

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

Hearing Date: 11/17/2017

Today's Date: 11/28/2017

Agency: Ohio Department of Job and Family Services

Rule Number(s): 5101:6-2-35, 5101:6-2-50, 5101:6-3-01, 5101:6-3-02, 5101:6-4-01, 5101:6-5-01, 5101:6-5-02, 5101:6-5-03, 5101:6-6-01, 5101:6-6-02, 5101:6-7-01, 5101:6-7-03, 5101:6-8-01, 5101:6-9-01 (ERF 179505).

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

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

1. Michael Kirkman, Executive Director/General Counsel, Disability Rights Ohio – Reference to rules 5101:6-35 to 5101:6-9-01

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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).

- 1) Disability Rights Ohio (DRO) stated that rule language of 5101:6-4-01 did not take into account instances in which the MCP or MCOP plan failed to provide timely notice of adverse benefit determinations.
- 2) DRO stated that "CMS contemplated...an appeal "request" as a request for further services, and therefore rule 5101:6-4-01(A)(01) is not in compliance with federal law.
- 3) DRO asks that ODJFS-BSH and ODM work together to assure processes are fair and consistent.
- 4) Regarding "Incorrect Denials" in rule 5101:6-5-03 DRO had concerns that erroneous denials will result in the member not getting a chance to be heard.

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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.

- 1) In rule 5101:6-3-01, language includes grounds for a hearing when the MCP or MCOP fails to adhere to the notice and timing requirements for appeals set forth in rule 5160-26-08.4 or 5160-58-08.4. Further both ODM rules describe an “adverse benefit determination” to include “failure to provide services in a timely manner...” and “failure to act within the resolution timeframes specified in rule.”
- 2) ODJFS Bureau of State Hearings (BSH) disagrees with DSO’s interpretation of 81 Fed. Reg. 27632 regarding assuring long-term care services and supports be assessed based on a person-centered service plan, CSM did not alter the State’s ability under fee-for-service or managed care to apply medical necessity criteria for an individual requesting services. CMS prohibits utilization controls that would interfere with an enrollee’s freedom to choose the method of services being provided. CMS addresses the duration of benefits, not the amount of benefits. In rule 5101:6-5-01(G) the language requires the MCP or MCOP to continue or reinstate services “to the previous level until the services that were authorized by the MCP or MCOP are received or until the state hearing decision is rendered, whichever date comes first.” BSH believes this is in alignment with federal regulations.
- 3) ODJFS-BHS and ODM have been collaborating for the past year regarding a fair hearing process so that BSH rules are being applied fairly and consistently across the Medicaid program. DRO requests that BSH require MCPs to accept the date BSH receives the appeal request to be the official date for a plan appeal. BSH will not be making this change because MCPs are required to comply with language in the Medicaid Managed Care and MyCare Ohio Provider Agreements. New agreements are to be effective January 1, 2018 that include language related to the MCP appeal and grievance process; explicitly describing the communication process that is required between the plans and BSH when a member requests a state hearing. Language is included in the new agreements that requires the MCP to work with the member to initiate the MCP appeal process after discovering the member prematurely filed a state hearing before exhausting the plan appeal process. The MCP appeal process is monitored for compliance by ODM, and the plans are subsequently fined monetarily for any infraction.
- 4) Regarding “Incorrect Denials” DRO had concerns that erroneous denials will result in the member not getting a chance to be heard. For clarity, BSH has moved the dismissal language to its own paragraph, so that it will apply to both paragraphs in 5101:6-5-03(D)(1) and (2) which will align with BHS’s current practices.