



CARESOURCE OHIO

FAIR HEARING PLAN

**CARESOURCE FAMILY OF
COMPANIES**

May 4, 2011

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FAIR HEARING PLAN

A Provider subject to an Action issued by Plan shall have the rights set forth in this Fair Hearing Plan. This Fair Hearing Plan applies only to Actions, as defined herein. Prior to the issuance of an Action, the Provider will have the opportunity to take corrective action. Following the issuance of a Notice of Action by Plan, the levels of appeal available to the Provider are as follows:

Level 1	Meeting with CMO
Level 2	Provider Fair Hearing Panel
Level 3	Appellate Review Committee

A Provider under review for failing to meet standards for quality or utilization in the delivery of health care service will generally retain his or her status as a Participating Provider during the Provider's appeals under the provisions of this Fair Hearing Plan.

I. DEFINITIONS

Action. An action of Plan affecting the ability of Provider to provide services to individuals enrolled with Plan, including but not limited to summary suspension or termination of the Provider's Provider Agreement on the basis of Provider's failure to meet Plan's standards for quality or utilization in the delivery of health care services or billing for said services. Exclusions are set forth in Section II, herein.

ARC. The Appellate Review Committee.

ARC Recommendation. The recommendation of the ARC, which may include remand to the PFHP or modification of the PFHP Decision.

CEO. The Chief Executive Officer of Plan or his or her designee. All duties assigned to the CEO hereunder may be delegated to his or her designee.

CMO. The Chief Medical Officer of Plan or his or her designee. All duties assigned to the CMO hereunder may be delegated to his or her designee.

CMO Decision. The decision issued by the CMO following a meeting with the Provider, which may include affirmance, modification, or reversal of the Action.

Notice of Action. A written notice of an Action issued by Plan to Provider, which shall include the nature of the Action and the Provider's appeal rights.

Participating Provider. A health care professional or facility, including Provider, that has been credentialed or approved by Plan and entered into a Provider Agreement with Plan, to provide services to individuals enrolled with Plan in accordance with Plan requirements.

PFHP. The Provider Fair Hearing Panel.

PFHP Decision. The decision of the PFHP, which may include affirmance, modification, or reversal of the CMO Decision.

Plan. The entity within the CareSource Family of Companies that is a party to a Provider Agreement with Provider and that, through contracts with its Participating Providers, provides or arranges for the provision of medical services to its enrollees.

Provider. A Participating Provider who is the subject of a proposed Action or an Action.

Provider Agreement. The contract between Provider and Plan for the provision of services by Provider to individuals enrolled with Plan, including but not limited to contracts titled "Provider Agreement" and "Group Practice Services Agreement."

II. PROPOSED ACTION, NOTICE OF ACTION, AND EXCLUSIONS

A. PROPOSED ACTION AND NOTICE OF ACTION

Prior to finalizing an Action, Plan will give Provider notice of the reason or reasons for the Action and an opportunity to take corrective action, if appropriate. Where necessary, Plan will develop a performance improvement plan in conjunction with Provider. If the Provider declines to participate in a performance improvement plan or agrees to participate but fails to comply, in the reasonable determination of Plan, Plan may finalize the Action. If Plan finalizes the Action, the CMO will send a Notice of Action via certified mail, return receipt requested, to the Provider. The Notice of Action will include information regarding the Provider's further appeal rights.

B. EXCLUSIONS

This Fair Hearing Plan shall not apply, and the Provider shall have none of the rights set forth herein under any of the following circumstances:

1. the Provider Agreement is terminated without cause pursuant to the terms of the Provider Agreement;
2. the Provider's conduct presents an imminent risk of harm to an enrollee or enrollees of Plan;
3. there has occurred unacceptable quality of care, fraud, patient abuse, loss of clinical privileges, loss of professional liability coverage,

incompetence, loss of authority to practice, or legal or government action that has impaired Provider's ability to practice;

4. the health care needs of Plan's enrollees are being met and no need exists for the Provider's continued services; or
5. the Provider does not otherwise meet the terms and conditions of the Provider Agreement.

Accordingly, nothing in this Fair Hearing Plan will be construed as precluding Plan from summarily terminating a Provider's participation for these reasons, and such terminations will not constitute an Action for purposes of this Fair Hearing Plan.

The rejection of a Provider's application for participation with Plan does not constitute an Action for purposes of this Fair Hearing Plan. This Fair Hearing Plan applies exclusively to Participating Providers.

