



## **HOW TO REPRESENT YOURSELF AT AN ADMINISTRATIVE HEARING**

### **A SELF-ADVOCACY GUIDE**

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## **Funding**

This guide was paid for by the United States Department of Health and Human Services – Administration on Developmental Disabilities and Center for Mental Health Services, United States Department of Education – Rehabilitation Services Administration.

## **This Guide Cannot Replace Legal Advice**

This guide gives basic facts to people about their rights and laws that protect them. It is not meant to be legal advice. You may need more information or legal advice. Contact the Arizona Center for Disability Law or talk to a lawyer in your area.

Federal and state laws can change at any time. To make sure facts in this guide are still correct, contact the Arizona Center for Disability Law or talk to a lawyer in your area.

# HOW TO REPRESENT YOURSELF AT AN ADMINISTRATIVE HEARING

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## I. Introduction to this Guide

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This guide will help you represent yourself at an administrative hearing. You do not need to have a lawyer with you at an administrative hearing, but it may be helpful. Administrative hearings are not formal. They are ways to handle disputes without the strict rule of a court. For more information about the rules for the Office of Administrative Hearings, visit the website <http://www.azoah.com>.

A hearing officer, called an administrative law judge, will hear your case. The hearing judge is not part of a court. He is a trained officer who will conduct your hearing. This hearing officer is an employee of the Office of Administrative Hearings. He is not an employee of the agency whose decision you are appealing.

### A. How to Get Ready for an Administrative Hearing

- Read your written notice of adverse action very carefully. You have a right to a written notice. If you did not receive a written notice, ask for one from your health plan right away.
- Please note the number of days given for you to appeal the adverse action. Be sure to file your request for an appeal on time. Follow the directions on the written notice about how to file your notice of appeal.

**For some appeals, you will have the right to still receive benefits during your appeal. The notice will tell you how to do this. Please follow the instructions on the notice. But if you do not win your appeal, you may have to repay the agency for the services that you got during your appeal.**

- Be sure that you know the reason for the adverse action as shown on your written notice. If the health plan does not give a reason, quickly write to them asking them to explain the action. If the reason given asks you to look at other “guidelines” or “manual sections,” write to the health plan to ask that copies of those guidelines or sections be sent to you.
- Write to your health plan to request a copy of their file on your case. Keep a copy of any letters that you write to the health plan. If you can, send any letters to the health plan by certified mail with a return receipt and also fax them a copy of any

letters. To send your letters, see “Where to File an Appeal or Request a Fair Hearing When Your AHCCCS/ALTCS Health Plan Denies, Terminates, or Reduces a Service” at the end of this guide. The copies of your file will help you plan your argument. If you have trouble getting copies of your file, do not worry. You can ask the hearing office to issue a subpoena to get copies of your file from your health plan.

- If the health plan or doctor will not give you the records that you asked for to support your case, you can ask the hearing office to issue a subpoena ordering the health plan or doctor to give you the records. You can also ask for a copy of that subpoena from the hearing officer. This request should contain the names of the people involved, the docket number, a list or description of the records you need, and the reason you need the subpoena. Because of the deadlines for your hearing, you should request the subpoena well in advance of your hearing. For more information on subpoenas, contact the Office of Administrative Hearings at (602) 542-9826 or go to their website at <http://www.azoah.com>.
- Ask your primary care doctor to send you copies of your medical records. If you do not have a primary care doctor, ask the doctor that requested your treatment or medication to send you copies of all your records. These records will help you to prove why the health plan’s action is not correct. You should send any records that will help you in your claim directly to the hearing officer as evidence. The hearing officer’s name will be given on your written notice of adverse action.
- Carefully plan your argument. Give reasons to show that the adverse action by your health plan is not correct. Gather all evidence to help your appeal.

Arizona’s Medicaid program is called the Arizona Health Care Cost Containment System or AHCCCS. Under Arizona law, your AHCCCS health plan is required to provide “medically necessary” services. “Medically necessary” means “a covered service provided by a physician to prevent disease, disability, and other adverse health conditions or their progression or to prolong life.”

For example, health plans often deny requested health services or equipment because they say that the services or equipment are not “medically necessary.” But children are allowed to have any services that are needed to correct defects, physical and/or mental illnesses, and other conditions, as stated in a Federal law. The law is called the “Early and Periodic Screening, Diagnosis and Treatment,” or “EPSDT.” This law makes states that receive Medicaid funding (that includes Arizona) provide Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services for persons under 21 who receive Medicaid.

Under this Federal law, EPSDT services include those that prevent diseases or are used to rehabilitate. They also include any medical services asked for by a physician or other licensed health care person. These services should be to reduce physical or mental disability and to restore the person to the best possible level to function. Services for children are covered by the health plan even if they are not covered for an adult.

