by an attorney authorized to practice law in Florida retained by the recipient, or a person with authority to retain counsel for the recipient.

(b) Counsel representing a party in a fair hearing shall promptly file with the Office and serve on each other party a notice of appearance, which includes counsel's mailing address of record and email address. Filing of a notice of appearance shall constitute acceptance of service at the email address provided by counsel.

(c) Any person, including counsel or a recipient's provider, requesting a fair hearing on behalf of a recipient, or seeking to represent a recipient in a fair hearing, must provide and maintain with the Office:

1. A written authorization signed by the recipient or by a person with legal authority to act on behalf of the recipient, designating the person as the recipient's authorized representative; and,
2. A mailing address of record, and may designate an email address with the Office. As set forth herein, counsel appearing on behalf of a recipient consents to service via email.

(d) Upon motion, the Hearing Officer shall grant counsel of record or an authorized representative leave to withdraw from representation of a party for good cause shown. The motion shall contain the mailing address, email address, if applicable, and telephone number of the party represented.

(8) Requests for Fair Hearing.

(a) A recipient may make a hearing request either orally or in writing.

(b) Any person, including counsel or a recipient's provider, making a hearing request on behalf of a recipient, or seeking to represent a recipient in a fair hearing, must file with the Office a written authorization signed by the recipient or by a person with legal authority to act on behalf of the recipient, designating the person as the recipient's authorized representative.

(c) The Agency must receive the fair hearing request within 90 days of the date a required NOA is sent to the recipient.

(d) The Agency may waive the 90 day time limit for making a hearing request when:

1. The Agency fails to send a timely NOA to the FFS recipient, or
2. The Agency fails to act on a FFS recipient's specific request for benefits.

(e) An enrollee must initiate and complete a plan appeal before making a fair hearing request. The plan appeal is complete when:

1. The enrollee receives from the plan a NPAR indicating the plan appeal was not resolved wholly in the enrollee's favor, or
2. The plan fails to adhere to notice and timing requirements applicable to plan appeals.

(f) An enrollee need not initiate and complete a plan appeal before making a fair hearing request if the request is based on a plan determination or NOA rendered before March 1, 2017.

(g) A fair hearing request by an enrollee must be received by the Agency within 120 days of the date the required NPAR is sent to the enrollee.

(h) In other instances where a recipient is entitled to a fair hearing, the hearing request must be received by the Agency within 90 days of the date of the required time to provide a NOA, or such other time specified by law.

(9) Acknowledgement, Denial, and Dismissal of Fair Hearing Requests.

(a) The Office shall provide each party with prompt, written acknowledgement of a fair hearing request. The parties shall comply with any instructions issued with the acknowledgement.

(b) A Hearing Officer is authorized to deny or dismiss a request for a fair hearing for reasons consistent with this rule, including the following:

1. The Office does not have jurisdiction over the subject matter of the fair hearing,
 2. The enrollee has not completed the plan appeal,
 3. A fair hearing request is untimely,
 4. A person other than the recipient makes a hearing request without also filing a written designation signed by the recipient authorizing the representation,
 5. The recipient:
 - a. Files a written withdrawal of the fair hearing request, or
 - b. Fails to appear at the scheduled fair hearing without good cause; examples of good cause include but are not limited to a disabling accident, illness, or declared emergency.
 6. The fair hearing is moot, or
 7. The sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients or enrollees.
- (c) The Hearing Officer shall provide each party with written notice when a fair hearing request is denied or dismissed.

(10) Notice of Fair Hearing.

- (a) The Office shall provide each party with a written notice of fair hearing at least 14 days in advance of the fair hearing date.
- (b) The recipient or enrollee may waive the 14 days advance notice requirement, upon written request.
- (c) Each party shall comply with all prehearing instructions issued by the Office or a Hearing Officer.

(11) Consolidated Hearings.

The Hearing Officer may consolidate separate fair hearing requests involving the same recipient if it appears consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not prejudice the rights of the recipient, or unduly prejudice another party.

