

Health Home Notices of Determination and Fair Hearing Process

Policy Title: **Health Home Notices of Determination and Fair Hearing Policy**

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Date:

Purpose: To inform NYS Health Homes and Care Management Agencies of policies and procedures for issuing notices and participating in the Notices of Determination and Fair Hearing process.

The New York State Department of Health (Department) is responsible for the oversight of Health Homes, a care management service model whereby all the professionals involved in a member's care communicate with one another so that the member's medical, behavioral health (mental health and/or substance use disorders), and social service needs are addressed in a comprehensive manner. Oversight and care coordination will reduce unnecessary emergency department visits and inpatient stays, improve medical and behavioral health outcomes, and improve the overall well-being of Health Home members.

Policy

The Department requires that Health Homes serving adults and children establish and maintain policies and procedures to notify members/potential members of their Fair Hearing rights, and participate in the Fair Hearing process if a Health Home member requests a Fair Hearing challenging enrollment, denial of enrollment, or disenrollment from the Health Home. In addition, Health Homes will have clear and focused training on Medicaid notice requirements, and will be required to maintain a quality assurance program to ensure compliance with specified requirements.

Relevant Statutes and Standards

18 NYCRR Part 358

§365-I NYS Social Services Law

§2703 of the Patient Protection and Affordable Care Act (Pub. L. 111-148)

§1945(h)(4) of the Social Security Act

NYS State Plan Amendments #11-56, 12-10, 12-11 (Health Homes for Individuals with Chronic Conditions)

NYS State Plan Amendment #15-0020 (Health Home Eligibility Criteria for Children)

OTDA Office of Administrative Hearings (OAH) Procedures Transmittal #13-02, *Waiver of Personal Appearance Instructions for Agencies*

Glossary of Terminology

- **Adequate Notice** – Notice issued that meets the specifications of 18 NYCRR § 358-2.22; adequate notice is given when an application for Health Home enrollment Health Home is accepted or denied.
- **Aid Continuing** -- The right of a Health Home enrollee to have services continue unchanged until the Decision After Fair Hearing is issued; Aid Continuing directives are issued by OTDA.
- **Agency Conference** – An informal meeting that may be requested by the member in addition to requesting a Fair Hearing in which the member may submit addition information in support of their disagreement with the determination on enrollment or continued enrollment in the NYS Health Home Program.
- **Evidence Packet** – Documentation supporting enrollment/disenrollment determinations including, but not limited to, the signed DOH-5055 consent form; the updated Plan of Care; care record notes; and medical documentation.
- **Fair Hearing** – A proceeding before an Administrative Law Judge that provides an opportunity for a member and the agency to present evidence in support of a determination that the member does not agree with.
- **Successful Completion** – Occurs when a member has met all of the goals in the Plan of Care and no longer meets the appropriateness criteria for participation in a Health Home.
- **Notice Date** – The date the Notice of Determination is issued.
- **Notice of Determination** – A written notice to a member or potential member of the Health Home's determination of eligibility for enrollment or continued enrollment in the NYS Health Home Program.
- **Timely Notice** – Per 18 NYCRR § 358-2.23, a timely notice is one that is mailed at least ten days before the date upon which the proposed action is to become effective.

Notice of Determination

The Department has developed three notices for Health Homes to use to advise a Health Home member or a potential Health Home member and/or their parent/caretaker/guardian/legally authorized representative, of the Health Home's determination on eligibility for enrollment or continued enrollment in the Health Home program. These notices can be found on the Health Home website

[\(https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/\)](https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/) and should be used by **all** Health Homes serving adults and children.

The notices inform the individual of the decision being made, the reason for the decision, their right to a Fair Hearing, how to request a Fair Hearing, their right to access their Health Home file and copies of documents in the case record, their right to Aid Continuing in certain circumstances, and their right to have an Informal Agency Conference with the Health Home.

Health Home Responsibilities

A Health Home must:

- ensure that the care management agency has a procedure in place to immediately notify the Health Home upon enrollment, denial of enrollment, or disenrollment of a member from the Health Home program;
- issue an adequate notice of a decision to accept or deny an application for enrollment, and issue a timely and adequate notice of a disenrollment;
- hold an informal Agency Conference with the member and their representative upon request of the member;
- have well documented evidence to support enrollment/disenrollment determinations when a Fair Hearing is scheduled including, but not limited to, the signed DOH-5055 consent form; the updated Plan of Care; care record notes; medical documentation, as well as a written summary of the case; the applicable program policy upon which the decision is based; and a copy of the notice sent to the member;
- provide a copy of the evidence packet to the member or their legally authorized representative and provide copies of other documents from the member's case file upon request from the member or their legally authorized representative prior to the hearing;
- attend the Fair Hearing, be familiar with the case, and have the authority to make binding decisions at the hearing including the authority to withdraw the decision; and
- comply with the Decision after Fair Hearing as to enrollment or continued enrollment in the NYS Health Home Program.

