



Demystifying

the Medicaid and Department of
Community Health
Administrative Hearings Process

By Lisa K. Gigliotti

Creation of a Central Hearings Panel and Transfer of Department of Community Health Administrative Hearings

Executive Order 2005-01, MCL Section 445.2021, transferred administrative hearings for the Department of Community Health (DCH) and Department of Human Services (DHS) to the newly created State Office of Administrative Hearings and Rules (SOAHR) within the Department of Energy, Labor & Economic Growth. Pursuant to Executive Order 2005-01, SOAHR became the new home for administrative hearings regarding Medicaid benefits and Medicaid providers as well as appeals from the non-Medicaid actions of the DCH and DHS. The transfer of non-Medicaid appeals from the DCH actions included health professional licensing; health facility licensing; certificate of need; nursing home complaints or transfers; lead abatement; and the Women, Infants and Children (WIC) food benefit program.

In fiscal year 2009, SOAHR received more than 35,000 requests for hearings resulting from actions taken by the DCH and DHS. Many of those requests were related to Medicaid applications or authorized services. The trajectory appears steeper for the number of requests for hearings in fiscal year 2010.

Non-Medicaid state administrative law hearings often involve one section of state statute and the rules promulgated pursuant

to that statute. As such, the non-Medicaid practitioner well versed in the relevant state law and the Administrative Procedures Act (APA) can confidently step into the administrative hearing room.

By contrast, administrative fair hearings for Medicaid applicants or Medicaid beneficiaries are a fascinating interplay of federal law, federal regulations, state law, state administrative rules, and the DCH and DHS policy and provider contracts. The complex interplay of legal authority can appear daunting. For this reason, a practitioner may hesitate to represent a client in this administrative area.

Before SOAHR, an attorney whose client was appealing an action taken by a state department may have appeared at an administrative law proceeding versed in one statutory and rule provision, but post-SOAHR an attorney might have to contend with multiple levels and sources of legal authority. This article will help the practitioner disentangle the legal bundle by working through the hierarchy of laws related to Medicaid or the DCH appeals.

Judicial Branch Legal Proceedings vs. Executive Branch Administrative Hearings

In a judicial branch proceeding, the Michigan Court Rules and Michigan Rules of Evidence apply. The practitioner should be mindful that the APA governs administrative proceedings.¹ While many principles of the Michigan Court Rules and Rules of

Evidence are followed during an administrative hearing, the APA commands adherence to several distinct differences. One example is that in APA-governed proceedings, the rules of evidence are slightly relaxed:

In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.²

An additional distinction is that in a case contesting a state agency action, the appellant must exhaust the state administrative hearing process before he or she can proceed to circuit court. The administrative hearing will be the depository of proofs; it is critical to present any issues, arguments, evidence, or proofs you desire to carry forward to a circuit or appellate court.

Fast Facts

The administrative hearing will be the depository of proofs; it is critical to present any issues, arguments, evidence, or proofs you desire to carry forward to a circuit or appellate court.

In fiscal year 2009, the State Office of Administrative Hearings and Rules received more than 35,000 requests for hearings resulting from actions taken by the Department of Community Health and Department of Human Services.

The Code of Federal Regulations explicitly instructs that the Medicaid hearing follow the due process principles outlined in *Goldberg v Kelly*.

Differences Between a Medicaid Fair Hearing and a Non-Medicaid Administrative Hearing

Federal Law for Medicaid Beneficiaries

The right to a Medicaid hearing has its origins in Title XIX of the Social Security Act. The Code of Federal Regulations (CFR) contains the enforcement provisions for the federal statute. Pursuant to the CFR, an agency must grant an opportunity for a hearing to:

