



# **Fair Hearing Policy**

**April 24, 2008**

## CARESOURCE FAMILY OF COMPANIES

### FAIR HEARING PLAN

#### **I. RIGHT TO NOTICE OF PROPOSED ACTION OR TERMINATION AND OPPORTUNITY TO COMPLY WITH PERFORMANCE IMPROVEMENT PLAN**

Prior to finalizing any action or terminating the participation of a Provider on the basis of the participating Provider's failure to meet Plan's standards for quality or utilization in the delivery of health care services, Plan will give the participating Provider notice of the reason or reasons for its decision and an opportunity to take corrective action. Where necessary, Plan will develop a performance improvement plan in conjunction with the participating Provider. If after agreeing to comply with the performance improvement plan, the participating Provider fails to do so, Plan may finalize the intended action, including terminating further participation of the Provider. The Provider may also dispute Plan's decision to require a performance improvement plan.

If Plan decides to take an action or to terminate the Provider's participation for failure to comply with the performance improvement plan, the Chairperson of Plan's Board of Trustees, the Chief Medical Officer (CMO), or the Medical Director will comply with the Notice provisions of Section IV below.

A Provider under review for failing to meet standards for quality or utilization in the delivery of health care service will generally keep her status as a participating Provider during the Provider's appeals under the provisions of this Fair Hearing Plan. This does not apply with respect to any Provider who is summarily terminated for the following reasons: the Provider's conduct presents an imminent risk of harm to an enrollee or enrollees; if there has occurred unacceptable quality of care, fraud, patient abuse, loss of clinical privileges, loss of professional liability coverage, incompetence, or loss of authority to practice in the participating Provider's field; or if a governmental action has impaired the participating Provider's ability to practice.

#### **II. RIGHT TO INFORMAL MEETING WITH CHIEF MEDICAL OFFICER OR MEDICAL DIRECTOR**

A participating Provider for whom an action has been taken or participation has been terminated under Section I above, has a right to appeal the action to the CMO or Medical Director of Plan. The Provider appeals by requesting an informal meeting, in writing, within thirty (30) days of receipt of the Notice of Termination. The request must be addressed to the CMO or Medical Director and must be hand delivered or sent via certified mail, return receipt requested.

##### **A. Notice of Meeting**

Upon receipt of a Provider's request for a meeting with the CMO or Medical Director,

the CMO or Medical Director will schedule the meeting. In no event will the meeting be scheduled for later than thirty (30) days after the Provider's request for a meeting is received, unless otherwise agreed to by the Parties, or, in the sole discretion of the CMO or Medical Director for good cause. Promptly after the meeting is scheduled, the CMO or Medical Director will send a Notice to the Provider, via certified mail, return receipt requested, of the date, time and place of the meeting.

### **B. Meeting Procedure**

During the meeting, the CMO or Medical Director will give the participating Provider an opportunity to discuss the reason or reasons for the termination. This is an informal meeting and not a hearing. The following procedural requirements apply:

- (1) Personal presence shall be required. Failure of the Provider to appear at the meeting, without good cause, shall constitute a waiver of the right to meeting and a voluntary acceptance of the recommendations or actions involved;
- (2) Representation is not permitted. The Provider may not be represented by an attorney or any other person at the meeting; and
- (3) The Provider may submit any documents or other evidence or a written statement to the CMO or Medical Director either before or at the meeting.

### **C. Timing and Notice of Decision**

No later than fourteen (14) days after the meeting, the CMO or Medical Director will make a final decision regarding the Provider action or termination. The CMO or Medical Director will communicate his decision to the Chairperson of Plan's Board of Trustees. Within seven (7) days, the Chairperson of Plan's Board of Trustees, the CMO, or the Medical Director will send Notice of the final decision, and the Provider's right to appeal, to the Provider in compliance with the Notice provisions of Section IV below.

