

**§ 155.540**

(4) Present an argument without undue interference; and

(5) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(e) *Information and evidence to be considered.* The appeals entity must consider the information used to determine the appellant's eligibility as well as any additional relevant evidence presented during the course of the appeals process, including at the hearing.

(f) *Standard of review.* The appeals entity will review the appeal *de novo* and will consider all relevant facts and evidence adduced during the appeals process.

[78 FR 54136, Aug. 30, 2013, as amended at 81 FR 12344, Mar. 8, 2016]

**§ 155.540 Expedited appeals.**

(a) *Expedited appeals.* The appeals entity must establish and maintain an expedited appeals process for an appellant to request an expedited process where there is an immediate need for health services because a standard appeal could jeopardize the appellant's life, health, or ability to attain, maintain, or regain maximum function.

(b) *Denial of a request for expedited appeal.* If the appeals entity denies a request for an expedited appeal, it must—

(1) Handle the appeal request under the standard process and issue the appeal decision in accordance with § 155.545(b)(1); and

(2) Inform the appellant, promptly and without undue delay, through electronic or oral notification, if possible, of the denial and, if notification is oral, follow up with the appellant by written notice, within the timeframe established by the Secretary. Written notice of the denial must include—

(i) The reason for the denial;

(ii) An explanation that the appeal request will be transferred to the standard process; and

(iii) An explanation of the appellant's rights under the standard process.

**§ 155.545 Appeal decisions.**

(a) *Appeal decisions.* Appeal decisions must—

(1) Be based exclusively on the information and evidence specified in § 155.535(e) and the eligibility require-

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ments under subpart D or G of this part, as applicable, and if the Medicaid or CHIP agencies delegate authority to conduct the Medicaid fair hearing or CHIP review to the appeals entity in accordance with 42 CFR 431.10(c)(1)(ii) or 457.1120, the eligibility requirements under 42 CFR parts 435 and 457, as applicable;

(2) State the decision, including a plain language description of the effect of the decision on the appellant's eligibility;

(3) Summarize the facts relevant to the appeal;

(4) Identify the legal basis, including the regulations that support the decision;

(5) State the effective date of the decision; and

(6) If the appeals entity is a State Exchange appeals entity—

(i) Provide an explanation of the appellant's right to pursue the appeal before the HHS appeals entity, including the applicable timeframe, if the appellant remains dissatisfied with the eligibility determination; and

(ii) Indicate that the decision of the State Exchange appeals entity is final, unless the appellant pursues the appeal before the HHS appeals entity.

(b) *Notice of appeal decision.* The appeals entity—

(1) Must issue written notice of the appeal decision to the appellant within 90 days of the date an appeal request under § 155.520(b) or (c) is received, as administratively feasible.

(2) In the case of an appeal request submitted under § 155.540 that the appeals entity determines meets the criteria for an expedited appeal, must issue the notice as expeditiously as reasonably possible, consistent with the timeframe established by the Secretary.

(3) Must provide notice of the appeal decision and instructions to cease pending eligibility to the appellant, if applicable, via secure electronic interface, to the Exchange or the Medicaid or CHIP agency, as applicable.

(c) *Implementation of appeal decisions.* The Exchange, upon receiving the notice described in paragraph (b), must promptly—

(1) Implement the appeal decision effective—

(i) Prospectively, on the first day of the month following the date of the notice of appeal decision, or consistent with §155.330(f)(2), (3), (4), or (5), if applicable; or

(ii) Retroactively, to the coverage effective date the appellant did receive or would have received if the appellant had enrolled in coverage under the incorrect eligibility determination that is the subject of the appeal, at the option of the appellant.

(2) Redetermine the eligibility of household members who have not appealed their own eligibility determinations but whose eligibility may be affected by the appeal decision, in accordance with the standards specified in §155.305.

[78 FR 54136, Aug. 30, 2013, as amended at 81 FR 12345, Mar. 8, 2016]

#### § 155.550 Appeal record.

(a) *Appellant access to the appeal record.* Subject to the requirements of all applicable Federal and State laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeals entity must make the appeal record accessible to the appellant at a convenient place and time.

(b) *Public access to the appeal decision.* The appeals entity must provide public access to all appeal decisions, subject to all applicable Federal and State laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

#### § 155.555 Employer appeals process.

(a) *General requirements.* The provisions of this section apply to employer appeals processes through which an employer may, in response to a notice under §155.310(h), appeal a determination that the employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide that coverage but it is not affordable coverage with respect to an employee.

(b) *Exchange employer appeals process.* An Exchange may establish an employer appeals process in accordance with the requirements of this section and §§155.505(f) through (h) and 155.510(a)(1) and (2) and (c). Where an Exchange has not established an em-

ployer appeals process, HHS will provide an employer appeals process that meets the requirements of this section and §§155.505(f) through (h) and 155.510(a)(1) and (2) and (c).

(c) *Appeal request.* The Exchange and appeals entity, as applicable, must—

(1) Allow an employer to request an appeal within 90 days from the date the notice described under §155.310(h) is sent;

(2) Allow an employer to submit relevant evidence to support the appeal;

(3) Allow an employer to submit an appeal request to—

(i) The Exchange or the Exchange appeals entity, if the Exchange establishes an employer appeals process; or

(ii) The HHS appeals entity, if the Exchange has not established an employer appeals process;

(4) Comply with the requirements of §155.520(a)(1) through (3); and

(5) Consider an appeal request valid if it is submitted in accordance with paragraph (c)(1) of this section and with the purpose of appealing the determination identified in the notice specified in §155.310(h).

(d) *Notice of appeal request.* (1) Upon receipt of a valid appeal request, the appeals entity must—

(i) Send timely acknowledgement of the receipt of the appeal request to the employer, including an explanation of the appeals process;

(ii) Send timely notice to the employee of the receipt of the appeal request, including—

(A) An explanation of the appeals process;

(B) Instructions for submitting additional evidence for consideration by the appeals entity; and

(C) An explanation of the potential effect of the employer's appeal on the employee's eligibility.

(iii) Promptly notify the Exchange of the appeal, if the employer did not initially make the appeal request to the Exchange.

(2) Upon receipt of an invalid appeal request, the appeals entity must promptly and without undue delay send written notice to the employer that the appeal request is not valid because it fails to meet the requirements of this section. The written notice must inform the employer—