

How to Request and Prepare for a Medicaid Service Appeal

Revised October 2018

This information is designed to help someone on Maryland Medical Assistance (Medicaid) or someone helping that person during the appeals process.¹ If you disagree with a decision by the Maryland Department of Health (MDH; formerly known as the Department of Health and Mental Hygiene) or another government office (such as your county Department of Social Services) to deny, reduce, suspend, or terminate your Medicaid services, you have the right to appeal that decision. This is general information for educational purposes only and should not be considered to be legal advice.

Please keep in mind that this guidance focuses on appeals from MDH decisions regarding 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.

If you are appealing a decision *made by your Medicaid managed care organization (MCO)*—a private company that contracts with MDH to provide your Medicaid services²—then this guide does not apply. Instead, you should consult the DRM guide titled “How to Appeal a Medicaid Managed Care Plan Decision,” which is available at <https://disabilityrightsmd.org/resources/>. However, even if you are enrolled in an MCO, some of your services may be administered by the state, such as in-home personal assistance (care from an aide) through the Community First Choice or the Community Personal Assistance Services programs. If MDH administers the service that is being denied, reduced, or terminated, then this document does apply to that appeal.

¹ 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.

Again, you should follow the appeal instructions in the denial letter you received if they differ from the advice in this document.

Getting Help with Your Appeal

Medicaid allows a person to appeal an MDH 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. The agency that provides your services may also be willing to help you. 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.

If you would like an attorney to come with you to the 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. You should not wait to contact these agencies until you receive your hearing scheduling notice, as they will need time to evaluate your case.

Accommodations

Throughout the appeal process, MDH must ensure that the process is accessible to people with disabilities at no cost. For instance, if you have impaired vision, you may request that the state 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 state or at the hearing. Other accommodations may be available as well, such as payment for an aide to provide physical or behavior support at a hearing. If a Medicaid recipient's authorized representative (see below) has a disability, the hearing system must also be accessible to the representative.

Agencies Involved in Medicaid Appeals

During the appeal, you may interact with:

- Maryland Department of Health (MDH): the state agency that administers the Medicaid program; formerly known as the Department of Health and Mental Hygiene.
- Office of Administrative Hearings (OAH): the state office that will schedule and hold a hearing, 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.

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) on the appeal request, write the name of your authorized representative and include the authorized representative form provided with the decision notice; (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).³

Filing an Appeal

To request an appeal, write a short letter to MDH. State simply that you are requesting a hearing 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 your reasons and arguments 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.

³ Available at <http://www.dsd.state.md.us/comar/comarhtml/10/10.01.04.12.htm>

You may mail, fax or email your appeal letter to MDH's Office of Health Services. If possible, fax your appeal if you can receive and save the fax confirmation sheet, or send it by certified mail with return receipt requested; either will provide written proof that the request was received.

As of March 2018, MDH accepts email appeal requests. In your email, ask for a written reply that your appeal was received. Faxing the request is still the preferred method, if you are able to receive immediate written confirmation of the successful fax transmission. 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 – see below), use email—but make sure you receive and save a written reply and follow up via email again if you do not receive it. Contact information for appeals is provided below.

Deadlines to Appeal

*If the notice reduces or terminates services or benefits that you want to continue receiving until you get a hearing decision, MDH must receive your appeal request within **10 days** of:*

- the date on your notice,
- the postmark on the envelope used to mail the notice to you (if it is markedly later than the notice date), or
- the stated effective date of the MDH action, if later than the notice or postmark dates.

To help figure out which date to use:

- Sometimes the date on the notice is earlier than the postmarked date on the envelope. You may mail your appeal request within 10 days of the postmarked date on the envelope instead of the date in the letter, but 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 explain 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 for the reduction or end of benefits, 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 restored to the level you were receiving until you receive a 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, or if you were denied a request for new or increased services, MDH accepts all appeal requests received within 90 days from the date on the MDH letter.

Hearing Summary

At least 6 days before the hearing, MDH should send you a hearing summary. MDH's summary will briefly describe the issues for the hearing and why MDH made its decision. If you do not receive that 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 administrative law judge (ALJ) that you have a medical need for the services that you have been denied. The ALJ'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. 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 gather as much information from MDH as possible to prepare for the hearing and minimize surprises during the hearing.

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 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 the documents to you.

You will also want to gather and bring copies of your own documents that are helpful to your appeal (for example, doctor's or hospital letters or reports supported by office visit notes or test results so as to show medical need; work or school verification to show parents' time commitments in nursing cases). You should bring 3 copies of each helpful document of your own or received from MDH to the hearing and ask the ALJ to admit the documents into evidence.

Witnesses and Requesting Telephone Testimony

Witnesses can include yourself and anyone else 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 ask OAH in writing and in advance 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 28.02.01.20B⁴, 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 the best days of the week or times of day for your witness to testify by phone. If the judge approves phone testimony from that witness, you may 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 28.02.01.14⁵, 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 may charge \$5 for each subpoena requested, but you may ask in your subpoena request for this fee to be waived. 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 and suggest other dates (days of the week) and times

⁴ Available at <http://www.dsd.state.md.us/comar/comarhtml/28/28.02.01.20.htm>

⁵ Available at <http://www.dsd.state.md.us/comar/comarhtml/28/28.02.01.14.htm>

that you could attend. OAH will likely ask you for documentation of the reason you or your witness cannot attend the 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.

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 ALJ will permit members of the public to attend.

After the Fair Hearing

The 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.

Contact Information

(Accuracy confirmed as of March 2018)

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
Email Address for Appeal Requests: Kristina.White@maryland.gov

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

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/>