



HOW TO REPRESENT YOURSELF AT AN ADMINISTRATIVE HEARING

A SELF-ADVOCACY GUIDE

5025 East Washington Street
Suite 202
Phoenix, AZ 85034-7439
602-274-6287
800-927-2260 (toll free)
602-274-6779 (fax)

177 North Church Avenue
Suite 800
Tucson, AZ 85701-1119
520-327-9547
800-922-1447 (toll free)
520-884-0992 (fax)

www.azdisabilitylaw.org
center@azdisabilitylaw.org

Funding for this document is provided 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.

Federal and state law can change at any time. If there is any question about the continued validity of any information in the guide, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

* This guide is available in alternative formats upon request.

Revised 3/4/08

H-5

HOW TO REPRESENT YOURSELF AT AN ADMINISTRATIVE HEARING

This is a guide to help you represent yourself at an administrative hearing. It is helpful but not necessary to have a lawyer at an administrative hearing. Administrative hearings are informal ways to resolve disputes without the strict procedural rules of a court. (*The rules of the Arizona Office of Administrative Hearings are included in the appendix of this guide*). A hearing officer, called an administrative law judge, is in charge of hearing your case. The hearing officer is not part of a court, but a specially trained officer who will conduct your hearing. This hearing officer is an employee of the Office of Administrative Hearings, not an employee of the agency whose decision you are appealing.

Use the following steps to prepare for an administrative hearing:

1. Read your written notice of adverse action very carefully. You have a right to written notice, so if you did not receive written notice, ask for one from your health plan right away.
2. Carefully note the number of days allowed for you to appeal the adverse action and be sure to file your request for an appeal on time. Follow the instructions on the written notice about how to file your notice of appeal.

For some appeals, you will have the right to continue receiving benefits during your appeal. The notice will explain how to do this. Please carefully follow the instructions on the notice. Please note, however, if you are not successful on your appeal, you may be responsible for repaying the agency for the services that you received during your appeal.

3. Be sure that you understand the reason for the adverse action that is stated in your written notice. If the reason is unclear or the health plan does not give a reason, immediately write to the health plan requesting a more specific explanation. If the reason refers to other “guidelines” or “manual sections,” write to the health plan to request that copies of these be sent to you.
4. Write your health plan to request a copy of the health plan’s file on your case. Keep a copy of any letters that you write the health plan and, if possible, send any letters to the health plan via certified mail, with a return receipt, as well as via facsimile. (*See appendix, list of AHCCCS and ALTCS Health Plans*). This information will assist you in planning your argument. If you have trouble obtaining the evidence that you need from the health plan, do not worry because you can ask the hearing officer to issue a subpoena (for more information see number 6 below).
5. Request that copies of medical records from your primary care physician (or the physician/specialist that requested the service, treatment or medication) be sent to

you. These records will be helpful in proving why the health plan's adverse action is not correct. You should send or present any portion of these records that supports your claim to the hearing officer as evidence.

6. If the health plan or doctor refuses to give you records that will support your case, you can ask the hearing officer to issue a "subpoena" ordering the health plan or doctor to give you the records. You can request a subpoena, in writing, from the hearing officer. This request should contain the names of the parties involved, the docket number, a list or description of the document(s) needed and the reason the subpoena is needed. Because there are certain requirements in serving the subpoena, you should request the subpoena well in advance of your hearing. For more information on subpoenas, you should contact the Office of Administrative Hearings at (602) 542-9826 or "www.azoah.com."
7. Carefully plan your argument, outlining why the reason(s) for the adverse action provided by your health plan are not valid. Gather evidence to show that the reason(s) are invalid.

Arizona's Medicaid program is 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" is defined in pertinent part as a "covered service provided by a physician to prevent disease, disability, and other adverse health conditions or their progression; or prolong life."

For example, health plan denials of requested health services or equipment are often based on a claim that the services or equipment are not "medically necessary." Children are entitled to any services that are necessary to correct defects, physical and/or mental illnesses and other conditions, pursuant to a federal law, "Early and Periodic Screening, Diagnosis and Treatment," or "EPSDT." This law requires states receiving Medicaid funding, which includes Arizona, to provide *Early and Periodic Screening Diagnostic and Treatment* (EPSDT) services for persons under the age of 21 who receive Medicaid.

