

DHS Proposed Rules for Notice and Appeals: Impact On Beneficiaries

Summary from Legal Assistance Foundation of Chicago – at request of Rep. Greg Harris

Overall, the proposed rules contain a number of provisions that limit beneficiaries notice and appeals protections, and seem to be written without an understanding of how DHS notice and appeals actually operate for beneficiaries. The rules also allegedly clarify existing provisions but the new scheme contains contradictions and does not make the administrative rules on hearings more clear.



Appeals

- The proposed rules improperly limit the ability to file a Medicaid appeal to only the “individual *who applied for or received* medical assistance” and not an appointed representative or power of attorney as with SNAP and TANF Federal rules permit no such limitation.
- The proposed rules also single out Medicaid recipients by prohibiting them from appealing by telephone. SNAP and TANF customers can appeal by phone and Medicaid recipients can appeal to their managed care organization by telephone.
- The proposed rules **also add a specificity requirement for medical assistance appeals** and only these appeals. Notices the Department sends to customers are typically short on information. Reasons for termination or denial have included: you did not “provide information,” or you do “not meet the eligibility requirements,” with nothing more. The rule would impose a higher burden on appellants than the Department itself.

Pre-Hearing

- One section of the proposed rules eliminates continuing benefits for persons who appeal within 10 days of the date of change, limiting them only to appeal made within 10 days of the *date of notice*. But the Medical Assistance appeals section refers to the 10 days after the *date of the action*. This is confusing as it appears that the rules in the former section are intended to govern all programs.

Hearings

- **The proposed rules delete the requirement that hearing officer be “impartial”.** This change is a violation of due process, a contradiction of *Goldberg v. Kelly*, and a violation of federal law on fair hearings.
- The proposed rules change the venue of hearings from the county where the appellant resides or another county acceptable to the appellant to *only* “the Department’s FCRC that serves the appellant” regardless of whether that FCRC is accessible to the person. This proposal would impose a barrier on clients and would worsen the access problem already experienced by DHS clients in the vast geographic area of central and southern Illinois.

- The proposed rules mention only two of the many requirements for the fair hearing outlined in federal regulations. These rights are fundamental and cannot be abridged by state rule but eliminating them from state regulations will be confusing and misleading for beneficiaries, agency personnel and hearing officers.
- The public assistance appeals section allow clients to challenge issues of Department policy while the proposed rules seek to strip medical assistance clients of the ability to challenge the “legality” of Department rules.
- The proposed regulation eliminates evidentiary considerations, except that the hearing “be conducted in a manner best calculated to conform to substantial justice.” Department of Rehabilitative Services clients currently enjoyed the right to the application of the rules of evidence, relaxed only for evidence that is “of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, has probative value, and is relevant and material to the facts and issues.”

Post-Hearing

- This section allows managed care organizations to recover the cost of ongoing services if their decision is upheld after a hearing. Because managed care organizations are paid on a capitated rate, this payment appears to be a windfall that allows the managed care organizations to avoid some of the risk inherent to the system of paying on a capitated rate, not on a per service rate. Furthermore, **as with Social Security benefits, beneficiaries should only be liable for repayment if they pursue an appeal in bad faith.** Otherwise, the rule improperly discourages good faith appeals and violates due process.

To get involved in advocacy around these issues:

773-791-3523

info@AllianceForCommunityServices.org