

Appealing the Denial, Reduction, or Termination of Wraparound Services in HealthChoices

A Guide for Parents/Guardians and Advocates



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The Pennsylvania Health Law Project is a 501(c)3 nonprofit organization.

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This publication is intended to provide general legal information, not legal advice. Each person's situation is different. If you have questions about how the law applies to your particular situation, please consult a lawyer or call the Helpline at 1-800-274-3258.

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What if the MCO Denies, Reduces, or Ends My Child's Wraparound Services?

Notice & Right to Appeal

If your child's Managed Care Organization (MCO) denies all or any part of the services prescribed by the psychologist or psychiatrist who evaluated your child, you are entitled to receive a notice in writing from the MCO stating what has been denied and a detailed explanation of why the service was denied. The reason given for the denial cannot just be that the service is not medically necessary. The notice must say why the service is not medically necessary.

The notice must also tell you about your rights to file a Grievance with the MCO or a Fair Hearing with Department of Public Welfare's (DPW) Bureau of Hearings and Appeals (or you can do both). To file a Grievance with the MCO you can write a short letter to the Complaint & Grievance Coordinator or call Member Services and tell them you want to file a grievance. The MCO is then required to send you a First Level Grievance Acknowledgement letter. To request a DPW Fair Hearing you must write to the:

Department of Public Welfare, OMHSAS
Division of Grievance and Appeals
Beechmont Building #32
P.O. Box 2675
Harrisburg, PA 17105

You may file a Grievance within 45 days of the date on the denial, reduction or termination of services letter. You may file a Fair Hearing within 30 days of the date on a denial letter or within 30 days of receiving a decision in a First or Second Level Grievance.

Note! Ongoing Benefits Pending Appeal:

If your child has been receiving services but the MCO decides to reduce or end those services, **you should appeal that decision (either by filing a grievance or a fair hearing) within 10 days** of the date on the letter that tells you they plan to reduce or terminate your child's services. If you file your appeal within 10 days, your child is permitted by law to continue to receive the services at the same level she has been getting until the appeal is resolved.

If you decide to file a Grievance but do not win at the first or second level, you must file an appeal to the next level of review within 10 days of the date on the written notice, in order to keep services going throughout the appeal.

What are Some Common Reasons for Denial, Reduction, or Termination of Wraparound Services?

Treatment Plan Focuses on “Life Skills” or “Educational Goals”:

A common reason MCOs give for denials is that the treatment plan’s goals are not behavioral goals but are instead educational or life skills goals. This complaint will often require the Behavioral Specialist Consultant (BSC) to look more carefully at the treatment plan, and may require them to re-write portions of it.

Sometimes the problem can be resolved by changing how a problem, goal or intervention is written so that the focus is more on the child’s behavior rather than on the outcomes that will be achieved. Some goals that have been identified as life skills include: toilet training, eating lunch, dressing and personal hygiene. If your child’s behaviors are interfering with her ability to perform these skills, any goals should focus on changing those behaviors so that the child can perform the skill. The goal should not be to teach the life skills themselves. Similarly, with goals that are considered educational (ability to read, write, perform in school up to her intellectual ability), if your child’s behavior is what is preventing her from achieving in school, the treatment plan must focus on modifying the behavior, not on improving school achievement.

Treatment Plan Doesn’t Include Transfer of Skills to Others:

Wraparound services are intended to provide interventions that help the child, family and others learn how to change the child’s behavior so that the child can stay in his home and the least restrictive living and learning environment possible. The Therapeutic Staff Support (TSS) is a fairly intrusive service that is considered to be restrictive, although less restrictive than placement in a residential facility or a special school. MCOs and others hope to be able to reduce this service over time as the child learns to modify his behavior, and his family and school learn techniques for working effectively with the child when he is unable to change his behavior on his own. As a result, Treatment Plans should include, where appropriate, ways of transferring skills from the BSC and TSS to others who interact with your child on a regular basis – this can be anywhere your child’s behaviors cause difficulties for him including home, school, or other social settings.

Problems with the Evaluation

Often the psychological (or psychiatric) evaluation is not specific enough and does not clearly describe your child’s problem behaviors and the ways that wraparound services can assist in addressing these behaviors. The evaluation must justify why the number of hours of wraparound service are prescribed. The evaluation should also explain what other services have been tried, if any, and why other less intrusive services are not sufficient to meet your child’s needs. The prescriber should indicate why your child would be at risk for more intensive services if he or she doesn’t receive wraparound as prescribed. If there is a plan to start tapering services, the evaluation should identify what goals your child should meet before it is appropriate to begin decreasing services.

How can you fix problems with the evaluation?