The Fair Hearing Process

The member has **60 days from the date of the notice to request a Fair Hearing** from the Office of Temporary and Disability Assistance (OTDA). When a Fair Hearing is requested, OTDA's Office of Administrative Hearings (OAH) will issue form OAH-4420 (Acknowledgement of Fair Hearing Request), the Fair Hearing number assigned, and Confirmation of Aid Status. OTDA OAH will then issue form OAH-457 (Notice of Fair Hearing) to the Health Home and the member. This form will also provide the Fair Hearing number that has been assigned by OTDA, as well as the date, time, and location of the hearing. Form OAH-457 will also indicate the Aid status and if the Health

Home is being directed to provide Aid Continuing, i.e., to continue providing services unchanged until the Decision After Fair Hearing Notice is issued.

The member has the right to be represented by legal counsel, a relative, a friend or other person, or to represent themselves. At the hearing the member, their attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, the member has a right to bring witnesses to speak in their favor.

The Health Home must attend the Fair Hearing on the scheduled date, time, and location directed on form OAH-457. If the Health Home has a valid reason, they may request an adjournment by contacting OTDA at their office located at 14 Boerum Place, Brooklyn, NY, by phone at 877-209-1134, or online at <http://otda.ny.gov/hearings/>. OTDA will evaluate the request for adjournment against the regulations. PLEASE NOTE: Simply needing more time may not be sufficient for OTDA to grant an adjournment.

Fair Hearings may be expedited, usually at the request of the member, depending on the urgency of the issue(s), and may be held within three days or sooner.

Notice of Determination for Enrollment into the Health Home Program (DOH 5234)

Form DOH 5234 notifies the member and/or their parent, legal guardian, or legally authorized representative of their Health Home enrollment and the commencement of care management services. The notice should be mailed to the member along with the Health Home welcome letter.

Notice of Determination for Denial of Enrollment into the Health Home Program (DOH 5236)

A member's eligibility for Health Home enrollment must be verified, including proper Medicaid coverage, Health Home eligibility, and appropriateness criteria. Health Homes must issue Form DOH 5236 to any potential (non-enrolled) individual if they are found ineligible. The notice will inform the individual that they did not meet the eligibility criteria for enrollment into the Health Home program and the reason for denial of enrollment. Possible reasons for denial of enrollment or disenrollment from the NYS Health Home Program include:

- Ineligible for Medicaid – Medicaid is required for enrollment in Health Homes
- Member has Medicaid coverage type not compatible with Health Home (Emergency Coverage only, Family Planning only, Essential Plan etc.)
- Chronic condition criteria not met
- Member does not meet the appropriateness criteria
- Member currently resides in an excluded setting (Residential Treatment Facility, Nursing Home, Incarceration etc.)
- Member is concurrently enrolled in another Health

Notice of Determination for Disenrollment from the Health Home Program (DOH 5235)

If a determination is made to disenroll a Health Home member or upon a member's successful completion of the Health Home program, timely and adequate notice by means of Form DOH-5235 is required *before* the Health Home can take any action. As defined in 18 NYCRR § 358-2.23, timely notice is one that is mailed at least ten days before the date upon which the proposed action is to become effective. 18 NYCRR § 358-3.3 outlines the requirements for an adequate notice.

NOTE: Fair Hearing rights cannot be invoked when a member voluntarily discontinues Health Home services. In this case, the Health Home should issue a DOH 5058 (Withdrawal of Consent). Should an eligible member want to rejoin a Health Home, the remedy would be to re-enroll.

Maintaining Members' Status in the Tracking System

If Aid Continuing is not granted by OTDA, the Health Home should PEND the enrollment segment in MAPP at the end of the month of disenrollment.

Aid Continuing

If the member requests a Fair Hearing before the effective date stated in the notice, the member may continue to receive benefits unchanged until the Fair Hearing decision is issued. However, if the member checks the box "I agree to have the action taken on my medical assistance benefits, as described in this notice, prior to the issuance of the Fair Hearing Decision" under *Continuing Your Benefits* on the back of the notice, the Health Home can move forward with Pending the enrollment in MAPP until the Decision After Fair Hearing is issued.

Agency Conference

Pursuant to 18 NYCRR § 358-3.8, at any reasonable time prior to the Fair Hearing, the member can request an informal Agency Conference with the Health Home. If the member requests an Agency Conference, the Health Home must arrange for a meeting with the member and/or their representative or anyone they choose (friend, family, attorney, neighbor etc.) and allow the member to submit additional information and review the Health Home's determination on enrollment or continued enrollment.

The Health Home can withdraw its determination and enroll or re-enroll the member. If the Health Home decides to uphold its initial determination, the member will still be entitled to have the initial determination reviewed through the Fair Hearing process.

