03/10/2023

Update to COVID-19 Accommodations for the Member State Fair Hearing Process

Background:

In response to the COVID-19 Public Health Emergency (PHE), the Health and Human Services Commission (HHSC) extended the timeframe individuals, legally authorized representatives, or member authorized representatives have to request a fair hearing. Individuals normally have up to 120 days to request a fair hearing after the internal MCO appeal. HHSC extended the timeframe to 150 days during the COVID-19 PHE.

HHSC is informing STAR, Children's Health Insurance Program (CHIP), STAR Health, STAR Kids, STAR+PLUS MCOs, Dual Demonstration Medicare-Medicaid Plans (MMPs), and Dental Maintenance Organizations (DMOs) that this flexibility is ending on May 11, 2023, when the federal PHE ends.

Key Details:

HHSC is ending the additional 30 days a member has to request a fair hearing starting May 12, 2023. For services provided up until May 11, 2023, MCOs, MMPs, and DMOs should continue to allow the additional 30 days. For services provided beginning May 12, 2023, and ongoing, the normal policy of allowing no less than 90 calendar days and no more than 120 calendar days from the date of the notice of resolution to request a State fair hearing will apply.

Action

MCOs, MMPs, and DMOs must take the following actions to reinstate the requirement that members have up to 120 days to request a State fair hearing:

- Pursuant to Section 8.1.5.3 of the Uniform Managed Care Contract, STAR Health, STAR Kids, and STAR+PLUS contracts, 2.3.20.5 of the Dental Services Contract, and Appendix B, Section B.2.10.11 of the Medicare-Medicaid Dual Demonstration Contract, MCOs/MMPs/DMOs must notify members 30 days in advance, which is April 11, 2023. HHSC recommends where possible to provide 45-day advance notice to ensure timely mail delivery.
- Ensure all members receive notification before or by April 11, 2023, that the flexibility to allow up to 150 days from the date of the notice of resolution to request a State fair hearing will end on May 11, 2023. MCOs, MMPs, and DMOs must use the attached required language. Using the HHSC-approved language means MCOs, MMPs, and DMOs do not have to go through the HHSC member notice approval process and may proceed with adding logo and contact information without further review.
- Follow all contractual requirements around member notification unless otherwise specified in this notice, including translation requirements.
- HHSC does not require a specific method of notification to meet the member communication above. However, HHSC expects written documentation to be provided to all members (e.g., a letter, postcard, or email -if there is member consent to email). MCOs, MMPs, and DMOs may send one notice per household. For example, if a member has three members living in the same household, one notice can be sent to the household instead of three separate notices.
- MCOs, MMPs, and DMOs may create their own materials or language for members. Any new language created must be routed to the HHSC Marketing Team for review. HHSC

approval is not needed to use or distribute any pre-approved language included in this notice.

- If a member contacts the MCO, MMP, or DMO requesting additional time beyond the timeframe noted in accordance with 42 CFR § 438.402(f)(2) and expresses that they were not aware the flexibility has ended, the MCO, MMP, or DMO must contact their health plan manager for guidance on how to proceed.
- MCOs, MMPs, and DMOs are encouraged to also notify members and providers of this change on their websites.
- Implement any system or process changes needed to reinstate the timeframe noted in accordance with 42 CFR § 438.402(f)(2) by the first day after the last day of the PHE.
- MCOs, MMPs, and DMOs are required to inform HHSC when member and provider notifications are complete by emailing the attached attestation form to Managed_Care_Initiatives@hhs.texas.gov and copy their MCCO Health Plan Team.

Additional Information:

MCO Member Notification Letter Content:

Subject Line: An HHSC Policy Flexibility for Member State Fair Hearings ends on May 11, 2023

In January 2020, the federal government declared a public health emergency (PHE) in response to COVID-19. Under the PHE, the Texas Health and Human Services Commission (HHSC) provided certain flexibilities, including allowing Medicaid members more time to request a fair hearing. Instead of 120 days to request a fair hearing after the internal MCO appeal, members were given up to 150 days to request a fair hearing with HHSC during the PHE.

HHSC will be ending this flexibility on May 11, 2023.

Starting on May 12, 2023, if you receive a “Member Notice of MCO Internal Appeal Decision” and want to appeal it, you must file your request for a fair hearing with or without an external medical review no less than 90 calendar days and no more than 120 calendar days from the date the notice is mailed. State fair hearing requests filed past this deadline may not be reviewed. If you have any questions, please reach out to your health plan representative <<MCO must enter information specific to their health plan including telephone number>>.

Resources:

Attestation Form (Attached)

MCO Notices posted to TexConnect:

March 26, 2020 – *COVID-19 Guidance: Fair Hearing Determinations Extensions*

March 26, 2020 – *COVID-19 Guidance: Fair Hearing Request Extensions*

Contact:

Managed_Care_Initiatives@hhsc.state.tx.us

John.huffine@hhs.texas.gov

Attachment:

MCO Notice Attachment Attestation Form_Update to COVID-19 Accommodations for the Member State Fair Hearing Process.docx

Type: Action Required

To: CHIP; CMDS; DMO; MMP; STAR; STAR+PLUS; STARHEALTH; STAR_KIDS

From: Policy