(12) Access to Case File Prior to Fair Hearing.

(a) The recipient or enrollee must be provided access to his or her entire case file, including all medical records and any other documents and records considered or relied upon by a plan regarding a plan appeal, or by the Agency, whichever is applicable. Access to documents specified herein must be provided within seven days of the recipient's or enrollee's request to the plan or Agency.

(b) For expedited fair hearings, the entire case file, or any requested portion, must be provided within 24 hours of the recipient's or enrollee's request.

(c) These materials shall be provided to the recipient or enrollee free of charge.

(13) Discovery; Subpoenas.

(a) Each party may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.410, Florida Rules of Civil Procedure. The Hearing Officer may issue orders to effect the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

(b) Upon the request of any party, the Hearing Officer may issue subpoenas for the attendance of witnesses for deposition or at the hearing. The requesting party shall indicate whether the witness is also requested to bring documents, and if so, specify the documents to be produced.

(c) A subpoena may be served by any person specified by law to serve process, or by any person who is not a party and who is 18 years of age or older. Service shall be made by delivering a copy to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service, if not served by a person specified by law to serve process.

(d) Any motion to quash or limit a subpoena shall be filed with the Office or Hearing Officer and shall state the grounds relied upon.

(14) Continuances and Abandonment.

(a) The Hearing Officer may grant a continuance of a fair hearing for good cause shown, or upon stipulation of all parties of record. Except in cases of emergency, requests for continuance shall be made at least five days prior to the date noticed for the hearing. Examples of good cause include but are not limited to the recipient's inability to attend the hearing through no fault of his or her own, or a party's good faith need for more time to conduct discovery.

(b) The Hearing Officer may find that a fair hearing is abandoned if the recipient or enrollee fails to appear at a properly noticed fair hearing without good cause. Examples of good cause include but are not limited to a disabling accident, illness, or declared emergency.

(15) Motions.

(a) All motions shall be in writing and filed with the Office. The motion shall state the relief requested and the grounds relied upon in support of the motion. If the movant is represented by counsel, the motion shall be accompanied by a written memorandum of law in support of the motion, unless otherwise permitted by the Hearing Officer.

(b) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state whether each party has any objection to the motion. Any statement that the movant was unable to confer with another party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.

(c) When time permits, the other parties to the fair hearing may, within seven days of service, file written memoranda in response to a motion. No reply to a response shall be permitted, unless leave is sought from and granted by the Hearing Officer.

(d) Motions shall be decided on the basis of the pleadings, the grounds set forth in the motion, and any supporting or opposing legal memoranda, unless the Hearing Officer orders a motion hearing to resolve the issues. The Hearing Officer shall conduct such proceedings and render such orders as necessary to dispose of the issues raised by a motion.

(e) Motions for extension of time, other than a motion for continuance of the fair hearing, shall be filed no later than two days prior to the expiration of the deadline sought to be extended and shall state good cause for the request. Examples of good cause include but are not limited to a disabling accident, illness, or declared emergency.

(f) Motions made orally on the record during the course of a fair hearing, except for motions for extension of time or for a continuance, are exempt from these requirements, unless otherwise ordered by the Hearing Officer.

(16) Hearing Officers.

(a) A Hearing Officer shall be appointed by the Agency to preside over each fair hearing and must:

1. Ensure that the fair hearing is conducted in a manner consistent with this rule and promotes the fair, just, and speedy resolution of the proceeding,

2. Be impartial and was not involved in the initial determination giving rise to the fair hearing; and,

3. Refrain from unilateral communications with a party or a party's representative regarding the substance of the issues presented in the fair hearing; if any such communication occurs, the Hearing Officer shall document the communication in the record of the fair hearing.

(b) The Hearing Officer shall have the authority to issue any and all orders and render rulings consistent with this rule.

(17) Conduct of Hearing.

