

# Agency Appeals Related to Mental Health Treatment and Barriers to Due Process

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*\* The presenter is not representing the State of Indiana, the Office of Administrative Law Proceedings, or the Office of Medicaid Policy and Planning for the purposes of this presentation.*



# The Impact of Agency Appeals on Access to Mental Health Treatment

- Administrative appeals of adverse agency determinations related to Medicaid program eligibility and mental health treatment services provide a forum for a final chance to challenge these determinations.
- However, navigating the process of appealing these determinations and participating in the hearing process can present additional barriers to access to mental health treatment because of obstacles to procedural due process individuals with mental health conditions may experience.

# Mental Health Treatment and Medicaid

- Medicaid is the largest payer for mental health services in the U.S.<sup>1</sup>
- Studies have shown that Medicaid expansion is associated with a significant reduction in delaying mental health care because of cost.<sup>2</sup>
- Individuals without health insurance are two to three times more likely than Medicaid recipients to report going without medical care because they could not pay for it.<sup>3</sup>

1. Reinert, M, Fritze, D. & Nguyen, T. (October 2021). "The State of Mental Health in America 2022" Mental Health America, Alexandria VA.  
<https://mhanational.org/sites/default/files/2022%20State%20of%20Mental%20Health%20in%20America.pdf>.

2. *Id.*

4. Robert Wood Johnson Foundation, *What is Health Equity and What Difference Does it Make?*, (May 2017)..

# Mental Health Services and Medicaid

The share of adults reporting any mental illness was higher for those enrolled in Medicaid than for adults with private coverage and those without insurance.<sup>4</sup>

**HIGH  
STAKES!**

4. Medicaid and CHIP Payment and Access Commission. (June 2021). "Report to Congress on Medicaid and CHIP" Chapter 2. <https://www.macpac.gov/wp-content/uploads/2021/06/June-2021-Report-to-Congress-on-Medicaid-and-CHIP.pdf>



# Agency Determinations that Can Impact Access to Mental Health Treatment for Medicaid Beneficiaries

- Denial or discontinuance of eligibility for Medicaid coverage
- Denial of prior authorization of mental health treatment and services
- Denial of eligibility for Medicaid Waivers and Medicaid Waiver services
- Payment of Medicaid claims for treatment and services

# The State Fair Hearing: Access to Justice

- Administrative appeals and hearings are crucial tools for individuals to challenge state agency determinations related to the Medicaid program and serve to decrease disparities in health care access.
- Using administrative remedies to resolve issues with the state agency makes justice accessible to Medicaid beneficiaries because unlike trial courts, there are no associated filing fees and formalities in procedures. The process is easier to navigate without attorney representation.

# The Right to Request a State Fair Hearing

- The state agency is required to provide timely, adequate notice of its adverse determination that includes the Medicaid beneficiary's right to appeal the action and the process to appeal.
- The Centers for Medicare and Medicaid Services encourages state Medicaid agencies to enact policies that minimize burden on individuals seeking to appeal a denial or determination of Medicaid benefits.<sup>5</sup>
  - The agency should provide assistance with appealing determination when needed.

5. Centers for Medicare and Medicaid Services, [Medicaid/CHIP Eligibility Appeals](#), (December, 2016)

# Due Process Requirements

- "The hearing system must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in this subpart." 42 CFR § 431.205(d).
- Due process principles require that a Medicaid beneficiary have:
  - Timely and adequate notice detailing the reasons for a proposed termination.
  - An effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.



# Due Process: Notice and Opportunity

Notice means:

- A pre-termination notice stating the basis for the action, when coverage is to be reduced or terminated, and informing the claimant of the right to continue benefits pending a final administrative decision.

AND

**Meaningful** opportunity:

- An opportunity for a fair hearing allowing the claimant to **orally** confront and cross-examine the witnesses and the evidence relied on by the agency.
- The right of the claimant to be represented by counsel or any person of their choice.
- The right to an impartial decision maker that issues a reasoned decision, based solely on evidence presented at the hearing to provide resolution to the appealed issue.

# The Right to Representation or to Self-Represent

- No explicit right for the agency to provide an appellant attorney representation.
- However, there may be a right to assistance during the hearing due to disability status.
- Programs some states use to assist appellants with representation:
  - Qualified Representative programs
  - Pro bono projects
- The hearing process timeframe is quick, so appropriate processes and procedures for these programs need to be established or there could be further delay to the individual receiving mental health treatment.

# Barriers to Due Process

- The right to **meaningfully** participate in the hearing process is key.
- This cannot happen unless barriers to due process are addressed, which can be challenging due to the varying needs of appellants.
- Common barriers:
  - English proficiency
  - Visual impairments
  - Literacy and comprehension barriers
  - Physical and mental disabilities
  - Inexperience with the hearing process
  - Access to and experience with technology

# Pro Se Appellants In Administrative Hearings

- The vast majority of appellants in state fair hearings concerning Medicaid benefits are self-represented while trained advocates represent the state agency.
- Administrative Law Judges play an important role in navigating the hearing process with self-represented parties to ensure due process is served and the parties can meaningfully participate.

# Tips for Administrative Law Judges: Hearings with Pro Se Appellants with Mental Health Conditions

- Provide parties a “roadmap” to the hearing process before proceeding with the hearing.
- Emphasize the informality of the process to put parties at ease.
- If appeal timeliness is at issue, liberally construe good cause and get to the merits of the case.
- Admit all evidence offered by the appellant with the instruction that it will be weighed accordingly.
- Facilitating a just outcome vs advocacy- maintain impartiality.
- Navigate hearings involving medical assessments with care.
- Demonstrate cultural competence.

# Tips for Administrative Law Judges: Hearings with Pro Se Appellants with Mental Health Conditions

- Understand the state agency's duty to assist beneficiaries with certain aspects of the eligibility determination process.
- Ask questions to try to best understand what the appellant is conveying.
- Listen! Refrain from determining an appellant's statement is irrelevant. It may become clearer once all evidence is reviewed.
- Observe! If the appellant seems overwhelmed, confused, agitated, or unable to meaningfully participate, remind the appellant of their right to have someone there to assist them and offer a continuance.
- Take a recess (or more) if the appellant needs a break.

# Conclusion

- Medicaid coverage plays an important role for some individuals accessing mental health treatment.
- Individuals with mental health conditions face obstacles navigating the appeal and hearing process related to agency determinations of eligibility and services under the Medicaid program.
- Adherence to the due process standards required for the Medicaid program, including state agency policies and Administrative Law Judge practices, can help reduce barriers to a just outcome and access to mental health treatment.

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**Questions?**