

How to Appeal a Medicaid Managed Care Plan Decision

Revised October 2018

This information is designed to help someone on Maryland Medical Assistance (Medicaid) or someone helping that person during the managed care appeals process.¹ Most but not all people who receive Medicaid in Maryland are members of a managed care organization (MCO), a private company that contracts with the state to provide Medicaid services.²

If you disagree with a decision by your MCO to deny, reduce, or terminate your Medicaid services, you have the right to appeal that decision. Medicaid appeals allow a person to appeal an MCO decision with or without an attorney: you do not need an attorney in order to appeal. Although an attorney can be helpful, people may be successful in Medicaid appeals on their own or with the help of a trusted relative or friend. Make sure to know your rights, be organized, and present information that shows your medical need and explains why you qualify for the relevant services. This is general information for educational purposes only and should not be considered to be legal advice.

This guide is only intended to assist in appealing decisions made by a Medicaid MCO.

While many Medicaid services are delivered through MCOs, others are delivered through the Maryland Department of Health (MDH)—even if you are enrolled in and receive other services through the MCO. For instance, if you receive in-home personal assistance (care from an aide) through the Community First Choice or the Community Personal Assistance Services programs, these services are administered by the Maryland Department of Health (MDH), which makes the decisions about eligibility and hours of service for those programs. You would appeal MDH decisions directly to the state Office of Administrative Hearings and should not use the process outlined below, which only applies to MCO decisions.

- It is important to review the denial notice you receive to make sure you are taking the right steps to appeal that decision and sending your appeal request to the right place.

¹ We gratefully acknowledge the use of Disability Rights North Carolina's document regarding a similar appeal process, available at <https://www.disabilityrightsnorthcarolina.org/wp-content/uploads/2018/05/Medicaid-Appeals-with-MCOs.pdf>. This document adapts DRNC's materials for Maryland's MCO appeal process. Funding for this handbook was provided in part by grants from MLSC, Fund for Change and the Krieger Foundation.

² The MCOs currently operating in Maryland are Aetna Better Health, Amerigroup Community Care, Jai Medical Systems, Kaiser Permanente, Maryland Physicians Care, MedStar Family Choice, Priority Partners, University of Maryland Health Partners, and United Healthcare. If you are enrolled in an MCO, you have a card from one of these companies that you would bring to a doctor's office or the pharmacy. See <https://mmcp.health.maryland.gov/healthchoice/pages/home.aspx> for more information.

- If the decision was made by MDH rather than your MCO, you should instead review the DRM guide titled “How to Request and Prepare for a Medicaid Services Appeal,” available at <https://disabilityrightsmd.org/resources/>.

Introduction to the Appeal Process

Agencies Involved in Medicaid Appeals

During the appeal, you may interact with:

- Managed care organization (MCO): the private plan that makes decisions about what services to authorize for you.
- Maryland Department of Health (MDH): the state agency that administers the Medicaid program and oversees the MCOs; formerly known as the Department of Health and Mental Hygiene.
- Office of Administrative Hearings (OAH): If you lose the first level of appeal with the MCO and decide to appeal again, OAH is the state office that will schedule and hold a hearing for that second level of appeal, which will be before an administrative law judge.
- Office of the Attorney General (OAG): the office of lawyers that represents MDH (the other side) in your appeal.

Contact information for each of these offices is listed below. Your MCO will have specific information about where at the MCO to send your appeal request; this should be included in the denial notice you received.

Accommodations

Throughout the appeal, the MCO and MDH must ensure that the process is accessible to people with disabilities, at no cost to you. For instance, if you have impaired vision, you may request that the MCO provide you materials in larger print, in Braille, or as an audio recording. If you have impaired hearing, you may request an ASL interpreter for a phone conversation with the MCO or at a hearing. Other accommodations may be available as well, such as payment for a one-to-one aide to assist with behavior support at a fair hearing. If a Medicaid recipient’s authorized representative (see below) has a disability, the hearing system must also be accessible to the representative.

What is the Difference between a Grievance and an Appeal?

You have the right to file an appeal to challenge an “adverse benefit determination,” such as an MCO decision to deny³, reduce, suspend, or terminate your services. You must file an appeal within 60 days of the date on the MCO’s notice about the decision.

