Implementation Target 7.1

HSD will revise its Notice of Action and grievance protocols to require a Notice of Action be provided to the child's caregiver, legal representative, and legal custodian whenever a service recommended by an Individualized Planning Meeting Team is reduced, modified, delayed, or denied, or if the service or is not approved within 10 Days.

Grievance Protocols

The grievance protocols are outlined in a number of locations provided below. HSD wants to highlight that while the information is located in numerous places, the Medicaid member or their authorized representative receives this information directly from their managed care organization (MCO) at enrollment as outlined in NMAC 8.308.15.11 A 1-2. HSD will ensure that through contractual agreement with the FFS Care Coordinator the same requirements are met for children in state custody who are enrolled in fee-for-service Medicaid.

The link on how to file a grievance with HSD or the MCOs is listed below. The link to LOD 69-1 that provides the direction to the MCOs for this deliverable is also below.

1. File a Grievance | New Mexico Human Services Department
2. Centennial Care Letters of Direction | New Mexico Human Services Department

The protocols for the MCOs are listed in the following attachments:

1. MCO Contract: Medical Assistance Division | New Mexico Human Services Department
2. MCO Policy Manual: Medical Assistance Division Managed Care Policy Manual
3. NMAC 8.308.15 Grievances and Appeals: https://www.hsd.state.nm.us/wp-content/uploads/8.308.15-NMAC.pdf

The protocols for members are located on each of the MCOs' website:

1. BCBS: https://www.bcbsnm.com/pdf/provider_member_appeal_grievance.pdf
2. PHP: https://www.phs.org/health-plans/understanding-health-insurance/Pages/appeals.aspx#:~:text=How%20to%20file%20a%20Grievance,6%20p.m.%20with%20any%20questions.&text=We%20call%20this%20our%20formal%20grievance%20process.
3. WSCC: https://www.westernskycommunitycare.com/members/medicaid/resources/complaints-appeals.html
4. FFS: https://www.hsd.state.nm.us/wp-content/uploads/2020/12/MAD-100-Revised-2_24_201.pdf

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Parties permitted to file a grievance are outlined in New Mexico Administrative Code (NMAC) 8.308.15.11 B. (4) (b) Standing to file a MCO member grievance:

> (a) The member or his or her authorized representative may file a MCO member grievance concerning dissatisfaction with the MCO's operation.
> (b) The member or his or her authorized representative may choose a relative, friend or other spokesperson to advocate or assist him or her through the MCO member grievance process; however, the spokesperson is limited to a supporting role and cannot act on behalf of the member or his or her authorized representative. The member or his or her authorized representative must provide the MCO a signed release-of-information in order for the designated spokesperson to have access to information to aid the spokesperson to assist or advocate for the member or his or her authorized representative during the MCO's member grievance process. A member or his or her authorized representative may elect not to sign such a release, but utilize the spokesperson during the MCO member grievance process.
> (2) The member or his or her authorized representative may have legal counsel assist him or her during the MCO member grievance process.

The definition of an "authorized representative" is outlined at NMAC 8.308.15.7 and means the individual designated by the member or legal guardian to represent and act on the member's behalf.

> (1) The member or authorized representative must provide documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time-frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the member.
> (2) If a member, due to his or her medical incapacity, is unable to appoint an authorized representative and the authorized representative is unable to be reached and immediate medical care is needed, the member's treating provider may act as the member's authorized representative until such time as the member's authorized representative is available or until such time as the member is able to appoint an authorized representative. In this case, the authorized provider is allowed to file a MCO expedited or standard member appeal. The member's medical record must demonstrate that the member was incapacitated and the member's medical condition

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required immediate action prior to the authorized representative being located.

For children under 14 years old notices will go to the authorized representative and the three parties outlined in the settlement. CYFD will be the authorized representative for these children. For children 14 years and older notices will go to the authorized representative and the three parties outlined in the settlement. The authorized representative and the three other parties will be identified by the child with their permanency planning worker (PPW). .

Notice of Action

To ensure MCOs are aware of which children enrolled with them are in state custody and who the necessary contacts are for any notice provisions, deliverable D 5.1 adds a section to the MCO contract at 4.4.18.3.1 that requires the MCO to review the enrollment data file uploaded by HSD daily to identify members having CYFD categories of eligibility (COE). A new section, 4.4.18.3.2, will require the MCO to contact the member's assigned permanency planning worker (PPW) within three business days of notification of member's involvement in CYFD to assign a care coordinator to the member and to request contact information for the child's caregiver, legal representative, and legal custodian. HSD will ensure that through coordination with the PPW that the same requirements are met for children in state custody who are enrolled in fee-for-service Medicaid.

Notice of Action is defined in the NMAC 8.308.15.7 (S) and means the notice of an adverse action intended or taken by the member's MCO. The Centers for Medicare and Medicaid Services define "Notice," at 42 CFR §438.404: "The MCO, PIHP, or PAHP must give enrollees timely and adequate notice of an adverse benefit determination in writing consistent with the requirements below and in 438.10." Further, CMS and HSD define "Adverse Benefit Determination" similarly. Finally, the requirements for a notice of adverse benefit determination and HSD's Notice of Action are both outlined in 42 CFR §438.

Section 4.12.15 of the MCO contract requires MCOs to issue the notice of action in compliance with the requirements outlined in 42 C.F.R. § 438. Further, 42 C.F.R. § 438.404 (b) (3) requires the content of the notice to include the enrollees right to appeal, and 42 C.F.R. § 438.404 (b) (6) requires the notice to outline the option to request continuing benefits.