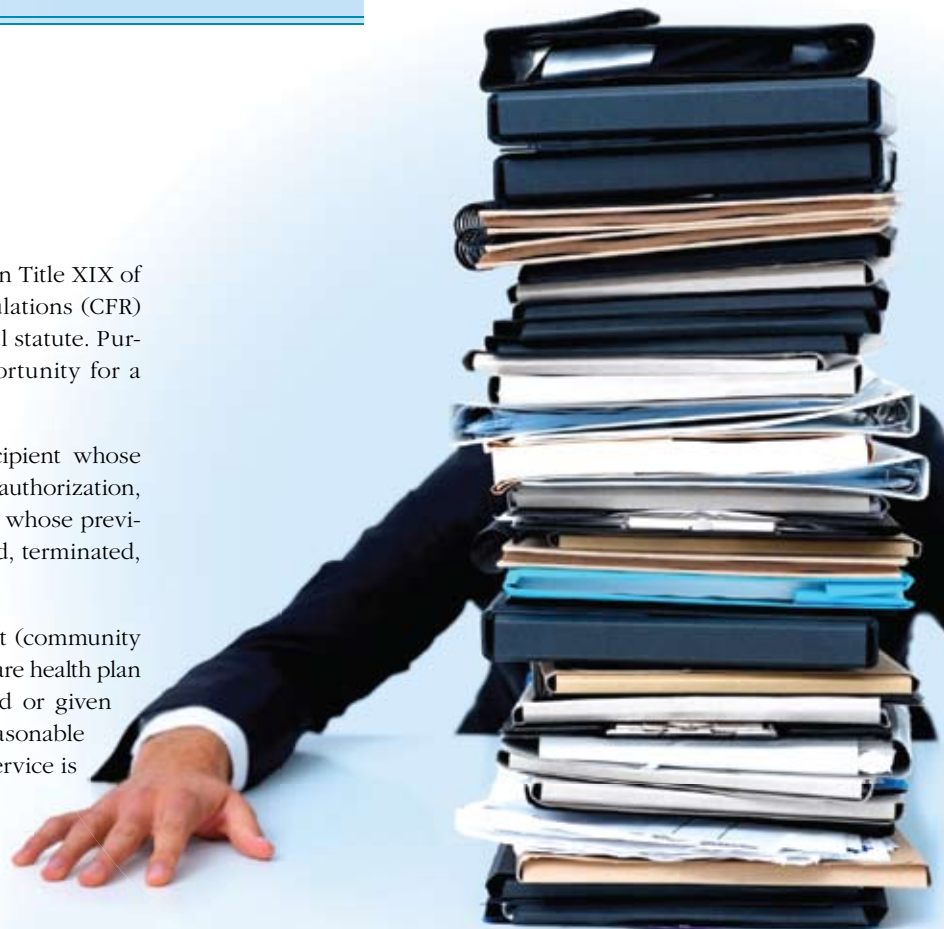
- A fee-for-service Medicaid applicant or recipient whose claim for services is denied or given limited authorization, not acted on with reasonable promptness, or whose previous authorized service is reduced, suspended, terminated, or denied³
- A capitated managed-care Medicaid recipient (community mental health enrollee or Medicaid managed-care health plan enrollee) whose claim for services is denied or given limited authorization, not acted on with reasonable promptness, or whose previous authorized service is reduced, suspended, terminated, or denied⁴

The CFR explicitly instructs that the Medicaid hearing follow the due process principles outlined in *Goldberg v Kelly*.⁵ Accordingly, a Medicaid applicant or recipient has a right to a full, evidentiary hearing in front of an impartial hearing officer—including the right to present witnesses, confront and cross-examine adverse witnesses, and be provided the reason the action was taken and the documents used to make the determination—and the right to a timely decision.⁶ A Medicaid applicant or recipient may appear at hearing in pro per or by counsel.

Michigan-Specific Law for Medicaid Beneficiaries

There are three general variances to the Social Security Act unique to Michigan:

- (1) Michigan obtained waivers from specific Medicaid provisions of the Social Security Act.
- (2) The CFR mandates each state participating in Medicaid to submit a plan detailing how the state will implement its Medicaid program, including the Medicaid services it will provide. Michigan has a current Medicaid state plan approved by the federal Centers for Medicare & Medicaid (CMS).
- (3) Michigan obtained amendments to particular sections of its Medicaid state plan.



In addition, the Michigan Social Welfare Act and Mental Health Code also address the provision of Medicaid services.⁷ The DCH has been designated by the CMS as the single state Medicaid agency. By memo of understanding, the DHS implements the application and continuing eligibility aspects of the Michigan Medicaid program for the DCH. While the DCH is technically the single state Medicaid agency, Medicaid policy may be posted on either the DCH or DHS website depending on whether the issue relates to Medicaid eligibility or Medicaid services for an enrolled Medicaid beneficiary.⁸

It is recommended that the practitioner be familiar with these various laws, policies, contracts, and agreements and the modifying effect they may have on the Social Security Act or Medicaid policy when representing the Medicaid applicant or recipient.