³ This includes a denial by the MCO of your request to dispute how much you owe for cost sharing, e.g. copayments, premiums, deductibles, coinsurance, or other financial liabilities.

If you disagree with any other type of decision your MCO has made, you may file a grievance against the MCO: for instance, the quality of care or services provided, concerns about treatment by a provider or employee (e.g. rudeness, not respecting your rights), or denial of an expedited appeal as noted below. You may file a grievance at any time.

Who Can Act as an “Authorized Representative”?

Another person, called an “authorized representative,” can file your appeal and/or represent you at the hearing. This can happen two ways: you may choose someone to help you or, if you don’t have the ability to choose someone, another person can act on your behalf under certain circumstances.

To choose a person, you as the Medicaid enrollee can (1) write the name of your authorized representative in the signed and dated appeal request; (2) at any time, sign and date a written statement naming your authorized representative; or (3) at the hearing, state verbally that someone with you is your authorized representative. You may change or end your authorized representative’s role at any time.

You may have an authorized representative even if you don’t have the ability to choose one. The parent of a minor child under 18 years of age may act as the representative. Legal guardians, or those in the process of becoming a legal guardian, and healthcare surrogate decision makers also qualify as authorized representatives. When you write the appeal letter, state the category of representative to which you belong.

Even if you cannot appoint an authorized representative and do not have a legal guardian or healthcare surrogate decision maker to help you with an appeal, others can become your authorized representative, file an appeal on your behalf, and represent you at a hearing. Anyone who writes an appeal request on your behalf should note their relationship to you and state that they are acting in good faith on behalf of an individual who lacks the capacity to choose an authorized representative. It may be useful to refer to the section of the Maryland regulations on authorized representatives: Code of Maryland Regulations (COMAR) 10.01.04.12B(4)(a).⁴

Filing an Appeal

You must first appeal MCO decisions within the MCO itself.⁵ After you file the appeal,

- 1) The MCO will review its decision.
- 2) If the MCO still agrees with (upholds) its decision, you may ask MDH to review the MCO decision. If MDH upholds the MCO’s decision, you may appeal to OAH.

⁴ Available at <http://www.dsd.state.md.us/comar/comarhtml/10/10.01.04.12.htm>

⁵ Due to a change in federal regulations, the way to appeal a Medicaid managed care plan’s decision in Maryland has changed.

- 3) After the MCO review, you may appeal the MCO decision to OAH whether or not you asked for a review by MDH.

This process is further outlined below.

1) **MCO Decision, Notice, and Review**⁶

When your MCO decides to deny, reduces, suspends, or ends services, it will send a written notice stating that decision. The notice should also include an explanation of why the service was denied, reduced, suspended, or terminated; the date when the service will end or change (if you currently receive the service); and information about how to appeal the decision.

- *If the MCO is reducing, suspending, or ending services that you currently receive, and you want your current level of services to continue until the MCO reviews its decision, the MCO must receive your appeal request within 15 days of the date on the notice (within 10 days after you receive it).*

Note that if you lose your appeal, you may have to pay for the services you received after submitting the appeal request. However, Maryland rarely, if ever, requires payment for services received when the person loses the appeal, and most people receiving Maryland Medical Assistance have no means of paying such costs. Consider that if you go without your current services while the appeal is pending, the judge may believe you do not really need those services.

- **How and when to file an appeal**

Contact the MCO to appeal the decision within 60 days of the date on the letter. The letter you received from the MCO will have the MCO's phone number and address; it may also have a fax number or email address to use. If you request the appeal by phone, you must follow up to confirm in writing (unless you're requesting an expedited appeal – see below). The date of your phone call is still considered the date that your appeal was filed.

With your written consent, your health provider or authorized representative may file the appeal on your behalf. However, your health provider cannot ask on your behalf that your services continue at the current level pending the MCO's decision: you must request that.

You may submit more information to the MCO that may assist them in reversing the decision. If you need more time to obtain additional documentation or information, you may ask the MCO for an extension of time by calling the contact number on the MCO notice. You may also arrange to speak with the MCO about the appeal in person; to do so, you must contact the MCO at the number included in your notice within 5 days of receiving it.