Waiver of Appearance

Under certain circumstances and no later than five calendar days before the hearing date, the Health Home may request a waiver of appearance from OTDA. If OTDA grants this request, the Health Home can submit a written evidentiary packet instead of appearing at the hearing location. Waiver requests will be reviewed and granted on a case-by-case basis. At this time, blanket waivers of appearance will not be granted; however, if the agency contact does not receive a telephone call from OAH prior to the hearing date indicating otherwise, it will be presumed that a waiver has been granted.

The waiver request should contain the primary and back-up contact persons' names and telephone numbers. The waiver request must also contain the fair hearing number, date of hearing, and a summary of the specific facts relevant to the issue under review at the hearing.

For proper inclusion in the fair hearing record, the waiver request and evidentiary packet should be submitted immediately upon notification of the hearing request.

Examination of Case Record; Providing Documentation Prior to Fair Hearing

At any reasonable time prior to the Fair Hearing, the member and/or the member's authorized representative has the right to examine the contents of the member's case record.

In addition, the Health Home must provide complete copies of its documentary evidence to the Administrative Law Judge (ALJ). The Health Home must provide copies of this evidentiary packet to the member and/or their authorized representative within 10 business days within receipt of the Fair Hearing notice. The evidentiary packet must include substantiation to support enrollment/disenrollment determinations including, but not limited to, the signed DOH-5055 consent form; the updated Plan of Care; care record notes; and medical documentation, as well as a written summary of the case; the applicable policy governing the program; a copy of the notice being challenged; and an explanation of the action taken and why it was appropriate and in compliance with that policy.

If the member or their authorized representative needs additional documentation to prepare for the Fair Hearing, the Health Home will provide the requested documentation within a reasonable time prior to the fair hearing date. If the member's request is made less than five business days before the hearing, the Health Home must provide such copies no later than at the time of the hearing. Case file documents should be mailed only if the member specifically asks that they be mailed. If there is insufficient time for such documents to be mailed and received before the scheduled date of the Fair Hearing, the documents may be presented at the hearing instead of being mailed.

Documents must be provided without charge to the member and/or their legally authorized representative.

Decision After Fair Hearing

When the Decision After Fair Hearing is issued, it is binding upon the Health Home and must be complied with in accordance with 18 NYCRR § 358-6.4.

If the Decision After Fair Hearing is in favor of the disenrolled member, the Health Home will need to end the pended segment in the tracking system and begin a new enrollment segment to be effective the first of the month following disenrollment to ensure no lapse in the segments.

If the member does not feel the Health Home has complied with the fair hearing decision within a reasonable time after receiving the decision, the member may submit a Compliance Complaint to OTDA to be investigated.

Either party may request that OTDA reconsider the Decision After Fair Hearing if the party feels there has been an error in law or fact. A request for reconsideration must be sent to the OTDA Litigation Mailbox at litigationmail.hearings@OTDA.NY.GOV or faxed to (518) 473-6735. While the reconsideration is under review, the Decision After Fair Hearing remains in effect. OTDA will notify the party of the result of its review, and if applicable, that it is correcting an error of law or fact in the decision, and/or reopening the hearing.

Health Home and HARP (Health and Recovery Plans) /HIV SNP (Special Needs Plans) HCBS (Home and Community Based Services) for Adults

If the BH HCBS eligibility assessment determines that a member is not eligible for HCBS, the HARP or SNP (**not** the Health Home) will issue a notice to the member regarding the outcome of the eligibility assessment for HCBS. If a Fair Hearing is requested, the Health Home will compile the evidence packet as directed by the HARP or SNP in support of the determination; the HARP or SNP have 10 days from the date of the notice to forward the evidentiary packet. The HARP or SNP may request that the Health Home participate in the Fair Hearing Process but the HARP or SNP will be issuing the determination regarding eligibility for HCBS.

Training

Health Homes must provide training to Care Management Agencies on notice procedures and management of the Fair Hearing process. Health Homes must provide access to and information regarding training opportunities that include the Fair Hearing Process described in this policy.

Quality Management Program

Health Homes must have a quality assurance process in place to ensure that care managers and Care Management Agencies comply with Health Home policies and procedures (Please see Quality Management Program Policy). Quality indicators must include, but are not limited to:

- The Health Home forwarded a correct and complete, timely and adequate notice
- The Health Home reviews the number of Fair Hearings filed against Health Home/CMA:
 - Number of Decisions After Fair Hearing favorable to Health Home/CMA
 - Number of Decisions After Fair Hearing unfavorable to Health Home/CMA
 - Are there similar issues that prompt a Fair Hearing that require technical assistance to the CMA?
- The Health Home provided the evidence packet to the member and/or their authorized representative within the required time frames
- The Health Home provided additional information requested by the member or their authorized representative within the required time frames

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