

Review of Medicaid Managed Care Long Term Care (LTC) Hearings

Background:

This brief summarizes a review of the 163 Medicaid Fair Hearing decisions provided to the Florida Health Justice Project (FHJP). The written redacted decisions were provided pursuant to a public records request asking for all decisions related to Medicaid managed care long term care (LTC) hearings between June 2020 and June 2021. Notably, a number of the hearings raised more than one issue. For example, a petitioner could challenge both the denial of a request for additional personal care hours and the termination of home delivered meals. Thus, the 163 hearings presented a total of 263 contested issues.

Methodology:

The analysis initially looked at whether the appeal was successful (in whole or in part). We identified salient factors related to the hearings, including whether the petitioner was represented. Specifically, did the petitioner have legal counsel; did the petitioner have representation (nonlegal); did the petitioner represent themselves pro se. We also looked at the conduct of the hearing, e.g number of witnesses; evidence submitted. Other items reviewed included the type of service being appealed; the hearing officer; the plan; caregiver issues.

Key findings:

The first key finding was that an extremely small number of petitioners had legal counsel (only four enrollees out of 163, (2.5%)). A second key finding was the fact that the very few individuals who did have legal counsel had a much higher success rate than those who were unrepresented. (50% vs. 25%). Those who had legal counsel were much more likely to have witnesses and submit documentary evidence, data which we also collected.

Witnesses:

Most enrollees did not have any witnesses other than their authorized representative. Some did not have a single witness; the average number of witnesses for unrepresented enrollees was 0.87. By contrast, plans averaged 3.58 witnesses per hearing including medical directors, case managers, and doctors. Represented enrollees averaged 3 witnesses each, a number close to the plans' average.

Documentary Evidence:

Along with witnesses, documentary medical evidence is obviously essential in supporting a petitioner's claim—especially if the issue is a service denial, where the burden of proof lies with the petitioner. However, the vast majority of petitioners (58%) failed to submit any written evidence. As noted above, most were unrepresented. By contrast, when enrollees were represented by counsel, the average jumps to 337 pages per enrollee. In each of the 163 fair hearings, the plans submitted evidence, with an average of 169 pages per hearing.

Conclusion & Recommendation:

Medicaid fair hearings are an essential element of due process. As noted, in the vast majority of Medicaid fair hearings, beneficiaries do not have legal representation. In identifying the factors

common to the prevailing party in Medicaid fair hearings, presenting witnesses and documentary evidence were 2 key factors. Most beneficiaries who lacked counsel presented no evidence and had no witnesses. By contrast, enrollees who are represented by an attorney (as well as the plans) had witnesses and/or documentary evidence. Beneficiaries who lack legal counsel are generally not able to present the facts of their case and secure the care that they need through the fair hearing process. The Agency for Health Care Administration could mitigate this problem by requiring that plans amend the requisite notice of adverse benefit determination (NABD) to include a link to the listing of local [legal aid contact info](#). See [email](#) from FHJP to AHCA summarizing the reasons for including this contact information in the NABD.