§ 431.152 State plan requirements.

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 and 431.154.

§ 431.153 Evidentiary hearing.

(a) Right to hearing. Except as provided in paragraph (b) of this section, and subject to the provisions of paragraphs (c) through (j) of this section, the State must give the facility a full evidentiary hearing for any of the actions specified in § 431.151.

(b) Limit on grounds for appeal. The following are not subject to appeal:

(1) The choice of sanction or remedy.
(2) The State monitoring remedy.
(3) [Reserved]
(4) The level of noncompliance found by a State except when a favorable final administrative review decision would affect the range of civil money penalty amounts the State could collect.
(5) A State survey agency’s decision as to when to conduct an initial survey of a prospective provider.

(c) Notice of deficiencies and impending remedies. The State must give the facility a written notice that includes:

(1) The basis for the decision; and
(2) A statement of the deficiencies on which the decision was based.

(d) Request for hearing. The facility or its legal representative or other authorized official must file written request for hearing within 60 days of receipt of the notice of adverse action.

(e) Special rules: Denial, termination or nonrenewal of provider agreement—

(1) Appeal by an ICF/IIDIID. If an ICF/IIDIID requests a hearing on denial, termination, or nonrenewal of its provider agreement—

(i) The evidentiary hearing must be completed either before, or within 120 days after, the effective date of the adverse action; and
(ii) If the hearing is made available only after the effective date of the action, the State must, before that date, offer the ICF/IIDIID an informal reconsideration that meets the requirements of § 431.154.

(2) Appeal by an NF. If an NF requests a hearing on the denial or termination of its provider agreement, the request does not delay the adverse action and the hearing need not be completed before the effective date of the action.

(f) Special rules: Imposition of remedies. If a State imposes a civil money penalty or other remedies on an NF, the following rules apply:

(1) Basic rule. Except as provided in paragraph (f)(2) of this section (and notwithstanding any provision of State law), the State must impose all remedies timely on the NF, even if the NF requests a hearing.

(2) Exception. The State may not collect a civil money penalty until after the 60-day period for request of hearing has elapsed or, if the NF requests a hearing, until issuance of a final administrative decision that supports imposition of the penalty.

(g) Special rules: Dually participating facilities. If an NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State’s denial or termination of participation in Medicaid is also a basis for denial or termination of participation in Medicare, the State must advise the facility that—

(1) The appeals procedures specified for Medicare facilities in part 408 of this chapter apply; and
(2) A final decision entered under the Medicare appeals procedures is binding for both programs.

(h) Special rules: Adverse action by CMS. If CMS finds that an NF is not in substantial compliance and either terminates the NF’s Medicaid provider agreement or imposes alternative remedies on the NF (because CMS’s findings and proposed remedies prevail over those of the State in accordance with §488.452 of this chapter), the NF is entitled only to the appeals procedures set forth in part 498 of this chapter, instead of the procedures specified in this subpart.

(i) Required elements of hearing. The hearing must include at least the following:

(1) Opportunity for the facility—

(i) To appear before an impartial decision-maker to refute the finding of noncompliance on which the adverse action was based;

(ii) To be represented by counsel or other representative; and

(iii) To be heard directly or through its representative, to call witnesses, and to present documentary evidence.

(2) A written decision by the impartial decision-maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(j) Limits on scope of review: Civil money penalty cases.

In civil money penalty cases—

(1) The State’s finding as to a NF’s level of noncompliance must be upheld unless it is clearly erroneous; and

(2) The scope of review is as set forth in §488.438(e) of this chapter.

§ 431.201 Definitions.

For purposes of this subpart:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act by providing an appeals process for any person who—

(1) Is subject to a proposed transfer or discharge from a nursing facility; or

(2) Is adversely affected by the preadmission screening or the annual resident review that are required by section 1919(e)(7) of the Act.

§ 431.200 Basis and scope.

This subpart—

(a) Impects section 1902(a)(3) of the Act, which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly;

(b) Prescribes procedures for an opportunity for a hearing if the State agency or PAHP takes action, as stated in this subpart, to suspend, terminate, or reduce services, or an MCO or PIHP takes action under subpart F of part 438 of this chapter; and

(c) Implements sections 1919(f)(3) and 1919(e)(7)(F) of the Act by providing an appeals process for any person who—

(1) Is subject to a proposed transfer or discharge from a nursing facility; or

(2) Is adversely affected by the preadmission screening or the annual resident review that are required by section 1919(e)(7) of the Act.

§ 431.154 Informal reconsideration for ICFs/IID.

The informal reconsideration must, at a minimum, include—

(a) Written notice to the facility of the denial, termination or nonrenewal and the findings upon which it was based;

(b) A reasonable opportunity for the facility to refute those findings in writing, and

(c) A written affirmation or reversal of the denial, termination, or nonrenewal.