## **III. RIGHT TO A HEARING**

If after availing herself of the procedures set forth in Sections I and II above, a Provider is not satisfied with the final decision, the Provider may appeal the action or termination. The Provider may appeal by requesting a hearing with the Provider Fair Hearing Panel (hereinafter the "PFHP") within thirty (30) days of receipt of the Notice of the Chairperson of Plan's Board of Trustees' final decision. The request must be addressed to the Chairperson of Plan's Board of Trustees and must be either hand delivered or sent via certified mail, return receipt requested.

In addition, and pursuant to the Provider Agreement, if a Provider's participation is summarily suspended for good cause, notwithstanding the inapplicability of the procedures set forth in Sections I and II above, the Provider shall, at the option of the Provider, be entitled to a hearing, and, if desired, a subsequent appellate review, in accordance with the procedures established herein. Good cause includes, but is not limited to, the following: the Provider's

conduct presents an imminent risk of harm to an enrollee or enrollees; there has occurred unacceptable quality of care, fraud, patient abuse, loss of clinical privileges, loss of professional liability coverage, incompetence, or loss of authority to practice in the participating Provider's field; or if a governmental action has impaired the participating Provider's ability to practice.

There is no right to any of the procedures in this Fair Hearing Plan under any of the following circumstances:

- (1) A Provider's participation is terminated for failure to comply with the Performance Improvement Plan and the Provider does not avail himself of the procedures set forth in Section II above;
- (2) The Provider Agreement is terminated without cause pursuant to the terms of the Provider Agreement;
- (3) The participating Provider does not otherwise meet the terms and conditions of the Provider Agreement.

#### IV. NOTICE - FORM AND CONTENT

Any Notice required to be sent by the Chairperson of Plan's Board of Trustees or by the CMO or the Medical Director under any of the provisions of this Fair Hearing Plan shall be in substantially the following form and shall contain the following information:

*Notice of Proposed Action or Termination of Provider Participation*

(or)

*Notice of Termination of Provider Participation*

To: (Name and address of Participating Provider)

You are hereby notified that the Chairperson of Plan's Board of Trustees, the Chief Medical Officer (CMO), or the Medical Director (or the Chairperson of Plan's Board of Trustees upon the recommendation of the CMO or Medical Director, or the Chairperson of Plan's Board of Trustees upon the recommendation of the PFHP, or the Chairperson of Plan's Board of Trustees upon the recommendation of the Appellate Review Committee) on \_\_\_\_\_, \_\_\_\_\_, took the following action, for the accompanying reason:

(Recommendation or Action) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Reason) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to the provision of the Fair Hearing Plan set forth in the Provider Manual (an additional copy of which shall be provided to you upon your request), you have a right to a(n) (informal meeting with the CMO or Medical Director, a hearing with the PFHP, or an Appellate Review) if you file a written request for such a hearing with the Office of the Chairperson of Plan's Board of Trustees, the CMO, or the Medical Director within thirty (30) days after receipt of this notice. This request must either be hand delivered or sent via certified mail, return receipt requested. **The request must be received by the CMO, Medical Director or Chairperson of Plan's Board of Trustees within the thirty (30) day period.**

**Failure to file such a request on time shall constitute a complete and final waiver by you of any right to a meeting, hearing and/or any appellate review of the matter which is the subject of this Notice.**

If you file a request for a meeting, hearing, or appellate review, you will be notified of the time, place and date of the meeting, hearing or appellate review. In the case of a hearing or appellate review, you will also be sent a list of the names of the members of the PFHP or the Appellate Review Committee and a current listing of known witnesses expected to testify on behalf of Plan. The meeting, hearing or appellate review will be held not earlier than thirty (30) days nor later than forty-five (45) days following the filing of your request for the hearing.

## **V. THE PROVIDER FAIR HEARING PANEL**

Upon receipt of a timely request for a hearing, the Chairperson of Plan's Board of Trustees shall promptly arrange for a hearing. The hearing shall be conducted by the PFHP appointed by the Chairperson of Plan's Board of Trustees and composed of not less than three (3) members. The committee will be composed of other Plan participating Providers with comparable or higher levels of education and training than the Provider requesting the hearing and not otherwise involved in network management.

