

Policy CR-17.0: Hearing and Appellate Review for Adverse Actions

OPTIMA HEALTH PLANS

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Specialty/Area:	Optima Health Plan and Sentara Health Plans, Inc., and its subsidiaries hereinafter Optima Health	Revised/Reviewed Date: 02/02, 10/04, 03/08, 04/09, 4/10, 5/11, 4/12, 5/12, 5/13, 6/14, 1/15, 1/16, 1/17, 1/19, 8/19, 8/20
Subject:	Hearing and Appellate Review for Adverse Actions	Approval: <i>Nicole Marshall</i>

Credentials Policy CR-17.0

Purpose

To define the procedures used in resolving issues related to Practitioner competence and/or professional conduct.

Policy

Optima Health will follow the procedures for Hearings and Appellate Reviews when resolving issues related to a Practitioner's competence and/or professional conduct.

Definitions

- A. ADVERSE ACTION: An adverse action is an official action, usually taken for disciplinary reasons, i.e. quality reasons, which adversely affects a provider and may include such punishments as a suspension for a defined period, or termination.
- . B. OBH/OHP CREDENTIALING COMMITTEE: Network Providers with Optima Health Plan, not Optima employees, with full voting privileges.
- C. AD HOC COMMITTEE: OHP and/or OBH Credentials Committee will appoint three (3) members with the plan that do not sit on the Committee, that are same type discipline to serve as a hearing panel.

Procedure

- A. Notice of Proposed Adverse Action: The notice shall inform the Practitioner that Adverse Action has been proposed to be taken against him/her and contains the following information:
 - 1. The reasons for the proposed Adverse Action.
 - 2. The right to request a hearing on the proposed Adverse Action if the Practitioner submits such request in writing to the Medical Director within thirty (30) days of his or her receipt of the notice.
 - 3. The Practitioner's failure to request a hearing in writing within such time period shall be deemed a waiver of the Practitioner's right to a hearing and appellate review.
 - 4. The Practitioner's failure to attend the hearing without good cause will result in the Practitioner's forfeiture of the right to a hearing.
 - 5. The hearing shall be conducted before a Hearing Panel whose members shall be appointed by the OHP Credentialing Committee Member of the same discipline as

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the Practitioner and shall not be in direct economic competition with the Practitioner. A majority of the members of the Hearing Panel shall consist of peers of the affected Practitioner.

6. The Practitioner shall have the right:
 - a. to representation by an attorney or other person of the Practitioner's choice;
 - b. to have a record made of the proceedings;
 - c. to have a copy of the record made available upon the payment of reasonable charges for the preparation of such record;
 - d. to present evidence determined to be relevant by the Hearing Panel;
 - e. to call and examine or cross-examine witnesses; and
 - f. to submit a written statement at the completion of the hearing.
7. Upon the completion of the hearing, the Practitioner shall have the right to receive a copy of the written recommendation of the Hearing Panel, including a statement of the basis for the recommendation.

B. Fraud, Waste and Abuse

1. If a Program Integrity investigation determines that allegations of Fraud, Waste or Abuse are substantiated, a findings letter is sent to the Provider explaining the findings of the audit and a request for a refund if appropriate. Providers have 30 days to request a reconsideration of the findings. After the reconsideration process, Providers have an additional 30 days to appeal the reconsideration decision.
2. If the Provider requests reconsideration or appeals the decision and the decision is overturned, the Provider is notified that the reconsideration/appeal resulted in overturning the original findings and that the case is closed.
3. If the findings are upheld upon appeal, the Provider's right to appeal is exhausted. A determination will be made to close the case or to submit the Provider to the Fraud, Waste and Abuse (FWA) Subcommittee for a determination on whether the Provider should be terminated for Fraud, Waste or Abuse. If it is determined that the Provider should not be submitted to the FWA Subcommittee, the case is closed.
4. Determinations made by the Fraud Waste and Abuse Committee are final and not reviewed by the Credentialing Committee and consequently not subject to the Hearings and Appellate Review process.

PROCESS

- A. Upon receipt of such written notice, the Practitioner may request to meet on an informal basis with an Ad Hoc Committee concerning the Adverse Action recommended by the OHP Credentialing Committee by submitting such request in writing to the Medical Director of OHP within ten (10) business days. Upon his or her receipt of such request, the Medical Director shall appoint an Ad Hoc Committee to meet, on an informal basis, with the Practitioner to discuss the matter. This meeting shall be confidential, non-adversarial, shall not constitute a hearing and none of the procedural rules provided elsewhere in this Policy for hearings shall apply to such meeting. Following the meeting, the Ad Hoc Committee shall notify the Medical Director and Practitioner of its recommendation to accept, modify or reject the Adverse Action.