III. LEVEL 1: MEETING WITH CHIEF MEDICAL OFFICER

A Provider for whom an Action has been taken has a right to request an informal meeting with the CMO to discuss the Action. The Provider must request such a meeting, in writing, within thirty (30) days of receipt of the Notice of Action. The request must be addressed to the CMO 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, the CMO 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, at the sole discretion of the CMO, for good cause. Promptly after the meeting is scheduled, the CMO 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 and the Provider will discuss the reason or reasons for the Action. This is an informal meeting and not a hearing. The following procedural requirements apply:

1. Unless the CMO agrees to permit attendance by telephone, personal presence will be required. Failure of the Provider to appear at the meeting, without good cause, will constitute a waiver of the right to a meeting and a voluntary acceptance of Action involved;
2. Representation of the Provider by legal counsel or any other individual is not permitted, unless such representation is approved in advance of the

meeting by the CMO; and

3. The Provider may submit any documents or other evidence or a written statement to the CMO either before or during the meeting.

C. TIMING AND NOTICE OF DECISION

No later than fourteen (14) days after the meeting, the CMO will make a decision regarding the Action. The CMO will report the CMO Decision to the CEO. The CMO will, within seven (7) days after making the report to the CEO, send notice via certified mail, return receipt requested, to the Provider, of the CMO Decision and the Provider's further appeal rights.

IV. LEVEL 2: PROVIDER FAIR HEARING PANEL

Following the procedures set forth in Section III above, the Provider may appeal the Action by requesting a hearing with the Provider Fair Hearing Panel ("PFHP"). The Provider must request such a hearing, in writing, within thirty (30) days of receipt of the CMO Decision. The request must be addressed to the CEO and must be hand delivered or sent via certified mail, return receipt requested.

A. NOTICE OF HEARING

Upon receipt of a Provider's request for a hearing, the CEO or will promptly arrange for and schedule the hearing. Promptly after the hearing is scheduled, the CEO will send a notice to the Provider, via certified mail, return receipt requested, of the date, time and place of the hearing.

B. COMPOSITION OF THE PROVIDER FAIR HEARING PANEL

The hearing will be conducted by the PFHP, composed of not less than three (3) members. The PFHP will be composed of other Plan participating Providers with comparable or higher levels of education and training than the Provider and not otherwise involved in Plan's network management. If possible, a representative of the Provider's specialty will be a member of the PFHP. 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 will be appointed to the PFHP. Knowledge of the matter involved will not preclude any individual from serving as a member of the PFHP.

The CEO will designate one of the PFHP members as the Chairperson. The names of the PFHP members will be promptly communicated to both parties, both upon the initial appointments and in the event of any subsequent substitute appointments. Within five (5) days of receiving the list of names, the Provider may object to any PFHP member. The objection must be in writing stating the basis of the objection. The decision as to whether to replace any PFHP member will be at the sole discretion of the CEO.

C. HEARING PROCEDURE

1. **Appearances.** The personal presence of the Provider is required. If the Provider fails to appear without good cause, as determined by the PFHP, the Provider will be deemed to have completely and finally waived his/her rights to the hearing and any appellate review. Both the Provider 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 to advise it regarding the procedures herein. If a party is represented by an attorney or anyone else, that attorney or person will be responsible for presenting the case. If the Provider will be represented by legal counsel or any other person, the Provider will notify Plan of such representation, in writing, at least fourteen (14) days in advance of the hearing.

2. **Presiding Officer.** The Chairperson of the PFHP will preside at the hearing. The presiding officer will determine the order of procedure and will make all rulings on procedure, including postponements and recesses, and the admissibility of evidence. The presiding officer may, in his or her sole discretion, call a pre-hearing conference in order to make decisions regarding exhibits, objections, or any other procedural matters as chosen by the presiding officer.

3. **Attendance of PFHP Members.** A majority of the PFHP must be present throughout the hearing and the PFHP deliberations. If a member is absent from any part of the proceedings, the member will not be permitted to participate in the deliberations or decision of the PFHP.

4. **Rights of Parties.** During the hearing, each of the parties will have the right:

- a. to call and examine witnesses;
- b. to introduce exhibits;
- c. to cross-examine any witness on any matter relevant to the issues;
- d. to rebut any evidence; and
- e. 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.

5. **Procedure and Evidence.** The following rules of procedure and evidence will apply to the hearing:

- a. 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 will be admitted regardless of the admissibility of such evidence in a court of law. Each party will, prior to or during the hearing, be entitled to submit memoranda that will 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.

- b. If requested by either party or at the direction of the presiding officer, copies of the exhibits to be introduced and the names of the witnesses to be called will 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
- c. If the Provider does not testify in his/her own behalf, the Provider may be called and examined as if under cross-examination by the Plan representative or the members of the PFHP.
- d. 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 will be informed of the matters to be noticed and those matters will be noted in the hearing record. Any party will be given the 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 will be determined by the PFHP.
- e. It will be the obligation of the Plan representative to present appropriate evidence in support of the Action. The Provider will thereafter have the burden of proving that the Action was arbitrary or capricious.

6. Record. A record of the hearing will be kept by a court reporter, and a copy thereafter may be obtained by the Provider upon payment of reasonable charges associated with the preparation thereof.