If possible, a representative of the Provider's specialty will be a member of the PFHP. The Chairperson of Plan's Board of Trustees will designate one of the committee members as the Chairperson. No one who has participated in the case or circumstances giving rise to the hearing, and no one in direct economic competition or professionally associated with the Provider requesting the hearing shall be appointed to the PFHP. Knowledge of the matter involved shall not preclude any individual from serving as a member of the PFHP.

The names of the PFHP members will be promptly communicated to both parties by their appointer, both upon the initial appointments and in the event of any subsequent substitute appointments.

## **VI. HEARING PROCEDURE**

### **A. Appearances**

The personal presence of the Provider who requested the hearing is required. If she fails

to appear without good cause, as determined by the PFHP, she shall be deemed to have completely and finally waived her rights in the matter.

Both the Provider who requested the hearing and Plan are entitled to have legal counsel, or any other person, represent them at the hearing. The PFHP may also have separate legal counsel represent it to advise it regarding the procedures herein. If a party is represented by an attorney or anyone else, that attorney or person representing each party shall be responsible for presenting the case.

**B. Presiding Officer**

The Chairperson of the PFHP shall preside at the hearing. He shall determine the order of procedure and shall make all rulings on procedure, including postponements and recesses, and the admissibility of evidence.

**C. Attendance of Committee Members**

A majority of the PFHP must be present throughout the hearing and the committee's deliberations. If a member is absent from any part of the proceedings, he shall not be permitted to participate in the deliberations or decision of the PFHP.

**D. Rights of Parties**

During a hearing, each of the parties shall have the right:

- (1) to call and examine witnesses;
- (2) to introduce exhibits;
- (3) to cross-examine any witness on any matter relevant to the issues;
- (4) to rebut any evidence; and
- (5) to submit a written statement at the close of the hearing.

Oral evidence will be taken only on oath or affirmation administered by a person entitled to notarize documents.

**E. Procedure and Evidence**

(1) The hearing need not be conducted strictly according to the rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of their affairs shall be admitted regardless of the admissibility of such evidence in a court of law. Each party shall, prior to or during the hearing, be entitled to submit memoranda that shall become part of the hearing record. State and Federal Rules of Evidence do not apply to the hearing. It is the intent of this section that

evidentiary disputes be resolved in favor of admissibility, with the PFHP deciding the appropriate weight to be accorded all evidence.

(2) If requested by either party, copies of the exhibits to be introduced and the names of the witnesses to be called shall be exchanged by the parties no later than seventy-two (72) hours before the hearing is scheduled to begin. Additional exhibits and witnesses can only be introduced or called upon a showing of good cause.

(3) If the Provider who requested the hearing does not testify in her own behalf, she may be called and examined as if under cross-examination by the Plan representative or the members of the PFHP.

(4) In reaching a decision, the PFHP may take official notice before the submission of the matter for decision of any generally accepted technical or scientific matter relating to the issues under consideration. Parties present at the hearing shall be informed of the matters to be noticed and those matters shall be noted in the hearing record. Any party shall be given opportunity, on timely request, to request that a matter be officially noticed and to refute the officially noted matters by evidence or by written or oral presentation of authority. The manner of such refutation shall be determined by the PFHP.

(5) Burden of Proof: It shall be the obligation of the Plan representative to present appropriate evidence in support of the adverse action of Plan. The Provider who requested the hearing shall thereafter have the burden of proving that the adverse recommendation or action which occasioned the hearing was arbitrary or capricious.

#### **F. Record**

A record of the hearing shall be kept by the use of a court reporter and a copy thereafter may be obtained by the Provider requesting the hearing upon payment of reasonable charges associated with the preparation thereof.

#### **G. Deliberation and Decision**

Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The PFHP shall thereupon, at a time convenient to itself within seven (7) days after hearing closure, conduct its deliberations outside of the presence of the parties. Upon conclusion of its deliberations, the hearing shall be declared finally adjourned and the PFHP, within fourteen (14) days thereafter, shall forward to the Chairperson of Plan's Board of Trustees and the CMO or the Medical Director a written report of its findings and recommendations.

