How to Appeal a Denial/Reduction of Medicaid In-Home Aide Services

This document will describe in detail:

- How to file an appeal, which is how you formally disagree, of a decision about or a change in or denial of your Medicaid-funded in-home aide services;
- The differences between the new program for in-home aide services (which is currently the subject of a lawsuit) and the program that existed before June 1, 2011;
- What criteria are used to make the decision about whether a person is eligible or not for in-home aide services;
- How the change to Consolidated PCS on January 1, 2013 affects services for people in their private homes;
- The mediation and appeal process each individual can use to keep their services; and
- What Disability Rights North Carolina is trying to do to help the people who were told they are not eligible for services under the new program.

This document also provides you with step-by-step instructions for how to represent yourself during a mediation and hearing. It is common for people to represent themselves in a Medicaid appeal like this. The mediation and hearing process is what you use to argue that the decision regarding your eligibility for in-home personal care should be reversed.

Filing the Appeal Form & Maintaining Services

- The letter that reduced or denied your services should come with a Hearing Request Form. If you submit this form within 30 days from the date on the letter, your aide services will continue at the level you were receiving before the letter. The services will continue until a final decision is made at mediation or hearing. If you did not receive an appeal form, you can call CCME (800-682-2650) to have a form sent to you.
  - If you file your Hearing Request Form within 10 days from the date on the letter, there will be no break or change in your in-home aide services until a final decision is made at a mediation or hearing.
  - If you file your Hearing Request Form after 10 days, but before 30 days, you may have a break in services for a short period of time until your appeal is received by OAH and services are reinstated.
- The letter you received says that you may be required to pay for the services that continue because of your appeal. While this is possible if you ultimately lose at a hearing, it does not generally occur.
North Carolina’s In-Home Aide Service

As of June 1, 2011, the NC Department of Health and Human Services changed the program that provides in-home aide services. The differences in the two programs are set out below. Generally, to be eligible to receive in-home aide services a person is evaluated for the number of activities of daily living with which they need assistance and how much assistance they need.

Although a person may need assistance with activities they want to do around the house, Activities of Daily Living (ADL) is a medical term with a specific meaning when it is used to talk about in-home aide services. The State decides whether a person is eligible for in-home aid services based on assessment of the individual’s need for assistance with ADLs.

**Only Five ADLs Are Evaluated: Bathing, Dressing, Toileting, Mobility, and Eating.**

As of January 1, 2013, the State is implementing a new PCS program called Consolidated PCS. This does not change eligibility for in-home aide services in the community, but PCS no longer includes hours for errands or transportation like the old PCS program did. Because errands and transportation are no longer part of the PCS program, appealing may not get those tasks back.

### OLD PROGRAM: PERSONAL CARE SERVICES

In the past, to be eligible for Personal Care Services, a Medicaid recipient would have to show a documented need for hands-on assistance with:

- at least two of the five ADLs at the **limited** level.

### CURRENT PCS PROGRAM

Beginning **June 1, 2011**, to be eligible for PCS in the home, a Medicaid recipient has to show a documented need for **hands-on assistance** with:

- **Three** of the five qualifying ADLs at the **limited** level; **or**
- **Two** of the five qualifying ADLs, with at least **one** at the **extensive** level; **or**
- **Two** of the five qualifying ADLs, with at least **one** at the **fully dependent** level.

Because of the change from the Personal Care Services Program to the PCS program, people who previously received in-home aide services before June 1, 2011 may no longer be eligible. Disability Rights NC filed a lawsuit in federal court about this issue and for a short period of time the standard went back to needing assistance with 2 ADLs; see the section “What is Disability Rights NC Doing to Help?” for more information. This lawsuit currently does not affect the elimination of errands or transportation that is occurring because of the change to Consolidated PCS on January 1, 2013. The State is changing the PCS program to try to eliminate the difference in eligibility based on where a person lives, whether in their private home or a facility. This difference is not allowed under federal Medicaid rules.
Your State Assessment - What It Is & Why It's Important

