Due Process Rights of Medicaid Beneficiaries: An Overview

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Constitutional Right of Due Process (14th Amendment) Applies to the Medicaid Entitlement

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive an person of life, liberty or property without due process of law; or deny to any person within its jurisdiction, the equal protection of the laws.”

SOURCE: The Fourteenth Amendment (Amendment XIV) to the United States Constitution
14th Amendment Right of Due Process

Medicaid Beneficiaries (or their Authorized Personal Representatives) have the right to appeal Adverse Decisions of the State Medicaid Agency or its contracted agents and receive a fair hearing pursuant to the Social Security Act, 42 C.F.R 431.200 et seq., and N.C.G.S. §108D for managed care; 42 USC 1396(a)(3).
• Social Security Act
  – § 1902(a)(3): The section requires State plans to provide an opportunity for fair hearing to any person whose claim for assistance is denied or not acted upon promptly.
  – § 1932(b)(4): The section requires Medicaid managed care plans to establish internal grievance procedures under which Medicaid enrollees, or providers acting on their behalf, may challenge the denial of, coverage of, or payment for, medical assistance.

• 42 CFR 438, Subpart F: Medicaid Grievances and Appeals

• NC General Statutes: § 108A-70.9A, § 108D

• A landmark decision in establishing the Right of Due Process for Medicaid beneficiaries.

• Facts of the Case:
  – Twenty Medicaid beneficiaries in NYC were denied their benefits due to suspicion of welfare fraud
  – Their benefits were terminated without substantiation of the fraud charges

• The court decided that these individuals had a ‘property interest’ in their benefits, therefore, ‘procedural due process’ was deemed to apply to a termination of Medicaid benefits.

Source: Goldberg, 397 US at 269, 90 S. Ct. 1011
The Medicaid Beneficiary Will Have:

- Timely and adequate notice
- Detailed reasons for a proposed adverse eligibility decision, service decision, or a service request
- An effective opportunity to defend by confronting adverse witnesses, and by presenting their own arguments and evidence orally or in writing
- A pre-termination (evidentiary) hearing conducted by an impartial decision-maker at a meaningful time and manner

Source: Goldberg, 397 US at 269, 90 S. Ct. 1011
Fair Hearings are ‘Evidentiary Hearings’

• Evidentiary hearing are different than other ‘formal trial’ hearing
  – Not a criminal proceeding

• The beneficiary is not entitled to counsel.
  – Legal representation is voluntary

• The beneficiary may cross-examine Medicaid representatives, and may present their arguments/evidence orally to a decision maker.

• The decision-maker must be ‘impartial’, and must not have participated in making the adverse benefit determination being reviewed.
• The decision must be sound and detailed, and the evidence relied upon must be disclosed in the hearing.
DTM v Cansler 2009-2010: The Settlement Agreement
Outcomes of the Settlement Agreement

• Issue
  – Unreasonable delays in deciding requests for Prior Approval

• Remedy
  – NC DHHS/DMA and its Prior Approval Vendors will make decisions timely
Outcomes of the Settlement Agreement

• Issue
  – Vague or poorly written Adverse Benefit Determinations

• Remedy
  – Communications of Adverse Determinations will contain clear detail of reasoning
Outcomes of the Settlement Agreement

• Issue
  – Inconsistent notification of Adverse Benefit Determination

• Remedy
  – Notices of Adverse Determination will be delivered promptly, accurately addressed, and by trackable mail to the recipient and the provider
Outcomes of the Settlement Agreement

• Issue
  – Illegal interruption in approved services

• Remedy
  – Continuing services will be maintained during the period of mediation and appeal
Outcomes of the Settlement Agreement

• Issue
  – Failure to consider current needs

• Remedy
  – Complete review of current information will be conducted by appropriately licensed professionals within the discipline, and requests will be timely considered
Outcomes of the Settlement Agreement

• Issue
  – Misinformation/discouragement of service/appeal requests

• Remedy
  – Medicaid and its agents may contact requestor or beneficiary only to obtain information required to decide a current prior approval request, without suggesting alternative treatments or speculating on review outcomes
Outcomes of the Settlement Agreement

• Issue
  – Unreasonable delays in deciding Appeal Requests

• Remedy
  – Mediations and formal hearings will be held timely (55 day target) to resolve appeals
Due Process and North Carolina Medicaid: Guiding Principles*

*Red highlighted items will be impacted by CMS final rule 438, subpart F, ‘Grievances and Appeals’ after 7/1/2017
When Medicaid Makes and Adverse Determination

- Proper written notice with appeal rights must be provided to the recipient and copied to the provider.

- When a service currently authorized is being reduced or terminated, the notice must be mailed at least 10 days before the effective date of the action.
An Adverse Determination Notice Must Include:

- Clearly written reasons for the intended action
- Citation of law that supports the intended action
- Notice of the right to appeal, with clear instructions on how to request a hearing
Maintenance of Service During an Appeal

• Provider Stipulations
  – Providers must continue to follow all service provision requirements (including all applicable state and federal rules and regulations).
  – Providers may submit a request for a new amount of the same service or a new request for different services during the appeal.
Maintenance of Service During an Appeal

• Provider Stipulations
  – While providers may assist a beneficiary in completing or filing their request for appeal, providers may not file an appeal on behalf of the beneficiary
  – Providers may only request an Appeal Form when the beneficiary designates them to do so
  – As the beneficiary may designate anyone he or she chooses to represent them in mediation or appeal, providers have been designated to speak for the beneficiary during an appeal process
Due Process and North Carolina Medicaid: Monitoring Due Process Compliance
The “Beneficiary Appeals Clearinghouse,” a collaborative effort with Public Consulting Group, was initially developed in partial satisfaction of the stipulations of the DTM v Cansler 2009 Settlement Agreement.
All vendors issuing prior approvals, our contracted entity for conducting fair hearings (OAH), Office of the Attorney General, and DMA Clinical Policy subject matter experts participate, making the Clearinghouse a single portal repository for:

- Every initial denial made by LME/MCOs
- Every final/adverse determination produced by DMA or its vendors
- Every Appeal Request made by a beneficiary
- All ‘Report of Mediator’ documents
- Every Final Agency Decision made by the Office of Administrative Hearings