

FREQUENTLY ASKED QUESTIONS EXPEDITED ADJUDICATORY PROCEEDINGS BEFORE THE ADMINISTRATIVE HEARINGS OFFICE

Under the Medicaid Provider and Managed Care Act, a Medicaid provider or subcontractor may request an expedited adjudicatory proceeding by serving the Inspector General/Program Integrity Unit and the Administrative Hearings Office (AHO) a written request for such proceeding no later than 30 calendar days following the service of a final determination of overpayment by the Healthcare Authority (HCA) on the Medicaid provider or subcontractor.

Pertinent statutes and regulations for an expedited adjudicatory proceeding.

NMSA 1978, Section 27-11-1 (Medicaid Provider and Managed Care Act)
NMSA 1978, Section 27-11-9 (request for expedited adjudicatory proceeding)
NMSA 1978, Section 27-11-9 (B) (30 day deadline to assign hearing officer)
NMSA 1978, Section 27-11-9 (C) (30 day deadline for expedited adjudicatory proceeding)
NMSA 1978, Section 12-8-2, 12-8-10 through 12-8-13, 12-8-15, 12-8-16 (Administrative Procedures Act)
NMSA 1978, Section 7-1B-10 (Administrative Hearings Office Act)
NMAC 302.2.1 (billing for Medicaid services)
NMAC 22.600.1 (general rules and procedures of the AHO)

Who can represent the provider?

The provider may be represented by an employee or, at their own cost and choosing, an attorney either licensed in New Mexico or affiliated with licensed local counsel pursuant to Rule 24-106 NMRA and Regulation 22.600.1.11 (A) NMAC.

How do I file pleadings with the AHO?

All requests, motions, and other pleadings shall be filed by email. Documents shall be attached to emails as a pdf file. Copies of all documents filed with the AHO shall also be sent to the HCA. To file with the AHO, send documents to: tax.pleadings@aho.nm.gov.

What happens after I file a request for an expedited adjudicatory proceeding?

Upon receipt of a request for an expedited adjudicatory proceeding, the Chief Hearing Officer of the AHO will issue a letter acknowledging receipt of the request for the proceeding. Within 30 days of the request for the proceeding, the Chief Hearing Officer will also appoint or contract a qualified hearing officer to preside over the adjudicatory proceeding. The expedited adjudicatory proceeding shall be conducted within 30 days of that assignment of hearing officer, or within another time frame as stipulated by the parties.

At the adjudicatory proceeding, every party may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify, and submit rebuttal evidence.

Prior to the adjudicatory proceeding, either may request a subpoena for the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding from the AHO. The subpoena shall adhere to the form used in civil actions in the district court unless another manner is provided by law.

How will I know about the expedited adjudicatory proceeding?

The AHO will send notice of the proceeding to the parties via email. The proceeding will be set via a video conference and shall not exceed 10 business days in length. The notice will include the date and time of the hearing and link for the video conference. As a courtesy, an Outlook Invite will also be sent to the parties.

What rules must the parties follow at the adjudicatory proceeding?

The rules set forth in the Administrative Procedures Act Section 12-8-11 shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil actions in the district court shall be followed. Unless excluded by statute, evidence that is not admissible under those rules shall be permitted if it is of a type commonly relied upon by a reasonable prudent person in the conduct of their affairs. The parties may also look to Administrative Hearings Office General Hearing Rules and Procedures, 22.600.600.1 NMAC, for general guidance.

What if the parties are not ready for an expedited adjudicatory proceeding within 30 days of the assignment of the hearing officer?

A waiver of the 30 day time limit for the expedited adjudicatory proceeding may be submitted by the provider to have additional time to prepare for the adjudicatory proceeding. If a time waiver is submitted, the AHO shall issue notice of a pretrial conference. The pretrial conference may be held via telephone or video conference. The notice of pretrial conference shall include the date and time of the hearing and how to call or log in for the telephone or for the video conference hearing. A pretrial conference will permit the parties to estimate the time needed to prepare for the adjudicatory proceeding, to set deadlines for discovery, witness and exhibit lists, filing of motions, and prehearing statements, to estimate how long the adjudicatory proceeding will take, and to select a date on which to hold the adjudicatory proceeding.

What if the provider fails to request an expedited adjudicatory proceeding within 30 days of the final determination of overpayment or fails to appear and no continuance has been granted?

If because of accident, sickness, or other good cause, a provider fails to request a hearing or fails to appear, the provider may within a reasonable time apply to the AHO to reopen the proceeding, and upon finding the cause sufficient, the AHO shall immediately set the matter for hearing and give notice to the parties of the hearing.

If a provider who requested an adjudicatory proceeding fails to appear and no continuance has been granted, the AHO may hear testimony and receive evidence and proceed to consider the matter and dispose of it on the basis of the evidence before it in accordance with the Administrative Procedures Act.

How to request a continuance?

Either party may request a continuance. Requests to continue must be filed with the AHO as soon as possible. Except in cases of illness or other emergency, last-minute requests for continuance are not likely to be granted. Requests for continuance shall state if the opposing party agrees, opposes, or has been notified but has not responded. If the request for continuance is for the expedited adjudicatory proceeding that must be held within 30 days of the hearing officer assignment, the provider shall agree in writing in the motion to waive the 30 day requirement.

What happens after the adjudicatory proceeding?

After the parties are afforded the opportunity to submit proposed findings of fact and conclusions of law in accordance with the Medicaid Provider and Managed Care Act and the Administrative Procedures Act, the hearing officer shall make findings of fact and conclusions of law on all material issues of fact, law or discretion, stating the basis for each. In addition, the hearing officer shall determine the amount of overpayment with respect to each disputed claim submitted for payment, if any. The hearing officer's findings of fact and conclusions of law shall be binding and constitutes a final decision.

Can the hearing officer's findings of fact and conclusions of law be appealed?

Either party aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision.
NMSA 1978, Section 39-3-1.1