- The State Assessment is very important because this is the document CCME used to make the decision about the ADLs you need assistance with and how much help you need. Your provider may be willing to help explain the assessment to you.
- When you look at your assessment, you will want to compare how you were assessed by CCME with what your actual needs are. The differences between the state assessment and the reality of your day-to-day life are most often the basis for your discussions about why you think CCME was wrong in its assessment of your needs.
- For example: You look at the state assessment and see that CCME says you need limited assistance with the two ADLs of bathing and dressing. While you agree that you need help in these areas, you also need help with eating because you need hands-on assistance with preparing your meals and feeding yourself.
- Because it may take a short period of time to request and receive the assessment, a person should generally file the appeal to protect their rights and maintain services. An appeal can be withdrawn if the decision is made to not pursue it.

How Hours are Decided

The maximum number in-home care hours is **80 hours per month**. The following chart shows how minutes are assigned for qualifying ADLs based on the assistance required:

<table>
<thead>
<tr>
<th>ADL</th>
<th>Limited Assistance</th>
<th>Extensive Assistance</th>
<th>Full Dependence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bathing</td>
<td>35</td>
<td>50</td>
<td>60</td>
</tr>
<tr>
<td>Dressing</td>
<td>20</td>
<td>35</td>
<td>40</td>
</tr>
<tr>
<td>Mobility</td>
<td>10</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Toileting</td>
<td>25</td>
<td>30</td>
<td>35</td>
</tr>
<tr>
<td>Eating</td>
<td>30</td>
<td>45</td>
<td>50</td>
</tr>
</tbody>
</table>

If the total assigned time for all ADLs is less than 60 minutes per day, the total time is increased to 60 minutes per day. Additional time of up to 25 percent may be authorized for special conditions or circumstances.

Before January 1, 2013, hours could be approved for errands when they were critical to maintaining a person’s health and welfare and there was no willing or able family member, individual, program or service available to assist. **Errands and transportation are not part of the Consolidated PCS program being implemented on January 1, 2013.**
The Appeal Process - Mediation & Individual Hearing

• **Appeal Process** - Medicaid appeals are intended to allow a person to appeal a denial or reduction of a Medicaid service with or without an attorney. Although an attorney can be helpful, people are often successful in Medicaid appeals on their own or with the help of a trusted relative or friend. The keys to success are: know your rights, be organized, and present information to the Administrative Law Judge that shows your medical need and explains why you qualify for in-home aide services.

• **Mediation** - In North Carolina, before you get to a hearing you will have an opportunity to discuss your need for in-home aide services through mediation. This is an informal process in which both parties are guided through a discussion by a neutral, third-party mediator to see if they can reach an agreement.

• **Hearing** - If mediation does not resolve the issue, the next step is a hearing at the NC Office of Administrative Hearings (OAH) before an Administrative Law Judge. The hearing involves presenting evidence, including introducing documents, allowing someone to testify on your behalf, and making arguments to an Administrative Law Judge.

Appealing a Cut in Hours vs. a Denial of Services

Regardless of whether you have a cut in hours or a complete denial or termination of your in-home aide services, you must be able to show you need the service. However, when your hours are cut you should be prepared to explain or show:

- How **all** the hours you have been receiving are necessary. Your provider is required to create a plan for your care and you should be able to use this plan the help show why all of the time is necessary. You can also add to this information your own personal experience as to why it takes that amount of time do a certain task.
- That there is no inefficient in the time for the care being provided. A cut in hours usually means that when your services were reviewed someone thought the services could be provided in a shorter amount of time.
- That the in-home aide services in particular are necessary to do a task rather than other services. For example, if you receive Meals on Wheels and also get help from your aide with meal preparation you need to show how they are both necessary.
- If the cut in errands/transportation places you at risk of moving to a facility, you may try asking for a reasonable modification of the PCS policies during mediation/hearing to allow you to keep these services so you can remain in the community.
Step-by-Step Instructions to Request an Individual Hearing & Appeal Your Denial of Services

The most important step is to file your Hearing Request Form by the deadline!!