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- B. When the Practitioner is given notice of a recommendation of the Ad Hoc Committee which remains an Adverse Action, he/she shall be entitled to request a hearing before a Hearing Panel as provided below. The OHP Credentialing Committee member of like discipline shall appoint hearing Panel members. Notwithstanding any other provision of this procedure, no Practitioner shall be entitled as a right to more than one appellate hearing before a Hearing Panel.
- C. Any notice or written report which must be given to the Practitioner shall be either hand-delivered, faxed or sent by registered mail to the Practitioner at the address listed on the Practitioner contract. Any notice or written report which must be submitted by the Practitioner shall be hand-delivered or mailed by registered mail to the Medical Director of Optima Health Plan.
- D. Summary Suspension
1. Whenever a Practitioner disregards or violates the bylaws, rules, regulations or policies of Optima Health Plan, or conduct requires that prompt action be taken:
 - a. to protect the life of any patient, reduce the substantial likelihood of injury;
 - b. damage to the health or safety of any patient, employee or other person, where the failure to take such action may result in an imminent danger to the health or safety of any individual;
 - c. whenever there are reasonable grounds to believe a Practitioner's conduct requires prompt attention for any of such reasons;
 - i. the OHP Credentialing Committee (Committee) shall have the authority to take summary action.
 - ii. Summary action may consist of:
 - a suspension of all or a part of a Practitioner's participating status,
 - the imposition of conditions or limitations on the exercise of such status or privileges; or
 - a combination of such actions.
 - iii. Such summary action becomes effective immediately upon imposition, and written notice of such action should be promptly provided to the affected Practitioner by the Committee.
 2. In instances where convening the entire Committee may be impossible due to time constraints, the right to take summary action may be delegated by the Committee to an individual member or representative of acting on behalf of the Committee.
 3. Immediately upon the imposition of summary suspension, the Medical Director shall have the authority to provide for alternative behavioral health coverage for the patients of the suspended Practitioner remaining under the care of OHP. When appropriate, the wishes of the patients shall be considered in the selection of such alternative Practitioner.
 4. A Practitioner whose participating status has been summarily suspended shall have thirty (30) days to request that a Hearing Panel hold a hearing on the matter.
 5. After the hearing, the Hearing Panel may recommend modification, continuance, or termination of the terms of the summary suspension. If the Hearing Panel does not recommend immediate termination of the summary suspension, the Practitioner shall be entitled within thirty (30) days to request an appellate review by the Medical Affairs Committee of Sentara Healthcare (MAC). The terms of the summary

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suspension shall remain in effect pending a final decision of the MAC.

E. Hearing

1. Upon the Medical Director's receipt of a Practitioner's timely written request for a hearing, a Hearing Panel shall be formed. The OHP Credentialing Committee Members shall appoint three (3) members to serve on the panel.
2. Hearing Panel members shall not also serve on the OHP Credentialing Committee. No one on the panel shall be in direct economic competition with the Practitioner; nor have actively participated in the prior consideration of the proposed Adverse Action against the Practitioner.
3. The OHP Credentialing Committee Members shall appoint a member of the Hearing Panel to serve as the panel chairperson to preside over the hearing.
4. The Hearing Panel shall schedule a hearing not be less than thirty (30) days from the date of the notice of hearing unless the notice period is waived by the Practitioner and both parties consent to an earlier hearing date.
5. Written notice of the hearing shall be sent to the Practitioner. The notice shall state the place, time, and date of the hearing and will include a list of witnesses, if any, expected to testify at the hearing on behalf of the OHP Credentialing Committee. The notice will also include copies of the exhibits, if any, expected to be offered at the hearing. This notice may also contain additional reasons for the proposed Adverse Action, as well as any additional acts or omissions supporting the reasons for the recommendation even though they were not specifically listed in the original notice of Adverse Action sent to Practitioner.
6. At least ten (10) days prior to the hearing, the Practitioner shall:
 - a. Notify the Hearing Panel whether or not the Practitioner desires to be represented by an attorney at the hearing;
 - b. Submit to the Hearing Panel a list of witnesses, if any, expected to testify at the hearing on behalf of the Practitioner; and
 - c. Include copies of the exhibits, if any, expected to be offered on behalf of the Practitioner at the hearing.

F. Conduct of Hearing

1. There shall be two (2) or more members of the Hearing Panel present at all times when the hearing is conducted. No member may vote by proxy.
2. The Practitioner is required to be present during the hearing. If the Practitioner fails to appear at the hearing without good cause, the Practitioner's right to such hearing and any appellate review shall be forfeited. The hearing will not be conducted, and the Practitioner will be deemed to have accepted the adverse recommendation.
3. Postponement of a hearing date shall be made only with the approval of the Hearing Panel.
4. The OHP Credentialing Committee may appoint a member, attorney and/or other individual to represent the Committee during the hearing.
5. The Practitioner shall have the right to representation by an attorney or other person of the Practitioner's choice. The Practitioner shall have the right to present relevant evidence; to call, examine, and cross-examine witnesses; and to submit a written statement at the conclusion of the hearing. Neither party shall have the legal power to subpoena witnesses or documents.
6. The Hearing Panel may designate an individual or appoint an attorney to advise the Panel and to serve as hearing officer of the hearing. The hearing officer shall

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maintain decorum and assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. The hearing officer shall be entitled to determine the order of proceeding, to promulgate rules of procedure consistent, to exclude or remove any person who is disruptive or disorderly, and to refuse to admit evidence which is not relevant to the subject matter of the hearing or is otherwise improper. If appointed, the hearing officer shall not participate in deciding whether to affirm, reverse or modify the adverse recommendation; however, the hearing officer shall not be prohibited from advising the Panel on issues related to hearing procedures, from explaining any aspect of the hearing to the Panel, or from preparing the Panel's report.