An additional difference is that while many non-Medicaid decisions issued by a hearing officer take the form of recommended decisions to a board or department director, pursuant to delegation by the director of the DCH, Medicaid benefit decisions and orders are final decisions.⁹

Preparation for Hearing

The most practical means for preparing for a Medicaid fair hearing are described below.

- Submit a request for hearing form signed by the appellant to SOAHR. The federal regulations give leeway for a request to be less formal, perhaps a handwritten note, but the action being appealed must be identified and the request must be signed. Blank hearing request forms are online at the DCH website.¹⁰
- Ascertain what action was taken by a Medicaid provider or a department.
- Determine what federal and state laws, rules, and policies apply.

- Prepare a hearing summary that articulates your client's position and why the action may have been improper by applying the facts of the case to the various federal regulations and state policy criteria. Blank hearing summary forms are online at the DCH website.¹¹
- Do not assume the hearing officer knows which of the various laws and policies apply. Include in your hearing summary a copy of the relevant law or policy.
- Do not rely solely on personal testimony to establish the facts. A well-prepared attorney will file a hearing summary with SOAHR and serve the opposing party at least 14 days in advance. The hearing summary will list the federal regulations and state policy relied on with evidentiary documents attached.

Required Steps and Timelines

Medicaid practitioners must be mindful of pitfalls that can occur. There are limitations on the right to a due process fair hearing; the Medicaid applicant or beneficiary must meet explicit requirements before achieving the right. A request for hearing must be made in writing.¹² Word of mouth and telephone calls do not suffice. The CFR instructs that a state is required to provide a fair hearing only if the Medicaid applicant's or beneficiary's written request is received within 90 days.¹³ The 90-day clock starts on the date of a negative action notice from the DCH or DHS, community mental health, or Medicaid health plan.

Medicaid practitioners should note that if an appellant fails to appear, the APA allows for default on the absent party and for the administrative law judge (ALJ) to proceed with a hearing and issue a disposition in the matter.¹⁴

Medicaid practitioners should consider the following:

- A Medicaid applicant or beneficiary may request a SOAHR rehearing of an ALJ final decision.¹⁵
- A rehearing is granted under specific conditions and only if the request is received within the timeline for rehearing.
- A Medicaid applicant or beneficiary may appeal an ALJ final decision to circuit court, but it is critical that the statutory timelines and conditions for appeal are met.

Michigan-Specific Law for Medicaid Providers

The Michigan Social Welfare Act sets forth the requirements that providers—such as doctors, dentists, or hospitals—must agree to as a condition of participation in the Medicaid program.¹⁶ The Social Welfare Act also delineates the process for Michigan's recovery of payments to a Medicaid provider in excess of the Medicaid reimbursement to which the provider is entitled.¹⁷ A Medicaid provider contesting the state's recovery of payment is entitled to an informal meeting with the designated DCH staff before an administrative hearing but may waive that right and proceed directly to an administrative hearing.¹⁸



Non-Medicaid Department of Community Health Administrative Hearing¹⁹

Appeals from non-Medicaid DCH actions are more formal than in a Medicaid fair hearing and must be initiated in writing to SOAHR or the DCH division from which the action arose. At the hearing, the DCH will begin by establishing the action it took, but the burden of proof rests with the petitioner.²⁰ The standard of proof for most DCH administrative actions is a preponderance of the evidence.

Deference is given to a department in its implementation of statute and in interpretation of its policy.²¹ In most DCH case types, the parties will have an opportunity to submit exceptions to a hearing officer's proposal for decision, the arguments thus being forwarded to the final decision-maker, in most instances the DCH director.²²

Federal regulations, public health code, mental health code, state statute and rules, and policy may play a role in the contested case action, and a wise practitioner will seek out all governing laws before proceeding with a request for administrative hearing.