Step 1: File the “Hearing Request” Form.

The Hearing Request Form is enclosed with the letter informing you of your denial.

- Instructions on how to file this form are on the form itself. The form must be returned by mail or by fax at (919) 431-3100 to the NC Office of Administrative Hearings (OAH) to appeal the termination of your in-home aide services.

- In order to appeal your termination of services, the Hearing Request Form must be submitted to OAH within 30 days from the date on the denial letter or you may lose your right to appeal.

- Most hearings will be done over the telephone. However, you can request an in-person hearing. If you request an in-person hearing, it will be in Raleigh, unless you request otherwise. You can request that the hearing to be in your county of residence if you can show “good cause,” such as your disability prevents you from traveling to Raleigh.

Who Can Help Me with the Appeal Process?

- Anyone you trust, a friend or a relative, can help you during your appeal.
- If you have been receiving in-home aide services, the organization/company that provides those services may be willing to assist you.
- You can also contact Legal Aid of North Carolina at 1-866-219-5262 to see if you can get legal assistance.
Step #2: Preparing for Mediation.

Within 25 days of filing your appeal, you will be contacted by a mediator to schedule a time to discuss your denial of in-home personal care service with the representative from DMA. This is a mediation, and it will likely take place over the telephone.

- **Who is Involved in Mediation** – If you are not represented by an attorney, the parties at the mediation will be a neutral, third-party mediator, yourself, and a representative from the Carolinas Center for Medical Excellence (CCME).
  - Your doctor, nurse, aide, case manager or family member can participate in the mediation to explain your need for the services.
  - CCME is an organization contracted by DMA to conduct reviews of requests for services. A CCME nurse likely came out to your home within the last year to perform an assessment of your ADL needs.
  - If you are represented by an attorney, an Assistant Attorney General representing DMA will also participate in the mediation. Make sure to let the mediator know that you are being represented by an attorney.

- **Gather Documents** – Organize any information or records you have documenting your medical need for personal care services.

- **Request Documents** – You are entitled to see the information that was used by CCME when it made its decision to terminate your personal care services. You can request a copy of your DMA case file, including your most recent State Assessment, by contacting the Assistant Attorney General assigned to your case in the NC Department of Justice, Division of Health and Public Assistance at 919-716-6855. (See next section explaining State Assessment)

- **Share Documents** – If you have documents, such as a letter from your doctor, that you would like CCME to see prior to mediation that will facilitate your discussions you can provide a copy directly to the mediator, who will give it to the CCME representative.

- **Witnecesses** – Your in-home aide and/or doctor would serve as the best witnesses regarding your medical need for personal care service. He or she can provide a letter or affidavit (a notarized, signed statement) explaining why you have a medical need for personal care services.

- **Have a Number of Hours In Mind** – Be ready to explain what would happen if you do not get in-home aide services. It may be that CCME says they will do a new assessment, or CCME may offer you a certain number of hours of in-home personal care, but it is less than what you were receiving. Have in mind the number of hours of personal care service you feel will allow you to continue on living independently. If you are willing to settle for a lesser number of hours, you may be able to resolve the case at mediation and avoid a hearing.
Step#3: The Mediation.

Mediation is a voluntary and confidential process. There is no penalty if you do not arrive at a settlement during mediation. There are advantages to mediation, including settling the issue or investigating the reasoning behind the decision to terminate services prior to a hearing. There is nothing to lose at mediation. If you do not settle at mediation, you simply go on to a hearing at OAH. The information you gather during mediation can be used to make better arguments during the hearing.

- In as much detail as possible, emphasize and focus on the types of hands-on assistance you need with any of the five activities of daily living (ADLs) of bathing, dressing, toileting, mobility, and eating.
- Your State Assessment shows which tasks are associated with each Activity of Daily Living. These can give you an idea about what to include in your discussion.
- For example, an individual who needs help with getting dressed would discuss the types of hands-on assistance they need with putting on, fastening, and removing clothes, socks and shoes. An individual who needs help with mobility would discuss the type of hands-on assistance they need with moving to and from their bed, to and from a chair, from one room to another room, or going up and down stairs.

