North Carolina Department of Health and Human Services

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

September 30, 2013

The Honorable Justin Burr, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Legislative Office Building, Room 307A
Raleigh, NC 27603-5925

The Honorable Mark Hollo, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Legislative Office Building, Room 369
Raleigh, NC 27603-5925

The Honorable Ralph Hise, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Legislative Office Building, Room 1026
Raleigh, NC 27601-2808

Dear Representatives Burr and Hollo and Senator Hise:

This status report is submitted to the Joint Legislative Oversight Committee on Health and Human Services pursuant to the requirements of Session Law 2013-397 regarding the grievance and appeals procedure established for LME/MCOs in North Carolina. The current contractual procedure is in compliance with both S.L. 2013-397 and 42 C.F.R. 438. To further ensure compliance, the contract between the Department of Health and Human Services and the LME/MCOs is in the process of being amended to ensure accurate reflection of the language in S.L. 2013-397. There is, however, no State Plan Amendment required to implement the session law.

Please direct all questions concerning this report to Catharine Goldsmith, Children's Behavioral Health Services Manager, at 919-855-4295 or Catharine.Goldsmith@dhhs.nc.gov.

Sincerely,

Aldona Z. Wos, M.D.
Secretary

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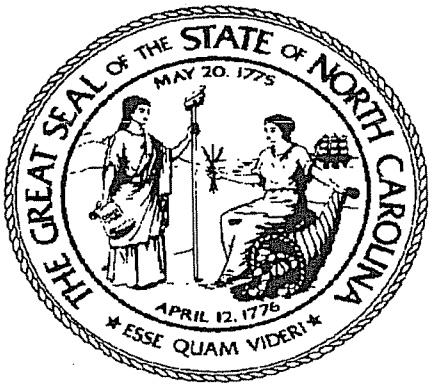
STATUS REPORT TO THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES



Session Law 2013-397

September 30, 2013

STATUS REPORT TO THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES

SESSION LAW 2013-397

Executive Summary

This status report is submitted to the Joint Legislative Oversight Committee on Health and Human Services, pursuant to the requirements of Session Law 2013-397. This report is to address the grievance and appeals procedure established for local management entity/managed care organizations in North Carolina. The currently established contractual procedure is in compliance with both S.L. 2013-397 and 42 C.F.R. 438. To further ensure contractual compliance, the contract between the Department of Health and Human Services (DHHS) contract and the LME/MCOs is in the process of being amended to ensure accurate reflection of the language in S.L. 2013-397.

Grievances

Requirements of S.L. 2013-397

- LME/MCOs are required to establish and maintain internal grievance and appeal procedures
- Grievances may be submitted orally or in writing by the recipient or their representative
- The LME/MCO will respond to grievances in writing no later than 90 days after receipt of the grievance
- The LME/MCO will not take punitive actions against the griever

Requirements of the contract between the DHHS and the LME/MCOs, Appendix N (Grievance and Appeals Procedures)

- The grievance and appeal system shall meet all regulatory requirements in 42 C.F.R. Part 438 Subpart F, "Grievance System," and shall include a process for filing a grievance, filing an appeal, and accessing the State's fair hearing system.
- Enrollees may file a grievance or an appeal with the LME/MCO either orally or in writing.
- The LME/MCO shall resolve grievances and provide notice to all affected parties within 90 days of the date the LME/MCO received the grievance.
- The LME/MCO may extend the timeframe by up to 14 days if:
  - The enrollee requests the extension; or
  - The LME/MCO demonstrates to the Division of Medical Assistance (DMA) that there is a need for additional information and the delay is in the best interest of the enrollee.