⁶ See COMAR 10.09.71.05 at <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.71.05.htm>

You may call the MDH HealthChoice HelpLine for more information about how to appeal the MCO's decision; that number is on the last page of this guide (along with other helpful contact information). The MCO letter will also have a phone number for your health provider to call if s/he would like to speak with the MCO representative about the decision as well.

- **How to get copies of the information the MCO used to make the decision**

The MCO notice will also have contact information for your plan's Member Services. You can contact them to get a free copy of any medical guidelines or coverage policy that the MCO used; a free copy of your own medical records; and any new or additional evidence the MCO considered, relied upon, or produced in connection with the decision.

- **What happens after you request an appeal**

When the MCO receives an appeal request, a person who did not make the original decision will review the MCO decision within 30 days. If the MCO needs more time, they will notify you of an extension of up to 14 additional days. If you disagree with the MCO's decision to extend the review time, you may call the MCO or the HealthChoice HelpLine to file a grievance.

- **What if you need a very fast decision on the appeal based on your medical needs**

If you, your provider, or your authorized representative believes the seriousness of your health condition requires a quick decision, you can request an expedited appeal. If the MCO agrees to expedite it, they will decide within 72 hours of that request to expedite and notify you of the decision within 24 hours after that.

If the MCO does not agree to expedite it, they will notify you and will then continue to review the appeal within 30 days of the date you filed it. You may call the HealthChoice Help Line at 1-800-284-4510 to file a grievance if you disagree with the MCO's denial of expedited review.

- **What if the MCO doesn't meet the deadline to review its decision**

If the MCO misses the 30-day deadline by which to review their decision, or the additional 14-day extension if requested, you have the right to request a state fair hearing without waiting for the MCO's decision. This is called "deemed exhaustion." To request a fair hearing, call the HealthChoice Help Line.

2) **Maryland Department of Health Review of MCO Decision**

If the MCO upholds their original denial, reduction, suspension, or termination of services—or if they approve some but not all of the services you were receiving—they will send you another letter informing you of that decision. You may then ask the Maryland Department of Health to review the MCO decision; to do so, call the HealthChoice Help Line.

3) **How and When to File an Appeal with OAH**

You have 120 days from the date of the MCO notice upholding its decision to request a fair hearing at the state Office of Administrative Hearings (OAH). You may file a hearing request even if you also request a review by MDH.

Attach a copy of the MCO notices you received—the original decision notice as well as the one upholding the MCO’s decision—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 or fax your appeal letter to MDH’s Office of Health Services address or fax number stated in the notice. Make copies of the request and attachments if you mail them. If possible, fax your appeal, if you can receive and save the fax confirmation sheet: this will provide written proof that the request was received. Contact information for appeals is provided below.

- *If the MCO is reducing, suspending, or ending services that you currently receive, and you already asked that your current level of services continue until the appeal is decided, your services will not automatically continue after the MCO affirms its original decision. You must specifically ask again that your services continue until the OAH hearing decision. To do so, call the HealthChoice HelpLine within 15 days of the date on the letter (within 10 days after you receive it).*

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

- **Hearing summary**

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 the summary, 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.

- **Preparing evidence for your hearing**

Your goal is to show the judge that you have a medical need for the services that you have been denied. The Judge’s decision will be based only on the sworn testimony of witnesses and documents (called exhibits) admitted into evidence.

To prepare, you should request from MDH copies of 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. Although you may already have the MCO’s documents, MDH may have generated

additional documents during its review process. You can also request information about or from any experts MDH will be calling as witnesses. Describe any documents and 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, which should be noted in a letter you receive from OAH to confirm that the office has received your appeal request.

You should request these documents soon after requesting the OAH hearing: don't wait until the last minute or until you receive the hearing scheduling notice. It is helpful to have time to review these documents and prepare a response to them, such as if you find incorrect or incomplete information about your health needs. To request these documents, mail or fax a letter to MDH's Office of Health Services, Attn: Appeals, sending a copy of your request to OAH and the OAG as well. Contact information for these offices is on the last page of this guide.

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 copies of the documents to you.

To respond to or supplement the information contained in the MCO's and MDH's documents, you will also want to gather and bring copies of your own documents that are helpful to your appeal, such as doctor's or hospital letters or reports. You should bring 3 copies of each helpful document of your own or received from the MCO or MDH to the hearing and ask the Administrative Law Judge to admit the documents into evidence.