Under federal law, EPSDT services include preventative and rehabilitative services, including any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level. If a child needs a service, it should be covered by the health plan even though it may not be covered for an adult.

You should ask your primary care doctor to write a letter for you that states, in detail, why the services or equipment are medically necessary for you, (and, if the service or treatment is for a child under the age of 21, the doctor should include an explanation of medical necessity under the EPSDT definition), given your

individual medical history and condition. In the appendix, a sample letter is attached, as well as an Outline of Medical Necessity. You can also ask for additional letters of “medical necessity” from medical specialists who have examined or treated you. You should send or present these letters to the hearing officer and the health plan.

8. Sometimes one or both parties may request that a hearing be rescheduled. The hearing officer will make a decision as to whether there is a good reason for the delay. If you will not be able to appear at the time and place scheduled for the hearing, you should ask the hearing officer to reschedule the hearing at a later date or to allow you to appear by telephone rather than in person. If you need to postpone the hearing, a sample request for postponement is attached. Requests for postponement should be submitted, *in writing*, to the hearing officer, at least fifteen (15) days prior to the hearing.

If you need to appear by telephone, you must fill out a Request for Telephonic Testimony, which was sent to you with your hearing notice. This Request needs to be sent to the hearing officer ten (10) days prior to the hearing. A form to request telephonic testimony can also be obtained at the Arizona Office of Administrative Hearing website at www.azoah.com. You can also ask that any witnesses who support your case be allowed to appear by telephone rather than in person, using the form entitled, “Request for Witness to Testify Telephonically,” which is enclosed in the appendix of this guide. All requests that you make concerning the scheduling of the hearing should be sent to the health plan as well as to the hearing officer.

9. When the day comes for the hearing, take the following items with you:
 - (A) Your medical records and letters of medical necessity, if you have not already sent them to the hearing officer;
 - (B) Any correspondence between you and the health plan;
 - (C) Any other evidence that supports your claim;
 - (D) A written list of points that you want to make;
 - (E) A written list of any questions that you want to ask the health plan; and,
 - (F) Paper, so you can take notes.

Take along at least two copies of each of your documents, so that you can provide 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 file and present at hearing, including copies of your appeals, evidence, medical records and letters of medical necessity for your files.

10. Finally, relax and allow the hearing officer to guide you through the proceeding.

You will generally go first in presenting your argument regarding why the reason(s) for the adverse action are invalid as well as the evidence that supports your reasons. You and your witnesses can be questioned (cross-examination) after you have finished speaking. The other side will then present their reasons for taking the adverse action, and you should take notes of any points about which you would like to question them. Both sides will have an opportunity to speak in conclusion. At that point you will be able to provide a summary of the reasons and the evidence that explain why you should win.

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

11. If you do not win at the hearing, the hearing decision will include information about your further appeal rights, which usually includes the right to obtain judicial review in court.

If you lose your hearing please contact the Arizona Center for Disability Law immediately.

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 authorization through my health plan, I must have the request initiated by my physician.

Many consumers are denied health care services because their health plan (i.e., AHCCCS/ALTCS, Medicare, private insurance) is not given appropriate medical documentation establishing the reason for the prescribed equipment or medication. Health plans generally require more than a doctor's prescription recommending _____ because prescriptions do not explain how the patient would benefit in light of her/his medical condition. The health plans require prescriptions to be supplemented by letters which explain the need for the prescribed equipment or medication in detail.

Letters of medical necessity are used to prescribe and certify that the use of certain equipment will: 1) prevent disease, disability, and other adverse health conditions or their progression; or, 2) prolong life. In my case, an effective letter of medical necessity should include:

A statement of my overall health care conditions, including all chronic conditions;
My exact diagnosis(es) and ICM-9-CM codes (if applicable);
The anticipated duration of my condition;
Anticipated health problems which are likely to occur if the _____ is not authorized and provided; and,
Rationale for this health care service. For example, Ms./Mr. _____ must be allowed to take the prescribed medication because he/she has tried other medications in the same drug family and they were not successful (or is allergic to other drugs in the same drug family).

Thank you for your time, consideration and effort in assisting me in advocating for my health care needs. If you have any questions please contact me at () _____.

Sincerely,

(Your Name)