

Health Practice Tip February 2014

Independent Medical Review vs. State Fair Hearing

Implementation of the Medicaid Expansion part of the Affordable Care Act. Rollout of the Coordinated Care Initiative. The Healthy Families and LIHP (Low-Income Health Program) transitions. These sweeping changes to California's health care system are bringing hundreds of thousands of new people into Medi-Cal, most of who will be enrolled in Medi-Cal managed care health plans. These changes have also moved thousands of others already in Medi-Cal into what for them is the unfamiliar territory of managed care plans. We thought it timely to review briefly how advocates might utilize the Independent Medical Review (IMR) and state fair hearing processes to our clients' greatest benefit.

An enrollee in a managed care plan, including a Medi-Cal managed care plan is entitled to seek an [Independent Medical Review \(IMR\)](#) by the California Department of Managed Health Care if her plan has refused to approve health services as not medically necessary or cover emergency or urgent care.[\[1\]](#)

As with other Medi-Cal recipients, enrollees in Medi-Cal managed care plans are also entitled to a state fair hearing for any claim for coverage of services under the Medi-Cal program which has been denied.[\[2\]](#)

Note that if you start the Medi-Cal State Hearing process you cannot then get an IMR from DMHC. But if you start the IMR process first, you can still pursue a Medi-Cal state hearing. Another advantage with the IMR process is that the decision is made by independent medical professionals who have no stake in whether the health plan pays or not and are focused more on the medical facts of the case.

So, that brings us to our **Health Practice Tip: If the problem with the managed care plan is a denial of services, consider seeking an Independent Medical Review (IMR) followed by requesting a Medi-Cal fair hearing, in that order. If the problem is the client's eligibility for Medi-Cal itself (or for the most advantageous Medi-Cal program), request a Medi-Cal fair hearing.**

Some things to consider in deciding whether and how to use the IMR and Medi-Cal fair hearing processes in combination:

[1] For details on IMR requirements and the full IMR process see CA Health & Safety Code sections 1374.30 and 1370.4 (Knox-Keene Health Care Service Plan Act of 1975) and Title 28, California Code of Regulations, sections 1300.74.30 and 1300.70.4. For overviews, see the IMR page on the California Department of Managed Care's website -

http://www.dmhc.ca.gov/dmhc_consumer/pc/pc_imr.aspx and the Health Consumer Alliance IMR piece at <http://healthconsumer.org/fs047SAeng.pdf>.

[2][2] See 42 USC § 13996a (a) (3) and CA Welfare & Institutions Code § 10950. See also Chapter 19 of the National Health Law Program's Medi-Cal Overview for details on the Medi-Cal fair hearing process, at <http://healthconsumer.org/Medi-CalOverview2008Ch19.pdf>.

- You must have a final decision from the health plan itself before you seek an IMR so make sure that you or your client has a record of the denial to submit with the request for IMR. An exception to this rule is requests for experimental treatment - if this is the case you may go straight to IMR.
- The IMR process usually goes more quickly than the fair hearing process; in fact, DMHC is supposed to resolve IMRs involving emergency or urgent circumstances within 3-7 days of receipt of the IMR request. If the health plan fails to respond to an urgent appeal of its decision within 3 days, you will first need to file a [complaint](#) with the DMHC health center to get the decision, and then file the IMR. If the problem is urgent, be sure to answer "yes" to the question "Do you have a condition that is a serious threat to your health?" and also write "URGENT" on the form or in the grievance text box.
- If you request a fair hearing within 10 days of the date of the Notice of Action (notice that the County is supposed to give your client indicating on what basis her Medi-Cal is being terminated or otherwise changed) your client gets aid paid pending (continued medical assistance) while awaiting the Administrative Law Judge's decision.
- While the process is intended to be simple and consumer friendly (meaning DMHC will contact the provider and plan for relevant records), it's a good idea to include all of the information that would be helpful to your client's situation such as denial notices and available medical records unless getting such information would cause considerable delay. If your client needs medical care that is unusual or new, you (or the client's doctor) can also submit supporting documentation about the treatment itself including studies from medical journals or letters from specialists in the field.

Consider whether the situation warrants seeking emergency relief through a court action, rather than the fair hearing process, e.g. where an IMR for urgently needed care is denied, or whether your client's issue(s) may affect a large number of people and may warrant seeking class wide or analogous relief in lieu of or following the IMR and/or fair hearing process.