You should ask your primary care doctor to write a letter for you that says why the services or equipment are needed medically for you. If the service or treatment is for a child under 21, the doctor should explain why it is needed under the EPSDT services of the Federal law. The doctor should also give any medical history and conditions that will support your appeal. See the sample letter called “Request for a Letter of Medical Necessity From Your Physician” at the end of this report. There is also an outline of How to Write an Effective Letter of Medical Necessity for AHCCCS/ALTCS (Arizona Medicaid) Services at the end of this guide. You can also ask for letters of “medical necessity” from other doctors who have examined or treated you in the past. You should send or present these letters to the hearing officer and the health plan.

- Sometimes either you or the health plan may request that a hearing be rescheduled. The hearing officer will decide if there is a good reason for the delay. If you will not be able to make the time and place scheduled for the hearing, you should ask the hearing office to reschedule the hearing at a later date. You may also ask the hearing office to allow you to call in rather than appear in person. If you need to postpone the hearing, we have attached a

sample Request for Postponement from the Office of Administrative Hearings form. All requests for postponement must be submitted in writing to the hearing officer at least 15 days before the hearing.

If you need to call in to attend the hearing, you must also fill out a “Request for Telephonic Testimony” which will be sent to you with your hearing notice. This form needs to be sent to the hearing officer 10 days before the hearing. You can also get a copy of this form at the Office of Administrative Hearings website at <http://www.azoah.com>. You can ask that any witnesses who can support your case also be allowed to call in rather than to appear in person. They will need to fill out the form “Request for Witness to Testify Telephonically” that we have attached to this guide. All requests that you make to reschedule the hearing or to call in should be sent to the health plan as well as to the hearing officer.

- When the day comes for the hearing, take the following items with you:
  1. Your medical records and letters of medical necessity.
  2. Any letters sent from you to your health plan;
  3. Any other evidence that supports your claim;
  4. A written list of points that you want to make;
  5. A written list of any questions that you want to ask the health plan; and,
  6. Paper to take notes.

Take along at least two copies of each of your documents, so that you can give them to both the hearing officer and the health plan. If you will be more comfortable, take a friend or family member along to the hearing.

Keep copies of everything you bring to present at the hearing, including all copies of your appeal notices, evidence, medical records and letters of medical necessity for your files.

- Finally, relax and allow the hearing officer to help guide you through the hearing process. You will probably go first to present your arguments why the reason(s) for the adverse action are not correct. You can also give evidence to support your reasons. You and your witnesses can be questioned by the hearing officer after you have finished speaking. The other side (health plan) will then give their reasons for taking the adverse action. You should take notes of anything you would like to question them about. Both you and the health plan people will be allowed to speak at the end to give a summary of your reasons. At that time, you should also give any evidence to help explain why you should win your appeal.

**Normally, the hearing officer will not tell you the decision on the day of the hearing, but will write a “Recommended Decision” that is then sent to the Director of AHCCCS. The Director can then accept, change or reject the decision. You will receive copies of both the “Recommended Decision” and the final decisions in the mail a few weeks later.**

If you do not win at the hearing, the decision will give you information about more appeal rights. This includes the right to obtain a judicial review in court.

If you lose your hearing, please contact the Arizona Center for Disability Law immediately. For more information about the Center’s hours and phone numbers, go to our website at <http://www.azdisabilitylaw.org>.

## B. SAMPLE LETTER

### Request for a Letter of Medical Necessity from Your Physician

Your Name  
Your Address  
Date

Dear Dr. \_\_\_\_\_:

I am seeking \_\_\_\_\_, which will allow me to \_\_\_\_\_. In order to receive approval through my health plan, I must have the request made by my doctor.

Many people are denied health care services because their health plan (such as AHCCCS/ALTCS, Medicare, private insurance) is not given the correct medical forms that show the reasons for the doctor to prescribe equipment or medicine. Health plans almost always require more than a doctor's prescription asking for \_\_\_\_\_ because the prescriptions do not explain how the patient would benefit from the treatment. The health plans also need to have the doctor write letters to explain the need for the equipment or medication in detail. These are called Letters of Medical Necessity.

These letters are used to show that the treatment will: 1) prevent disease, disability, and other unfavorable conditions or their progress or 2) prolong life. In my case, a letter of medical necessity should include:

- a statement of my overall health care, including all chronic conditions;
- my exact diagnosis(es) and ICM-9-CM codes (if they apply);
- how long my condition has lasted or will last;
- health problems that may occur if the \_\_\_\_\_ is not provided; and
- support for this health care service.

For example, Ms./Mr. \_\_\_\_\_ must be allowed to take the prescribed medication because he/she has tried other medications and they did not work, or he/she was allergic to that medication.

Thank you for your time and effort in helping me to advocate for my health care needs. If you have any questions, please contact me at ( ) \_\_\_\_\_.

Sincerely,

(Add Your Name Here)