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## How to Request and Prepare for a Medicaid Appeal

### Introduction

This information is designed to help someone on Medical Assistance (Medicaid) or someone helping that person during the appeals process in Maryland. An appeal must be filed if you disagree with a decision by the Maryland Department of Health (MDH; formerly known as the Department of Health and Mental Hygiene), another government office (such as your county Department of Social Services), or your Medicaid managed care plan to deny, reduce, or terminate your Medicaid services. It is wise to seek legal representation to help with the appeal. However, if you are going through the appeal process on your own, here is some basic information to help you.

Please keep in mind that this guidance focuses on appeals from MDH denials, reductions, and terminations of Medicaid *services* only and does not address denials or terminations of *eligibility* for Medicaid more generally. However, certain portions of this guidance will apply to eligibility cases as well. The 10-day deadline noted below applies to terminations of Medicaid eligibility as well as services. The MDH Office of Health Services fax number listed below will also accept eligibility appeals. It is always best to direct your appeal to the address provided in the letter you received and to follow the letter's directions on how to appeal if they differ from the information in this document. For any additional information about eligibility issues, please contact the Maryland Legal Aid Bureau at the phone numbers listed below.

During the appeal, you will interact with MDH, the state Office of Administrative Hearings (OAH), and the state Office of the Attorney General (OAG). MDH is the state agency that approves or denies Medicaid services, receives your appeal letter, and will be the opposing party seeking to support its decision during the appeal. OAH is the state office that will schedule and hold the appeal hearing before an administrative law judge who will make a decision. OAG is the office of lawyers that represent MDH (the other side) in your appeal. Contact information for each of these offices is listed below.

Disability Rights Maryland (DRM; formerly the Maryland Disability Law Center) is a nonprofit organization that provides free legal services for Marylanders with disabilities. If we have told you DRM is unable to represent you at the appeal hearing and sent you this guidance, we are still available to answer further questions you may have after reading this document. If you would

like to seek representation after reading this information, please contact the Maryland Legal Aid Bureau or the Maryland Volunteer Lawyers Service.

**Important 10-Day Deadline to Appeal and Keep Eligibility or Services in Place**

**Appeals can be submitted within 90 days, as noted in more detail below. But if MDH or another state or county government agency has notified you that you are no longer eligible for Medicaid or that your current Medicaid services will be reduced or terminated, and you want your eligibility or current level of services to continue until the hearing decision, MDH must receive your appeal within 10 days of the date on the letter you received.**

**Who Can File an Appeal and Act as a Representative?**

The person on Medicaid (called the recipient) has a right to an authorized representative when filing the appeal if he or she does not wish to represent him or herself, or cannot do so. If the recipient has the legal capacity (they have not given over their rights to a guardian) and cognitive ability to designate a representative, they should do so in the appeal request.

If you wish to file the appeal on behalf of a recipient who cannot designate you, you can also be an authorized representative. If you are the parent of a minor child under 18 years of age, you may act as the representative. Legal guardians or those in the process of becoming a legal guardian to an incapacitated adult (or minor) also qualify as authorized representatives. A third category of authorized representative is the healthcare surrogate. When you write the appeal letter, state the category of representative to which you belong.

If the recipient is an adult who lacks the capacity to designate you as their representative and you do not fall into one of the above categories, you can still file an appeal on behalf of the recipient. When writing the appeal request, note your relationship to the recipient and state that you are acting in good faith on behalf of an individual who lacks capacity to designate you. It may be useful to include a citation to the relevant section of the Maryland regulations authorizing you to act as the authorized representative. That citation is Code of Maryland Regulations (COMAR) 10.01.04.12B(4)(a).

If you are helping a recipient who received an Authorized Representative Form, you should complete the form and return it to MDH with your appeal request.