Instead of an offer of hours, CCME may also offer to do a new assessment. This may be especially true if you are arguing that the information in the assessment is wrong. A new assessment would be an opportunity to show what your needs are and the level of assistance you need with the ADLs they evaluate.

If you are offered a level of personal care services you feel will allow you to continue on living independently, without putting your health and safety at risk, you may decide to accept the offer and agree to a settlement of your appeal. The offer may not be available later at the hearing. If you are offered a settlement that you do not think will allow you to continue living independently, you can choose not take it. There is no penalty for saying “no” to a settlement offer at mediation. You will move on to the next step, which is an evidentiary hearing at OAH.
Step #4: The Hearing.

If you did not settle your case at mediation, the next step will be an evidentiary hearing. This means a hearing where both sides present evidence and witnesses to explain why you do or do not qualify for in-home personal care service.

- **Who is Involved at Hearing** - You can find out which Assistant Attorney General is assigned to represent DMA in your appeal by calling the NC Department of Justice, Division of Health and Public Assistance at (919) 716-6855.

- **Evidence** – Any evidence in support of your case, such as a letter from your doctor, must be submitted to OAH and the Assistant Attorney General assigned to your case 7 days prior to a hearing.

- **Witnesses** – Your doctor, nurse, aide, case manager, family members, or anyone who can testify to your medical need for personal care services can be a witness.
  - Witnesses can testify by phone if they are not available to attend the hearing in person.
  - You should check your witnesses’ schedules to make sure they are available on the date of your hearing. If they are not, this may be good cause for requesting a continuance, or a later court date, from OAH.

- **ALJ’s Recommended Decision** - The Administrative Law Judge will issue a decision in your case within 20 days of the hearing, either agreeing or disagreeing with DMA’s decision to terminate services.

- **Final Agency Decision** - DMA can either adopt or reject the Administrative Law Judge’s decision in your case. Prior to issuing its Final Agency Decision, DMA is required to give you an opportunity to file “Exceptions” to explain why you agree or disagree with the Administrative Law Judge’s decision. If DMA reverses the Administrative Law Judge’s decision, they must give detailed facts and reasons that support the reversal. The Final Agency Decision will be mailed to you.
  - If the Final Agency Decision reverses the Administrative Law Judge’s Recommended Decision, you can appeal to Superior Court within 30 days from the date of the Final Agency Decision. This is done by filing a Petition for Judicial Review in the Superior Court in the county where you reside or Wake County Superior Court. If you feel the need to appeal your case to Superior Court, you should contact an attorney to assist you with this process.
What is Disability Rights North Carolina Doing to Help?

In May 2011, Disability Rights North Carolina filed a complaint against the State of North Carolina in federal court on behalf of all North Carolina Medicaid recipients whose personal care services have been terminated because they are not eligible under the new IHCA criteria put into place June 1, 2011. In December 2011, the federal district court judge granted class certification and a preliminary injunction to stop the State from implementing the 3 ADL standard. For a short period of time, eligibility for in-home services went back to 2 ADLs and class members received notice their services were being reinstated. The State appealed this decision to the U.S. Court of Appeals and that court has granted a stay on the injunction until it can make a decision. This means that the eligibility standard is going back to 3 ADLs until the Court of Appeals makes a decision. Disability Rights NC continues to advocate against this 3 ADL standard and because of our role in this lawsuit we are not able to represent each Medicaid recipient with his or her individual hearing. However, if Disability Rights NC is successful in this lawsuit, it will help all members of the class by protecting their rights to receive these services.

There are many changes happening to the PCS program, both in the community and facilities. While Disability Rights NC continues with the lawsuit regarding PCS, we are also advocating to protect the rights of people with disabilities as the changes to the PCS program are discussed and implemented.

Disability Rights North Carolina is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration. Disability Rights NC is a 501(c)(3) nonprofit charitable corporation.

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