- Witnesses and requesting telephone testimony

Witnesses can include anyone who can testify to your medical need for the service or equipment: your treating physician (specialist or primary care physician), physical or occupational therapist, nurse, or other medical professional. S/he should be prepared to describe the service requested, how it helps or would help you, how many hours of the service you need, and what the effect would be of not having that service or equipment.

If there is a witness you wish to have testify who cannot appear in person, such as a doctor, you can fax a letter to the OAH Clerk's office requesting the judge's 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 28.02.01.20B⁷, which allows testimony to be submitted by 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 the best days of the week or times of day for your

⁷ Available at <http://www.dsd.state.md.us/comar/comarhtml/28/28.02.01.20.htm>.

witness to testify by phone. If the judge approves phone testimony from that witness, you can contact the OAG attorney assigned to the case to coordinate what time works to call your witness; the attorney may agree to let your witness go out of order if your witness is only available at specific times. The judge will call your witness at the agreed-upon time during the hearing.

If a witness testifying by phone will be referring to a document during their testimony that you want the judge to consider as evidence, you must send copies of that document to the judge (via fax or mail to OAH) and the Office of the Attorney General at least 5 days before the hearing. Contact information is on the last page of this document.

If your witness needs a subpoena to attend the hearing (for instance, a working person who needs to be excused from work), you may ask OAH to issue a subpoena requiring that person to be there. Under COMAR 28.02.01.14⁸, you must file the subpoena request at least 10 days before the hearing “to the extent practicable.” The request should include the case name, OAH case number, hearing date, and the complete names and addresses of the people to be subpoenaed. The OAH charges \$5 for each subpoena requested. Checks should be made payable to Maryland State Treasurer. Per OAH, a request for postponement will not be granted based on the fact that you did not request issuance of a subpoena.

- **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 is likely to ask you for documentation of the reason you or your witness cannot attend the scheduled hearing. *Postponements are not granted without good reasons and documentation.* 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.

If you need help with transportation to get to the hearing, call your county health department to request it. This service is run by the same part of the health department that administers Medicaid non-emergency medical transportation; you should clarify that you’re looking for transportation to your Medicaid fair hearing, not regular transportation to a doctor’s appointment.

⁸ Available at <http://www.dsd.state.md.us/comar/comarhtml/28/28.02.01.14.htm>.

- **Requesting a postponement**

To request a postponement, make a 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). If needed, you may also request a postponement when you arrive at the hearing.

You and/or your authorized representative need to attend the hearing, or the judge will likely find you defaulted on the case. If you and your authorized representative are unable to attend the hearing and the judge issues a default order (a finding that you did not attend the hearing and a ruling in favor of MDH), you can ask the judge to vacate that order if you file a request with OAH within 30 days, providing reasons for your failure to attend the hearing when scheduled.

- **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.

After the Fair Hearing

The administrative law judge (ALJ) will issue a written decision within 30 days of the hearing. If you disagree with that decision, you can appeal to state court within 30 days from the date of the decision. This is done by filing a petition for judicial review in the circuit court in the county where you live or in Baltimore City Circuit Court. It is helpful but not required to have an attorney to assist you in this process. Also, if your services are being reduced or terminated, appealing to state court does not automatically stop that from happening; you need to separately file a motion asking the court to pause (or “stay”) the ALJ’s decision so you can retain your current services while you are appealing.

Getting Help with Your Appeal

Anyone you trust, such as a friend or relative, can help you during your appeal. The agency that provides your services may also be willing to help you. If you would like an attorney to come with you to the state fair hearing, you may call the Maryland Legal Aid Bureau or the Maryland Volunteer Lawyers’ Service. Contact information is on the last page of this document. Disability Rights Maryland may also be able to help you with your appeal, depending on the details and merits of your case.

Contact Information

(Accuracy confirmed as of August 2018)

MCO Contact Information

See the notice you received from the MCO

MDH Contact Information

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., 1st Floor
Baltimore, MD 21201

HealthChoice Help Line (to appeal or to request more information): (800) 284-4510

State OAH Contact Information

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

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

For Potential Legal Representation

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.mdlab.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/>