Appeals

Requirements of S.L. 2013-397

- An enrollee or their representative may file an appeal no later than 30 days after receipt of a grievance decision or notice of a managed care action
- The LME/MCO shall continue the benefits in compliance with 42 C.F.R. 428.420
- The LME/MCO shall resolve the appeal no later than 45 days after receiving the request
- The appeal request form will be provided by the LME/MCO in the mailing to the recipient with the notice of resolution
- Expedited appeals may be filed if the denial of service jeopardizes the enrollee's life or health
- The LME/MCO will resolve the expedited appeal within three working days of receipt

Requirements of the contract between the DHHS and the LME/MCOs, Appendix N (Grievance and Appeals Procedures)

- Pursuant to 42 C.F.R. 438.414 and 42 C.F.R. 438.10(g), the LME/MCO shall provide all enrollees their right to a fair hearing and the process for obtaining one
- The enrollee must file an appeal within thirty (30) days after the date on the notice of action
- The LME/MCO must resolve each appeal, and provide notice, as expeditiously as the enrollee's health condition requires, within forty five (45) days from the day the LME/MCO receives the appeal
- The LME/MCO must provide written notice of disposition
- The LME/MCO must continue the enrollee's benefits if:
  - The appeal is filed timely, meaning on or before the later of the following:
  - Within ten (10) days of the LME/MCO mailing the notice of action; or
  - The intended effective date of the LME/MCO's proposed action;
  - The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
  - The services were ordered by an authorized provider;
  - The authorization period has not expired; and
  - The enrollee requests extension of benefits.
- If the LME/MCO continues or reinstates the enrollee's benefits while the appeal is pending, the benefits must be continued until one of following occurs:
  - The enrollee withdraws the appeal;
  - The enrollee does not request a fair hearing within ten (10) days from when the LME/MCO mails an adverse decision;

- A State fair hearing decision adverse to the enrollee is made;
- The authorization expires or authorization service limits are met.

- The LME/MCO must resolve each expedited appeal and provide notice, as expeditiously as the enrollee's health condition requires, within State-established timeframes not to exceed three (3) working days after the LME/MCO receives the appeal.

Contested Case Hearings/Office of Administrative Hearings (OAH)

Requirements of SL 2013-397

- An enrollee or their representative has the right to file a request for an appeal with an administrative law judge as long as they have exhausted the appeal process in G.S. 108D-6 or G.S. 108D-7. G.S. 108A-70.9 does not apply to enrollees contesting a managed care action.
- The LME/MCO is the respondent for this appeal, but may move for the permissive joinder of the DHHS
- The OAH shall schedule and hear cases by no later than 55 days after receipt of a request for a hearing
- OAH shall conduct all contested case hearings by phone or video, unless the enrollee requests an in-person hearing.
- The administrative law judge will prepare a written final opinion
- Extensions of time limits for good cause shown
- Content of notice of hearing to enrollees

Requirements of Memorandum of Agreement (MOA) between the DHHS and the OAH

- The MOA between DHHS and OAH is subject to the provisions of the Social Security Act, 42 CFR 431.200 *et seq.,* and N.C.G.S. §108A-70.9 and all other applicable Federal and State laws, regulations, policies and standards.
- The MOA provides that the OAH shall "schedule, hear and decide the case ordinarily within 90 days of the date appeal is filed." (Appendix B) It also states that OAH shall "schedule, hear and decide contested Medicaid cases in compliance with the Social Security Act, 42 CFR 431.200 *et seq.*, and G.S. §108-70.9 and within the statutory time period, which includes the days allowed for mediation."
- OAH is required to "prepare a written final agency decision in compliance with the Social Security Act, 452 CFR 431.200 *et seq.*, and G.S. §108A-70.9 and send it to the parties within the statutory time period, and provide a copy of the final agency decision to the Department...."
- Mediations must be completed within 25 days of receipt unless an extension is granted.

- OAH meets 42 CFR by conducting fair hearings in the timeframes listed above with the exception of very specific circumstances in which expedited fair hearings can be requested. In those circumstances OAH meets 42 CFR by conducting expedited fair hearings within 3 business days.

- OAH conducts contested case hearings by phone or video, unless the enrollee requests an in-person hearing. OAH follows both the requirements of 42 CFR and S.L. 2013-397 for these circumstances.

Conclusion

The current contract is in compliance with 42 C.F.R. 438, Subpart F, which addresses grievances and appeals and S.L. 2013-397. The current contracts are in the process of being amended to ensure all language included in S.L. 2013-397 is reflected in the contracts, including the requirement that all grievances be responded to in writing. No State Plan amendment is required.