There are several things you can do to improve an evaluation that is not detailed enough:

- You can request the psychologist or psychiatrist who performed the evaluation of your child to submit a written “addendum” to their evaluation. The addendum should include any important information or detail that was not included in the first evaluation. You may tell the psychologist or psychiatrist what areas need more attention in the addendum. You should also share with the evaluator as much information as possible from the treatment team (TSS, BSC, MT), if your child has been receiving wraparound, along with any documentation of your child’s behaviors from her school or daycare. The evaluating psychologist may refuse to write an addendum if he or she feels that the initial evaluation is complete and accurate.
- You can have your child re-evaluated by the same psychologist who did the first evaluation, if they didn’t have enough time to observe your child’s behaviors or to discuss your child’s problems with you.
- You can get a second opinion from a different psychologist or psychiatrist if you believe that the first evaluation does not accurately describe your child’s emotional and behavioral problems. However, your MCO needs to approve a second evaluation or you will be responsible to pay for it.

A copy of any addendum, re-evaluation report or second opinion evaluation should be sent to you, the wraparound service provider and your child’s MCO. If you have filed a grievance or requested a fair hearing, these documents should also be forwarded to the grievance committee and/or the hearing officer.

Problems with the TSS’s Progress Notes

At times the TSS worker’s progress notes do not show what s/he and your child are working on each time they are together. The TSS notes should indicate what types of interventions are done with your child, what behavioral goals are worked on and how your child is progressing toward each of her goals. The notes should include some information about your child’s strengths and successes but should also include information about continuing areas that need attention. If after several weeks or months it appears that an intervention is not effectively modifying your child’s behavior, you may want to talk with your child’s BSC to see whether there are other approaches that could be tried.

What If the MCO Still Denies the Services Prescribed for my Child?

You may find that by having the psychologist submit an Addendum to the MCO or having the BSC submit an updated Treatment Plan, that the MCO will reconsider its denial or reduction of prescribed services. If the MCO changes its mind then you can withdraw your appeal. If the MCO continues to deny services you should go ahead with the appeal. You can file an appeal through a grievance, a Fair Hearing, or both.

What is a Grievance?

A Grievance is an appeal to the MCO of a denial of a particular service prescribed by a provider.

Note: A “denial” is any change in a prescription by the MCO that the prescriber does not agree is medically necessary/appropriate for your child. This can include a total denial of a prescribed service, an authorization of some but not all of the service (e.g. 10 hours instead of 20 per week, or 3 months instead of 6), or approval of services other than those prescribed that the prescriber does not think are the correct level of care for your child at this time.

There are two levels to the Grievance process.

First Level Grievance

When you request a First Level Grievance, the plan has 30 days to hold the review. A First Level Grievance is usually a review of the documents submitted to the MCO in support of a particular service (Evaluations, Treatment Plans, Letters of Medical Necessity from Providers) are reviewed by an employee of the MCO who was not involved in denying the service. The reviewer must be a licensed psychologist or psychiatrist who is knowledgeable about the kind of services prescribed for you child. You, the prescriber, and others advocating for your child, can participate in the First Level Grievance (by phone or in person) and you must advise the MCO if you want to do that. You and others can provide additional information to the MCO at the review. If you don't participate, the First Level Grievance reviewer may contact the prescriber or the provider of services to discuss concerns with them. Once the First Level Grievance reviewer makes a decision, the MCO must send a written notice of his or her decision within 5 business days to you and your representative or provider (if they helped you file the Grievance). The written notice must include:

- A statement of the issue reviewed by the first level reviewer.
- The specific reasons for the decision.
- A statement of any alternative services that have been approved (if any).
- References to the specific plan provisions on which the decision is based.
- If an internal rule, guideline, protocol, or other similar criterion was relied on in making the decision, the notice should either include the specific criterion or provide instructions on how to obtain the criterion.
- An explanation of the scientific or clinical judgment for the decision, applying the terms to your child's medical circumstances.
- An explanation of how to file a request for a Second Level Grievance and Fair Hearing and the time frames for doing so.

Second Level Grievance

If you are not satisfied with the First Level Grievance reviewer's decision you can file a Second Level Grievance (or a Fair Hearing if you haven't already requested one). The MCO has 30 days to hold the review. At the Second Level Grievance you can present additional information either in writing, by phone, or in person. You, your child's psychologist and BSC can attend the hearing in person or by phone. The MCO must give you 15 days notice in writing before the date the review is scheduled to take place. The Second Level Review Committee must also be made up of people who were not involved in the earlier decisions to deny a service. The Committee must be made up of three people – a psychologist or psychiatrist, a county representative and a parent of a child who also receives services from the MCO.

