

**Note:** Email completed form to jcarr1@jcarr.state.oh.us.

Hearing Date: 11/17/2017

Today's Date: 12/5/2017

Agency: Ohio Department of Medicaid

Rule Number(s): 5160-26-08.4 and 5160-58-08.4

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If no comments at the hearing, please check the box. ☐

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List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Disability Rights Ohio (DRO) submitted testimony on rules 5160-26-08.4 and 5160-58-08.4
2. Legal Aid submitted testimony on rule 5160-26-08.4
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## Hearing Summary Report

### **Consolidated Summary of Comments Received**

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

ODM received the following comments from DRO in regards to proposed OAC rule 5160-26-08.4 and OAC 5160-58-08.4: concern regarding the proposed definition of “adverse benefit determination” in paragraph (A) of each rule, identification of an incorrect reference to 42 CFR 430.10 in rule 5160-26-08.4, concern with the content of written notices that members receive after an appeal resolution and that additional language from 42 CFR 438.404 was omitted from the rules, concern that specific forms (ODM 4043, 4066, and 4046) have not been updated to comply with federal requirements, concern that members will not know how to request their case file when filing an appeal with the plan, request that ODM add language to the proposed rule to indicate a member has exhausted the plan appeal process if the plan fails to adhere to the notice/timing requirements of the rule, request that ODM require MCPs to accept the date BSH received the state hearing request to be the official date for a plan appeal (when a state hearing is prematurely requested by the member), request that ODM amend the Authorized Representative grievance requirements and create template forms for the plans to use, request that ODM require plans to acknowledge receipt of all appeals in writing, concern with language included in 5160-26-08.4(C)(5) and 5160-58-08.4(C)(5) regarding grievances that could result in state hearing rights, and request that ODM specify language in the proposed rule related to untimely decisions and resolutions.

The following comments were submitted by Legal Aid in regards only to proposed OAC rule 5160-26-08.4: concern regarding the proposed requirement that members exhaust the MCP appeal process before requesting a state hearing and that the managed care plans (MCPs) are not required to have the same appeals process, concern that the proposed rule does not draw a clear line between the definition of a grievance or an appeal, concern that grievances don’t have state hearing rights, concern with the different notification requirements for grievances and appeals, request that ODM add language from 42 CFR 438.406 to the proposed rule related to a neutral and qualified fact finder, concern with the amount of information required for appeal resolution notices resolved wholly in the members favor, concern regarding the fact that there is seemingly no remedy for a member that files an appeal to the plan after specified timeframe, questioned how a member knows whether or not they should request an appeal or a grievance, concern with the translation requirements for notices and decisions, request that ODM add language to specify that a member can request a state hearing if the appeal isn’t resolved within 15 days by the plan, and concern with the potential lengthy timeframe for resolving an appeal and state hearing to the detriment of the member.

## Hearing Summary Report

### **Incorporated Comments into Rule(s)**

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

The Ohio Department of Medicaid (ODM) make a few changes to the proposed rules as a result of the comments received from Disability Rights Ohio (DRO). Ohio Administrative Code (OAC) rule 5160-26-08.4 was revise filed on November 21<sup>st</sup> with the following changes: updated the CFR reference in paragraph (B)(2) to 42 CFR 438.10, and inserted an oxford comma to the sentence in (B)(3)(d) to mitigate confusion regarding untimely decisions and resoltions. OAC rule 5160-58-08.4 was revise filed on November 21<sup>st</sup> with an oxford comma inserted into the sentence in (B)(4)(e) to mitigate confusion regarding untimely decisions and resoltions. No other changes were made to the rules as a result of the comments received by DRO. ODM addressed all the comments submitted by DRO in a response memo on December 1, 2017. Several of the concerns that DRO raised are addressed in the contracts that ODM holds with each of the plans (the provider agreements), or were addressed through previous public comment periods.

No changes were made to the proposed rules as a result of the comments received by the Legal Aid representatives. ODM addressed all the comments submitted by DRO in a response memo on December 1, 2017. Several of the concerns that Legal Aid raised are addressed in the contracts that ODM holds with each of the plans (the provider agreements), or were addressed through previous public comment periods. Furthermore, since many of the comments that ODM received from Legal Aid regarding the proposed rule were inaccurate, ODM did not find it necessary to update any language beyond what was updated through the clearance process.