For more information about additional categories of representatives, see COMAR 10.01.04.12 at this link: <http://www.dsd.state.md.us/comar/comarhtml/10/10.01.04.12.htm>

## **The Appeal Request**

You need to write a short letter to MDH to request an appeal. State simply that you are requesting an appeal based on the notice you received and that you disagree with their decision. You should not include detailed reasons for your appeal in the letter. Because it is too early to tell what MDH is going to say in the hearing, you do not want to limit what your reasons and arguments will be at the hearing by putting them in writing too early. Providing less information, rather than detailed reasons for your appeal, will allow you to respond to the arguments MDH actually makes at the hearing. Attach a copy of the notice you received to the appeal letter if possible. If you will have witnesses, include in your letter a request that OAH contact you to confirm witness availability before scheduling the hearing. You can also request that the hearing be held closer to your home if travel to the OAH office in Hunt Valley, just north of Baltimore, would be difficult or expensive for you. If you work during normal business hours, be sure to note that in your appeal and ask that the hearing be scheduled for a time when you would not have to miss work.

You may mail, fax or email your appeal letter to MDH. If possible, fax your appeal, which will allow you to receive and save the fax confirmation sheet, providing written proof that the request was received.

As of March 2018, MDH does accept email appeal requests. In your email, ask for a written reply that your appeal was received. Faxing the request is still the preferred method, as you will receive immediate written confirmation. But if you cannot fax the appeal in time to meet an appeal deadline (for instance, 10 days after the date on the notice, so as to retain services you now receive), use email - but make sure you receive a written reply and follow up via email again if you do not receive it. Contact information for appeals is provided below.

## **Timeline**

*If you want to continue receiving benefits at the same rate as before the reduction or cancellation notice, MDH must receive your appeal request within **10 days** of the date on your notice, or the date the notice was mailed, or the stated effective date of the MDH action if later.*

- Sometimes the date on the notice is earlier than the postmarked date on the envelope. If you mail your appeal request within 10 days of the postmarked date on the envelope, instead of the date in the letter, save the envelope the notice came in and note in your appeal letter that your letter was mailed within 10 days of the postmarked date, not the date MDH printed on the letter. Your benefits should still continue if this occurs and you note the situation in the appeal letter.
- Sometimes the MDH letter will include an effective date for the reduction or end of benefits that is more than 10 days after the date of the letter. If MDH receives your appeal request by the effective date, your eligibility or services will still continue.

- If your eligibility or services were reduced or terminated before you received a written notice or in less than 10 days after that, you can still request that they be maintained at the current level pending the hearing decision.

Note that if you lose at the hearing, the state has the right to request reimbursement for services you received after submitting the appeal request, but this occurs in rare circumstances.

*If you are not trying to keep existing services and just want to file an appeal, MDH accepts all appeal requests received within 90 days from the date on the MDH letter.*

At least 6 days before the hearing, MDH should send you a hearing summary. The summary will include what the issues at the hearing will be and why they made the decision they did. If you do NOT receive that report, or if the issues are different from those in the decision notice, call a MDH docket specialist at the OAH clerk's office. Those numbers are below.

### **Requesting and Using Documents**

You should request from MDH all documents in your case record and any other documents used by MDH in making its decision and/or that will be relied upon or used in the hearing. You can also request information about or from any experts MDH will be calling as witnesses. When you request such documents, include a description of any information you are seeking. It is not necessary to explain why you need the documents. Include in your request the case number assigned to your appeal. That number should be noted in a letter you receive from OAH to confirm that the office has received your appeal request. You should gather as much information from MDH as possible to prepare for the hearing and minimize surprises during the hearing.

To request these documents, mail or fax a letter to MDH's Office of Health Services, Attn: Appeals, sending a copy to OAH and the OAG as well.

A state representative may write or call to ask you to come to a state office in Baltimore to review the documents you requested. If that would be hard for you due to your location or other reasons, ask the person contacting you whether they can mail or email the documents to you.

You will also want to gather and bring copies of your own medical and financial documents that are helpful to your appeal (for example, doctor's or hospital letters or reports to show medical need, work or school verification to show parents' time commitments in nursing cases, or wage statements or bank account documents in some eligibility cases). You should bring 3 copies of each helpful document of your own or received from MDH to the hearing and ask the Administrative Law Judge to admit the documents into evidence. The Judge's decision will be based only on the sworn testimony of witnesses and documents (called exhibits) admitted into evidence.

