



February 4, 2025

To: Mainstream Medicaid Managed Care (MMC) Health Plan CEOs and Government Program Liaisons, and Managed Long Term Care (MLTC) Health Plan CEOs and Government Program Liaisons

Re: Fair Hearing Backlog

Dear Colleagues:

During the COVID-19 pandemic and the corresponding Public Health Emergency (PHE) and PHE Unwind, the New York State Department of Health (the Department) has seen the number of Medicaid Fair Hearings pending more than 90 days (the backlog) drastically increase. In 2023, the Department and plans worked to resolve backlogged Series 1 and Series 2 cases via pre-hearing disposition. The results of these efforts were limited, with only a subset of cases being attested to by the MMC and MLTC plans to go through pre-hearing disposition. The backlog has continued to grow and now exceeds 10,000 cases. CMS has written the Department expressing concerns and threatening corrective action, including disallowance, over the growing fair hearing backlog and New York's compliance with Federal Regulations.

Among the 10,000 cases, there are over 3,500 cases that are greater than a year old, with just one issue, where a member has continued receiving services (AC) at the level authorized prior to the reduction or discontinuance pending the outcome of a fair hearing decision. As these cases are greater than one year old, the service authorization under which the hearing was requested is no longer applicable. Further, the Department's authorized SSA 1902(e)(14) waiver includes a prohibition on recovering costs for AC services if the plan's determination is upheld by the fair hearing decision.

These cases include discontinuances, reductions, and inadequate services hearings. There are also cases where the plan issued a denial, but the client is home-bound and requested an in-person hearing. In these Varshavsky cases, the member receives services at the requested level until the fair hearing.

As part of New York's approved compliance plan with CMS, the Department is requiring plans to attest to a pre-hearing disposition process for these Series 3 cases as described herein. The pre-hearing disposition process includes sending a new service authorization letter to the member at the level of services required by AC. Cases will be sent to MMC and MLTC plans with instructions for completion.

A pre-hearing disposition will have the same impact as a fully favorable decision on members' fair hearings. A plan should ensure that the member receives assessments as required by

regulation and may take future action including reducing or discontinuing hours or services based on a new assessment after the pre-hearing disposition.

The Department will send instructions and spreadsheets to plans later today and will follow up with each plan to verify that the service authorization was sent to align to the Series 3 pre-hearing disposition decision for these members.

If you have questions regarding this letter – or the subsequent instructions provided – please contact Andrew Dujack (Andrew.DuJack@health.ny.gov) or one of the mailboxes referenced in the instructions.

Sincerely,



Amir Bassiri
Medicaid Director
Office of Health Insurance Programs