Once a decision has been reached, the review committee must send its decision to you and your representative or provider (if they helped you file) within 5 business days. This notice must include the same information as the notice from the First Level Grievance Committee but instead of explaining the process for filing a Second Level Grievance it must explain the process for filing for an "External Review." (*See page 9 for more information about External Reviews.*)

What is a DPW Fair Hearing?

A Department of Public Welfare (DPW) Fair Hearing is an administrative legal proceeding that lets you challenge the actions of your child's MCO before a neutral decision maker. The Hearing Officer is not a medical person, he/she is usually an attorney. You can participate in person or by telephone. If you want the hearing to be in person, you must ask for this, otherwise the hearing will automatically be scheduled as a telephone hearing. The hearing will be fairly informal. The Hearing Officer will ask you and all other witnesses to swear to tell the truth. Then, the Hearing Officer will ask you to explain why you asked for the Fair Hearing. A person from the MCO will explain why they made their decision. After this person or the plan's witnesses have finished, you may ask them questions.

Then it will be your turn to tell your story. You should explain why you disagree with your plan. You should tell the Hearing Office if you have papers to help prove what you said at the hearing, even if you have already mailed these papers to the Hearing Officer.

It is very important for your child's psychologist and/or BSC to participate in the Hearing. The psychologist should justify why the services he/she prescribed are medically necessary and the risks involved if your child does not receive these services. If your plan has given information at the hearing about your child or your child's services that is wrong you should be sure to give the Hearing Officer the correct information. Your plan may ask you or your witnesses questions after each of you have finished talking. The Hearing Officer can also ask questions of you, your psychologist and the plan's representative.

DPW must have your hearing and send you a decision within 90 days after you mailed your Fair Hearing request.

Should I File a Grievance or Request a Fair Hearing?

You can file a Grievance and request a DPW Fair Hearing at the same time or you can file one and then file the other at some later point, as long as you don't miss the filing deadlines.

In a case where you are appealing the denial or reduction of wraparound services, there are several reasons why you may want to file a Grievance:

- If you will need time to get additional documents together to support your Grievance, you will have two opportunities to present your case in the Grievance process, in the First Level and again in the Second Level.
- Grievances are generally resolved more quickly than Fair Hearings.
- If you and the MCO are arguing over a medical question instead of a legal question, a Grievance is usually preferable because one member of the Grievance Review Committee is always a medical provider with knowledge about the prescribed services. Also you can appeal a Second Level Grievance to an External Medical Reviewer who will review the medical arguments you are making. For example, if your prescriber has prescribed 40 hours of TSS for your child but the doctor for the MCO says that your child only needs 10 hours of TSS, you may want to file a Grievance, since medical necessity arguments like this are often better argued among doctors than among lawyers.

Some reasons to choose a Fair Hearing instead of or in addition to a Grievance are:

- DPW, and not your plan, decides who wins a fair hearing. With a grievance, the plan's employees and a plan member decide, until you get to the External Review.
- Fair hearings give you more procedural rights. For example you can subpoena reluctant witnesses and ask questions of your plan's representatives at a Fair Hearing.
- Where you and the MCO are arguing over a legal question instead of a medical question the Fair Hearing is probably the best place to resolve this dispute because a Hearing Officer (or Administrative Law Judge) is often a lawyer or has some training in Pennsylvania Law while the Grievance Review Committees have no legal training.

If I lose at the Second Level Grievance, Should I Request a Fair Hearing or External Review?

If you do not like the decision of the Second Level Grievance Committee, you have the choice of seeking “External Review” or filing for a DPW Fair Hearing (if you haven’t already done so). You have 15 days from when you receive the Second Level Grievance decision to file a request for External Review. You have 30 days from the date on the Second Level Grievance decision to file a request for a DPW Fair Hearing.

A medical reviewer who is not employed by your MCO does an External Review. The medical reviewer should be knowledgeable about the area of medicine that your appeal deals with and the services that are in dispute. The external medical reviewer has to issue a written decision within 60 days from the date that you filed a request for External Review.

External Review, where the decision maker is a medical practitioner, is recommended where you and the MCO disagree about the medical necessity of a service. If you believe that you have strong medical support for your position, but you just cannot get the MCO to accept or recognize it, then External Review is usually the better choice. Fair Hearings, where the decision maker is either a Lawyer or Social Services professional, are more appropriate when you and the MCO disagree about a legal matter. If you think that the MCO has not met its legal obligations to provide a service for your child, you may prefer to go to a Fair Hearing.

How Can I Prepare for a Second Level Grievance or a Fair Hearing?

For the Second Level Grievance Hearing and the DPW Fair Hearing, much of the same advice applies.