### **Requesting Telephone Testimony**

If there is a witness you wish to have testify who cannot appear in person, such as a doctor, you can ask OAH in writing for approval to have the person testify by phone. It may be helpful to include in your request the citation and quotes from the Maryland code, COMAR 28.02.01.20B (<http://www.dsd.state.md.us/comar/comarhtml/28/28.02.01.20.htm>), which allows testimony to be submitted via phone. The regulation says that OAH “may conduct all or part of a hearing by telephone” unless a party objects and “establishes good cause in opposition to the holding of a hearing by telephone.” You should include the reason(s) why your witness needs to be able to testify by phone. Be sure to notify OAH of any scheduling conflicts or best days of the week or times of day for your witness to testify by phone.

### **Time or Location Conflicts**

If you or one of your witnesses is not available to attend the hearing as scheduled, notify OAH of the problem in writing as soon as possible and ask for a postponement. Provide the reason why you or a witness cannot attend the hearing as scheduled and suggest other dates (days of the week) and times that you could attend. OAH may ask you for documentation of the reason you or your witness cannot attend the scheduled hearing. Postponements are not granted without good reasons. If OAH approves the request, it will notify you of the new date and time.

On request, OAH will also schedule or change a hearing to locations throughout Maryland other than its main location in Hunt Valley, north of Baltimore. If you wish the hearing to be at a location closer to you or a witness, ask OAH in the appeal letter or as soon as possible after you receive the scheduling notice. OAH will notify you of the new location if it is approved.

### **Requesting a Postponement**

If after receiving a scheduling notice, you have a good reason to postpone the hearing, you can make that request in writing to OAH five or more business days before the hearing date. You can fax or mail a letter to OAH—including the case name, OAH case number, hearing date, reason for the postponement request (with supporting documentation), a phone number where you can be reached during business hours, and at least three dates within a 60-day period that would work for you and your witnesses. If it is less than five business days before the hearing, you can make an emergency postponement request by calling one of the postponement officers (whose numbers are on the following page).

### **Confidentiality**

Your hearing will be confidential and not open to the public, unless you waive that right in writing. If you choose to have your hearing open to the public and indicate that in writing, then the judge will permit members of the public to attend. *The person on Medicaid and the representative can and should always attend if at all possible.* In some cases, however, the representative may attend without the Medicaid recipient.

## Contact Information

(Accuracy confirmed as of March 2018)

### **MDH Contact Information**

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Fax Number for MDH Appeal Requests: (410) 333-5154  
Mailing Address: Maryland Department of Health  
Office of Health Services  
Attention: Appeals  
201 West Preston St., 1<sup>st</sup> Floor  
Baltimore, MD 21201  
Email Address for Appeal Requests: [Kristina.White@maryland.gov](mailto:Kristina.White@maryland.gov)

### **OAH Contact Information**

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Main Telephone Number: (410) 229-4100  
OAH Fax Number: (410) 229-4266 or -4268  
OAH Docket Specialists for MDH: Warda Bekeit (410) 229-4245  
Amber McCraney (410) 229-4263  
Jean Tepelides (410) 229-4262  
Dawn Banks (410) 229-4290  
Mailing Address: Office of Administrative Hearings  
11101 Gilroy Rd.  
Hunt Valley, MD 21031  
Postponement Officers: Pamela Johnson (410) 229-4274  
Vikki Carter (410) 229-4273

### **State OAG Contact Information**

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Fax Number: (410) 333-7894  
Mailing Address: Office of the Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, MD 21202

### **Maryland Legal Aid Bureau**

Baltimore City Office: (410) 951-7777  
Baltimore County Office (Towson): (410) 427-1800  
Statewide Directory for all other counties: <http://www.mdslab.org/contact>

### **Maryland Volunteer Lawyers Service**

Telephone Number: (410) 547- 6537 (Baltimore metro)  
Toll Free: (800) 510-0050  
Online intake form: <https://mvslaw.org/get-legal-help/apply-for-services/>