7. The Hearing Panel is not required to conduct the hearing strictly according to the rules of law relating to the examination of witnesses or presentation of evidence. Any evidence deemed relevant and not duplicative by the Hearing Panel or hearing officer, including hearsay, may be presented during the hearing, regardless if such evidence would be admissible in a court of law. Any relevant matter upon which reasonable persons customarily rely in the conduct of serious affairs may be considered by the Hearing Panel.
 8. An accurate record of the hearing must be kept. Copies of the record may be obtained by the Practitioner upon his or her payment of reasonable charges for the preparation of such record.
 9. New or additional matters or evidence not raised or presented in the original notice of Adverse Action may be introduced at the hearing. The Hearing Panel, in its sole discretion, shall determine whether such matters or evidence shall be considered or accepted. If accepted, the party against whom the evidence is presented shall be provided an opportunity to respond to such additional evidence before the Panel.
 10. The Hearing Panel may recess the hearing and reconvene it for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon the conclusion of the hearing, the Practitioner and the OHP Credentialing Committee shall each have ten (10) days to submit a written statement to the Hearing Panel. Upon conclusion of the presentation of all oral and written evidence, the hearing will be closed. The hearing Panel will make its decision.
 11. Consistent with the burden on the practitioner to demonstrate that he or she satisfies, on a continuing basis, all criteria for participating status, the Hearing Panel shall recommend in favor of the Credentialing Committee unless it finds that the practitioner who requested the hearing has proved, by clear and convincing evidence, that the recommendation that prompted the hearing was arbitrary, capricious, or not supported by credible evidence.
- G. Written Report, Request for Appellate Review
1. Within ten (10) days of the close of the hearing, the Hearing Panel shall make a written report of its recommendation, including a statement of the basis for the decision. A copy of the written report shall be sent to the Practitioner in the manner provided in Section I (5), and a copy forwarded to the OHP Credentialing Committee.
 2. Within ten (10) days of the Practitioner's receipt of the written report, the Practitioner may request in writing an appellate review of the recommendation by the Medical Affairs Committee of Sentara Healthcare. If the Hearing Panel report is favorable to

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the Practitioner, the OHP Credentialing Committee may request in writing an appellate review of such recommendation within ten (10) days of its receipt of the written report.

3. If either party fails within such time period to request appellate review of the written report of the Hearing Panel, such party shall have waived any right to further appellate review and shall be deemed to have accepted the recommendation of the Hearing Panel.

H. Appellate Review

1. Upon a timely written request for appellate review, the Medical Affairs Committee (MAC) shall review the recommendation from the Hearing Panel. The MAC may choose to delegate this appellant review responsibility to a subcommittee of its members. Any member of the MAC who served on the Hearing Panel, actively participated in the consideration of the Adverse Action recommendation, or is in direct economic competition with the Practitioner shall not participate in the consideration of the Practitioner's appeal.
2. Within ten (10) days of his or her request for appellate review, the Practitioner shall submit to the Sentara MAC written argument not to exceed ten (10) pages in length. Upon receipt of such written argument, the MAC shall distribute copies to the OHP Credentialing Committee. The OHP Credentialing Committee shall have an opportunity to respond by submitting to the MAC within ten (10) days of its receipt of the Practitioner's written argument its own written argument not to exceed ten (10) pages in length.
3. Written argument shall be accepted only on matters raised during the hearing. New evidence shall not be submitted to the MAC except in rare circumstances and at the sole discretion of the MAC.
4. Within ten (10) days the MAC shall decide whether to uphold or reverse the recommendation of the Hearing Panel. The decision shall be final and binding upon issuance. A copy of the written decision shall include a statement of the basis for the decision and shall be sent to the Practitioner.
5. Within ten (10) days of the close of the hearing, the Hearing Panel shall make a written report of its recommendation, including a statement of the basis for the decision. A copy of the written report shall be sent to the Practitioner and a copy forwarded to the OHP Credentialing Committee.
6. Within ten (10) days of the Practitioner's receipt of the written report, the Practitioner may request, in writing, an appellate review of the recommendation by the Medical Affairs Committee of Sentara Healthcare. If the Hearing Panel report is favorable to the Practitioner, the OHP Credentialing Committee may an appellate review of the recommendation within ten (10) days of its receipt of the written report.
7. If either party fails, within the time allotted, to request an appellate review of the written report of the Hearing Panel, such party shall have waived any right to further appellate review and shall be deemed to have accepted the recommendation of the Hearing Panel.

References

- A. NCQA CR-10: Notification to Authorities and Practitioner Appeal Rights
- B. 42 C.F.R. 422.202(a) and (d)

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- C. Medicare Managed Care Manual, Chapter 6 on Relationships with Providers, Sections 30 and 60.4