(a) Hearings conducted pursuant to this rule are only open to the parties and their witnesses, unless authorized by the Hearing Officer and with the consent of the recipient or enrollee.

(b) Each fair hearing shall be a de novo, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule.

(c) Each fair hearing shall be conducted by telephone or in such manner as prescribed by the Hearing Officer. The Hearing Officer has the authority to swear witnesses and take their testimony under oath. Testimony taken by telephone or other telecommunications media does not require that a notary be present with the witness to administer the oath; however, the Hearing Officer must be satisfied as to the identity of the party or witness testifying.

(d) Each fair hearing shall be recorded. A copy of the recording shall be provided to the recipient or enrollee, upon request and free of charge.

(e) The recipient must have access to his or her entire case file including all medical records and any other documents and records considered or relied upon by a plan regarding a plan appeal, or by the Agency, whichever is applicable, during the course of the hearing. These materials shall be provided upon the recipient's request free of charge.

(f) When the plan is a party, it shall file with the Office or Hearing Officer all legal authorities, Florida Medicaid policies and regulations, and contractual provisions relied upon for its determination of any issues presented in the fair hearing. The enrollee must have access to this information during the course of the hearing.

(g) The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a

previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

(h) Opening and closing statements may be presented by each party.

(i) The recipient or enrollee shall be entitled to:

1. Introduce evidence relevant to the issues presented,
2. Examine and rebut any evidence presented by another party through the introduction of rebuttal evidence, and examination and cross-examination of any witness,
3. If documentary evidence is received in the form of a copy or excerpt, to compare the copy with the original, if available and to conduct cross-examination when such documents are made a part of the record,
4. Call witnesses at the hearing,
5. Cross-examine adverse witnesses; and,
6. Impeach any witness.

(j) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be taken only on oath or affirmation.

(k) Hearsay evidence may be used to supplement or explain evidence but is not sufficient in itself to support a finding, unless the evidence is within an exception to the Hearsay Rule under sections 90.801-.805, F.S.

(l) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material(s). Official recognition may be requested by motion and shall be granted or denied, in whole or in part, at the discretion of the Hearing Officer and in accordance with the provisions governing judicial notice in sections 90.201-.203, F.S.

(m) The rules of privilege apply to the same extent as in civil actions under Florida law.

(n) If the fair hearing involves medical issues, such as those concerning a diagnosis, an examining physician's report or a medical review team's decision, and if the Hearing Officer considers it necessary to have a medical assessment other than that performed by the individual involved in making the original decision, such a medical assessment must be obtained at expense of the Agency, in a hearing for a FFS recipient, or the plan, in a hearing for an enrollee, whichever is applicable, and made part of the record.

(o) Post-hearing submissions can be authorized by the Hearing Officer with the consent of the recipient or enrollee.

(p) If the fair hearing involves corrective action, the recipient must demand the corrective action and submit record evidence of the recipient's liability or potential liability for payment of the already-provided service.

(18) Final Orders.

(a) A Hearing Officer shall render a Final Order in each fair hearing.

(b) The Final Order shall be rendered within 90 days of the date of the request for a fair hearing, unless the time period is waived by the recipient or extended by order of the Hearing Officer.

(c) The Final Order must be based exclusively on evidence introduced at the hearing and any post-hearing submission authorized by the Hearing Officer. Findings of fact shall be based upon a preponderance of the evidence, unless otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

(d) The Final Order shall be in writing and shall include: a caption, specify the time and place of the fair hearing, list the parties and witnesses who appeared at the fair hearing, a statement of the issues addressed, findings of fact, conclusions of law, and, the resolution of the issues.

(e) The Final Order shall be sent to each party on the date rendered.

(f) The Final Order may prescribe corrective action retroactively to the date the incorrect action was taken.

(g) The Final Order shall include notice to the recipient or enrollee of the right to seek judicial review, the procedure which must be followed, and the time limits which apply.

(h) Rehearing or reconsideration of a Final Order is prohibited under this rule.