Look carefully at the reason for the denial, reduction, or termination of services given by the MCO. If the MCO's letter doesn't provide a detailed reason for its decision, you can request a more detailed clinical reason. You can also request a copy of the medical necessity criteria applied in your child's case. "Medical necessity criteria" are the reasons that prescribers and the MCO should use to decide the kind of care a person needs. If your child meets the medical necessity criteria for a particular kind of care she should get that care.

You may need to work with your child's treatment team to improve the quality and quantity of information presented to the MCO about your child's need for services. A prescriber can resubmit a request for services with more information that justifies the need for services and the number of hours needed.

You should try to get all of your documents together that support your request for services for your child. Documents may include:

- The most recent Psychological and/or Psychiatric Evaluations of your child that prescribe the wraparound services that are being denied
- Any other evaluations of your child that you believe are accurate and that support your request for services
- The current treatment plan (if there is one)
- TSS Progress notes (if there are any and they support your request)
- Any addenda that the prescriber of wraparound services has added to the evaluation and any changes that have been made to the treatment plan.

You can send a copy of these documents to your child's MCO before the Second Level Grievance, or to the hearing officer before the Fair Hearing. This will give the committee a good chance to review the strongest parts of your case. You can also choose to hold onto these documents and present them at the hearing itself. If you do this, you can decide to submit all or only some of the documents, depending on which ones are most helpful to your case.

Members of the treatment team—especially the BSC and the psychologist—are particularly helpful, and can attend the review in person, or by phone. Several days ahead of time, you should inform the grievance coordinator or the Hearing Officer who will attend, and who they will need to call.

As you prepare for the hearing it is very important for you to maintain good communication with your child's treatment team, and especially with anyone you plan to include in the review. Anyone participating should be prepared to speak on the aspects of your child's treatment that they are most directly involved with. You should discuss what they will say ahead of time so there are no surprises during the hearing. In answering questions from the review committee (at the Second Level Grievance) or from the MCO representative (at the Fair Hearing), try to be clear, to the point, and accurate; avoid giving more information than they ask for – generally, if they want to know more, let them ask it rather than guessing what else they are trying to find out.

If during the review someone speaking on your child's behalf does not cover an important issue that they are supposed to, the best way to make sure they get to it is to ask them about it as a follow up to what they have to say. For example, if the psychologist forgot to talk about the problems that a decrease in services would cause your child, you could ask, "Dr. Jones, could you describe how reducing wraparound services would affect Nathan's behavior?"

Above all, everyone who writes anything in support of your appeal, or who appears at the hearing either in person or over the phone, should be on the same page about the issues (you don't want to have people on your side saying different things). You may find it helpful to have a conference call with everyone who will be appearing beforehand to be sure of this. Your child's wraparound provider or psychologist may be able to help you coordinate a conference call.

What if the Psychologist and I Agree That My Child's Health is at Risk While Waiting for a Grievance or Fair Hearing Decision in the Usual Timeframes?

You can request an Expedited Grievance or an Expedited Fair Hearing.

If the psychologist believes that waiting the usual time for a Grievance decision would harm your child's health, you can contact the MCO and request that the Grievance be decided quickly. The psychologist will need to submit a statement within three business days of the request stating that waiting 30 days for a Grievance decision would jeopardize the consumer's life, health or ability to attain, maintain or regain maximum function. The letter must say how or why your child's health or life would be jeopardized. Once the statement is received, the MCO must issue an Expedited Grievance decision within 48 hours of receiving the doctor's statement or within 3 business days of your request, whichever is shorter. If the decision is not satisfactory, you can seek an Expedited External Grievance outside of the MCO.

An Expedited Fair Hearing request works about the same way. If the psychologist believes that waiting the usual timeframe for a Fair Hearing decision would harm his/her health, you can request that the Fair Hearing be decided more quickly. The psychologist again needs to write a letter to certify that waiting 90 days for a decision would jeopardize the consumer's life, health, or ability to attain, maintain or regain maximum function, and why. The Fair Hearing will be held by telephone. As with expedited grievances, DPW must give a decision within 48 hours of when the harm statement is received from the provider, or within 3 business days of the date the request for an expedited process was received, whichever is shorter.

REMEMBER!

If your child has been receiving wraparound services that the MCO is reducing or denying, you must appeal that initial decision within 10 days of the date on the letter that tells you they plan to reduce or terminate your child's services. If you file your appeal within 10 days, your child is permitted by law to continue to receive the services at the same level she has been getting until the appeal is resolved.

This is true at every appeal level. For example, if you have a First Level Grievance and the decision is still reducing or denying your child's services, those services must continue as long as you appeal the First Level Grievance decision within 10 days of the date on the decision letter from the MCO.