The Chairperson of Plan's Board of Trustees shall thereafter, within seven (7) days, send Notice via certified mail, return receipt requested, to the Provider who requested the hearing, of the recommendation of the PFHP, and the final decision, and the Provider's further appeal rights.

### **VII. RIGHT TO AN APPEAL**

Within ten (10) days after receipt of notice of the PFHP's recommendation and the final decision, an appellate review may be requested. The request shall be in writing, and shall be delivered to the Chairperson of Plan's Board of Trustees either in person or by certified mail, return receipt requested, and shall include a brief statement of the reasons for appeal. If such appellate review is not requested within ten (10) days as provided herein, both parties shall be deemed to have accepted the recommendation involved and it shall thereupon become final and immediately effective.

The grounds for appeal shall be that:

- (1) there was substantial failure to comply with this Fair Hearing Plan and/or other rules and regulations of Plan in the matter which was the subject of the hearing so as to deny due process or a fair hearing;
- (2) the recommendations were made arbitrarily, capriciously or with prejudice; or
- (3) the recommendations were not supported by substantial evidence.

#### **VIII. NOTICE OF TIME AND PLACE OF APPELLATE REVIEW**

Whenever an appeal is requested as set forth in Section VII above, the Chairperson of Plan's Board of Trustees shall, within ten (10) days after receipt of such request, schedule and arrange for an appellate review. The parties shall be given written notice of the time, place and date of the appellate review. The date of the appellate review shall be not less than ten (10) days, nor more than thirty (30) days from the date of receipt of the request for appellate review; provided, however, that when a request for appellate review is from a Provider who is under suspension then in effect the appellate review shall be held as soon as the arrangements may reasonably be made and not more than fourteen (14) days from the receipt of the request for appellate review. The time for appellate review may be extended by the Chairperson of Plan's Board of Trustees for good cause.

#### **IX. THE APPELLATE REVIEW COMMITTEE**

The Chairperson of Plan's Board of Trustees shall appoint an Appellate Review Committee composed of not less than three (3) persons, either members of the Board of Trustees or others, including but not limited to reputable persons outside Plan, to consider the record upon which the recommendation before it was made. At least one member must be a participating provider, not otherwise involved in network management and who is a clinical peer of the participating Provider who filed the dispute. No one who has participated in the case at a lower level or circumstances giving rise to the hearing or appellate review, and no one in direct economic competition or professionally associated with the Provider requesting the hearing, shall be appointed to the Appellate Review Committee. Knowledge of the matter involved shall not preclude any individual from serving as a member of the Appellate Review Committee.

The names of the members of the Appellate Review Committee will be immediately communicated to both parties by the Chairperson of Plan's Board of Trustees, both upon the

initial appointments and in the event of any subsequent substitute appointments.

The Appellate Review Committee may retain legal counsel to advise it during the appellate review process regarding any of the procedural matters set forth herein.

## **X. APPELLATE REVIEW PROCEDURE**

### **A. Nature of Proceedings**

The Appellate Review Hearing shall be conducted upon a review of the PFHP's transcript, exhibits, written statements by the parties and, only if permitted by the Appellate Review Committee in its sole discretion, oral argument by the parties or legal counsel or other representatives for the parties.

The Appellate Review Committee may accept additional oral or written evidence subject to the same rights of cross-examination or confrontation provided at the PFHP proceedings. Such additional evidence shall be accepted only if the party seeking to admit it can demonstrate that any opportunity to admit it at the hearing was denied, or that it is newly discovered, and then only at the discretion of the Appellate Review Committee.

During the period when an appeal is pending before the Appellate Review Committee, the PFHP's decision shall remain in full force and effect unless otherwise ordered by the Appellate Review Committee.

### **B. Presiding Officer**

The Chairperson of the Appellate Review Committee shall be the presiding officer. He shall determine the order of procedure during the review and make all required rulings.