7. Deliberation and Adjournment. Upon conclusion of the presentation of oral and written evidence, the hearing will be closed, unless the PFHP permits the parties to submit final written statements. The PFHP will thereupon, at a time convenient to itself within twenty-one (21) days after the later of hearing closure or the submission of written statements, conduct its deliberations outside of the presence of the parties. The conclusion of deliberations will constitute adjournment of the PFHP.

D. TIMING AND NOTICE OF DECISION

Within seven (7) days of adjournment of the PFHP, the PFHP Decision will be sent to the Chairperson of Plan's Board of Trustees, the CEO, and the CMO. The CEO will, within seven (7) days of receipt of the PFHP Decision, send notice via certified mail, return receipt requested, to the Provider, of the PFHP Decision and the Provider's further appeal rights.

V. LEVEL 3: APPELLATE REVIEW COMMITTEE

Within fourteen (14) days after receipt of notice of the PFHP Decision, the Provider may request an appellate review before the ARC. Such a request must be addressed to the Chairperson of Plan's Board of Trustees and must be hand delivered or sent via certified mail, return receipt requested. The request must include a brief statement of the grounds for appeal. If such appellate review is not requested within fourteen (14) days as provided herein, the PFHP Decision will thereupon become final and immediately effective.

A. GROUNDS FOR APPEAL

The only acceptable grounds for appeal to the ARC are as follows:

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

B. NOTICE OF APPELLATE REVIEW

When an acceptable appeal is requested, the Chairperson of Plan's Board of Trustees will, within ten (10) days after receipt of such request, schedule and arrange for an appellate review. The parties will be given written notice of the time, place and date of the appellate review. The date of the appellate review will 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 will 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.

C. COMPOSITION OF THE APPELLATE REVIEW COMMITTEE

The Chairperson of Plan's Board of Trustees will appoint an ARC 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 with Plan, 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, will be appointed to the ARC. Knowledge of the matter involved will not preclude any individual from serving as a member of the ARC.

The names of the members of the ARC will be promptly 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. Within five (5) days of receiving the list of names, either party may object to any ARC member. The objection must be in writing stating the basis of the objection. The decision as to whether to replace any ARC member will be at the sole discretion of the Chairperson of Plan's Board of Trustees.

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

D. APPELLATE REVIEW COMMITTEE PROCEDURE

1. Nature of Proceedings. The Appellate Review will be conducted upon a review of the PFHP's transcript, exhibits, written statements by the parties and, only if permitted by the ARC at its sole discretion, oral argument by the parties or legal counsel or other representatives for the parties. The ARC may accept additional oral or written evidence subject to the same rights of cross-examination or confrontation provided at the PFHP hearing. Such additional evidence will 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 ARC. During the period when an appeal is pending before the ARC, the PFHP Decision will remain in full force and effect unless otherwise ordered by the ARC.

2. Presiding Officer. The Chairperson of the ARC will be the presiding officer. The presiding officer will determine the order of procedure during the review and make all required rulings.

3. Written and Oral Statements. The Provider may submit a written statement detailing the findings of fact, conclusions, and procedural matters with which the Provider disagrees. This written statement may cover any matters raised at any step in the hearing process. The statement will be submitted to the ARC 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 ARC. A written statement in reply may be submitted by Plan, and if submitted, the Chairperson of Plan's Board of Trustees will provide a copy thereof to the Provider at least three (3) days prior to the scheduled date of the appellate review, unless the time limit is waived by the ARC. The ARC 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 will be required to answer questions by any member of the ARC.

4. Presence of Committee Members and Vote. A majority of the ARC must be present throughout the review and deliberations. If a member of the Committee is absent from any part of the proceedings, the member will not be permitted to participate in the deliberations or decision.

5. Recess, Deliberation, and Adjournment. The ARC 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 will be closed. The ARC will 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 will be declared finally adjourned.

6. Recommendation of Appellate Review Committee. If the ARC decides that the PFHP Decision was arbitrary or capricious, the ARC will recommend either: (a) remand of the PFHP's decision for a further hearing; or (2) modification of the PFHP Decision so that it is no longer arbitrary or capricious. If the ARC decides that the PFHP Decision is not arbitrary or capricious, the ARC will recommend that the PFHP's decision be affirmed. The ARC Recommendation will be provided, in writing, to the Chairperson of Plan's Board of Trustees.

D. TIMING AND NOTICE OF DECISION

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

VI. ADOPTION AND AMENDMENT OF FAIR HEARING PLAN

This Fair Hearing Plan will be effective upon adoption by 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 will prevail. This Fair Hearing Plan may be amended by a unanimous vote of Plan's Board of Trustees, at any meeting of the Board at which a quorum is present. Proposed changes must be mailed to each Board member at least seven (7) days before the meeting.

VII. 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 will not be included. The last day of the period so computed will 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.

CARESOURCE

By: 

Its: Chairperson of the Board

Date: 5/4/11