Appeals of DCH determinations in which an attorney should be mindful of the overarching federal authority are:

- WIC vendor contract sanctions²³
- Health facility licensing²⁴
- Nursing home complaints²⁵
- Involuntary transfer of nursing home residents²⁶

Peculiarities abound among the DCH administrative hearing requirements. Failure to adhere to the requirements can be fatal to a case, thus compelling an attorney to thoroughly peruse state statutes and rules. A sampling of idiosyncrasies:

- Certificate of need for health facilities, specialty centers, and equipment: the request for hearing is highly prescribed in statute and must include the grounds for a hearing; a clear, concise statement of the facts; the statutory provision relied on; and the relief sought.²⁷
- Suspension, revocation, or denial of emergency services personnel licenses: a hearing must be provided by the DCH and does not require request by licensee or applicant.²⁸
- Health professional license emergency suspension, emergency revocation, suspension, and revocation have independent statutory provisions, criteria, and processes.²⁹

Conclusion

The complex federal and state laws, policies, and contracts make representation of the Medicaid client appear daunting. By becoming familiar with the hierarchical structure of applicable law and the unique aspects of the DCH administrative hearing process, the mystery and intimidation can be removed. ■



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FOOTNOTES

1. 1969 PA 306, MCL 24.201 *et seq.*
2. MCL 24.275.
3. 42 CFR 431.200, 42 CFR 431.201, Mich Admin Code, R 400.903.
4. 42 CFR 431.201, 42 CFR 431.400.
5. *Goldberg v Kelly*, 397 US 254; 90 S Ct 1011; 25 L Ed 2d 287 (1970); 42 CFR 431.205(d).
6. 42 CFR 438.242 for Medicaid fee-for-service enrollees, 42 CFR 438.406(3) for CMH or MHP enrollees.
7. 1939 PA 280, MCL 400.1 *et seq.*; 1974 PA 258, MCL 330.1100 *et seq.*
8. Michigan Dept of Community Health <<http://michigan.gov/mdch>>; Michigan Dept of Human Services <<http://michigan.gov/dhs>>. All websites cited in this article were accessed November 7, 2010.
9. MCL 24.285; the Department of Community Health Delegation of Authority, August 29, 2006.
10. Michigan Dept of Community Health, *State Office of Administrative Hearing and Rules for the Department of Community Health* <http://michigan.gov/mdch/0,1607,7132-2946_5093-16825--,00.html>.
11. *Id.*
12. 42 CFR 438.221(a) for Medicaid fee-for-service enrollees; 42 CFR 438.402(3)(ii) for CMH or MHP enrollees.
13. 42 CFR 438.221(d) for Medicaid fee-for-service enrollees; 42 CFR 438.402(2) for CMH or MHP enrollees.
14. MCL 24.272 and MCL 24.278.
15. MCL 24.287.
16. MCL 400.111b.
17. MCL 400.111a.
18. MCL 400.111c.
19. Non-Medicaid DHS issues such as social security disability, food stamps, JET, central registry expunction, foster care, and adoption are beyond the limitations of this article.
20. *Blue Cross Blue Shield v Milliken*, 422 Mich 1, 89; 367 NW2d 1 (1985).
21. *Pharmaceutical Research and Manufacturers America v Department of Community Health*, 254 Mich App 397, 403-404; 657 NW2d 162 (2002); *In re Quality Service Standards for Regulated Telecommunications*, 204 Mich App 607, 613; 516 NW2d 142 (1994).
22. MCL 24.281.
23. 7 CFR 246.12(j) and (k) require the state to implement systems to monitor vendor compliance with program requirements and to review WIC coupon redemption submission for overcharging.
24. 42 CFR 482.1 through 482.104, 42 CFR 483.1 through 483.75; MCL 333.20101 through 333.21799c; Mich Admin Code, R 325.1001 through 325.5665; and 325.20101 through 325.22004.
25. 42 USC 1396r; 42 CFR 483.1 through 483.75; MCL 333.21799a; Mich Admin Code, R 325.1001 through 325.5665; and 325.20101 through 325.22004.
26. 42 CFR 483.12(a); MCL 333.21773; MCL 333.21774; Mich Admin Code, R 325.20116.
27. MCL 333.22232; Mich Admin Code, R 325.9503(3).
28. Mich Admin Code, R 325.22301 through 325.24118.
29. MCL 333.7314 through 333.7316, MCL 333.16231 through 333.16238; Mich Admin Code, R 338.1601 through 338.1637.