### **C. Written and Oral Statements**

The party seeking the review may submit a written statement detailing the findings of fact, conclusion, and procedural matters with which the party disagrees. This written statement may cover any matters raised at any step in the hearing process. The party's legal counsel or other representative may assist in its preparation. The statement shall be submitted to the Appellate Review Committee through the Chairperson of Plan's Board of Trustees at least seven (7) days prior to the scheduled date of the appellate review, except if such time limit is waived by the Appellate Review Committee. A written statement in reply may be submitted by the other party, and if submitted, the Chairperson of Plan's Board of Trustees shall provide a copy thereof to the other party at least three (3) days prior to the scheduled date of the appellate review, unless the time limit is waived by the Appellate Review Committee.

The Appellate Review Committee may, in its sole discretion, allow either party, upon request, to personally appear and make an oral statement in favor of that party's position. Any party so appearing shall be required to answer questions by any member of the Appellate Review

Committee.

**D. Presence of Committee Members and Vote**

A majority of the Appellate Review Committee must be present throughout the review and deliberations. If a member of the Committee is absent from any part of the proceedings, he will not be permitted to participate in the deliberations or decision.

**E. Recesses and Adjournment**

The Appellate Review Committee may recess the review proceedings and reconvene the same without additional notice for the convenience of the members or parties, or for the purpose of obtaining new or additional evidence or consultation. Upon the members' completion of the review of all materials, or upon the conclusion of oral arguments if allowed, the appellate review shall be closed. The Appellate Review Committee shall thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon the conclusion of those deliberations, the appellate review shall be declared finally adjourned.

**F. Recommendation of Appellate Review Committee**

If the Appellate Review Committee decides that the PFHP's decision was arbitrary or capricious, the Appellate Review Committee shall either (1) remand the PFHP's decision for a further hearing, or (2) modify the decision of the PFHP so that it is no longer arbitrary or capricious. If the Appellate Review Committee decides that the PFHP's decision is not arbitrary or capricious, the Appellate Review Committee will recommend that the PFHP's decision shall be affirmed in all aspects. The recommendation of the Appellate Review Committee shall be filed in writing with the Chairperson of Plan's Board of Trustees.

**G. Final Decision of the Board of Trustees**

Within thirty (30) days after receipt of the Appellate Review Committee's recommendation, Plan's Board of Trustees may affirm, modify or reverse the recommendation of the Appellate Review Committee or, in its discretion, refer the matter for further review and recommendation. The Board's decision will be final and conclusive of the matter. The decision will be in writing, and the Board shall deliver copies thereof to the Provider who requested the Appellate Review, to the Chairperson of the PFHP, and to the Chairperson of the Appellate Review Committee, in person or by certified mail, return receipt requested.

**XI. EXPEDITED PROCEEDINGS**

In the event of summary suspension or termination for reasons outlined in section I., above, the participating provider may request an expedited hearing. In such case, the first step in the Fair Hearing process, informal meeting with the CMO or the Medical Director, will occur within 14 (fourteen) calendar days and in all instances as quickly as possible. All subsequent

hearing provisions will be expedited to provide due process as quickly as possible with conclusion of the process within thirty (30) to sixty (60) days.

## **XII. ADOPTION**

This Fair Hearing Plan shall be effective upon adoption of Plan's Board of Trustees. In the event of any conflict between this document and any other Plan rule, policy or agreement, the provision(s) of this Fair Hearing Plan shall prevail.

## **XIII. AMENDMENT BY BOARD OF TRUSTEES**

This Fair Hearing Plan may be amended by a unanimous vote of Plan's Board of Trustees, at any meeting of the Trustees at which a quorum is present. Proposed changes must be mailed to each Trustee at least thirty (30) days before the meeting.

## **XIV. COMPUTATION OF DAYS**

Any reference to "days" throughout means calendar days. In computing any period of time pursuant to this policy, the day of the act or event from which the period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

## **XV. GENDER**

Any reference made to the feminine or masculine gender throughout is for convenience purpose only and not intended to reflect a specific designation.

CARESOURCE

By: 

Its: Chairperson of the Board

Date: 4/25/08