

Vermont Legal Aid Testimony on S.262
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Vermont Legal Aid understands the need to revise Vermont's process for fair hearings in light of changes to the federal regulations governing Managed Care Medicaid. Vermont is unique because under the Global Commitment waiver DVHA is designated as the managed care entity. We want to ensure that we implement managed care in Vermont in order to best protect the rights and interests of beneficiaries.

1. Exhaustion Requirement for a Fair Hearing

A state fair hearing is an essential component of due process for Medicaid beneficiaries. We are opposed to changes to 3 V.S.A. §3091 that create barriers to accessing a fair hearing. We can implement the federal requirement for an internal appeal in Vermont without undermining the right to a fair hearing.

- No wrong door for an appeal. If the beneficiary requests a fair hearing, that fair hearing should be processed pending the internal appeal.
- Provide full protection for "deemed" exhaustion.

We therefore suggest that Section 8 of the bill be revised to include the following additional line:

(i) In the case of an appeal of a Medicaid covered service decision made by the Department of Vermont Health Access or any entity with which the Department of Vermont Health Access enters into an agreement to perform service authorizations that may result in an adverse benefit determination, the right to a fair hearing granted by subsection (a) of this section shall be available to an aggrieved beneficiary only after that individual has exhausted, or is deemed to have exhausted, the Department of Vermont Health Access's internal appeals process. Should the aggrieved beneficiary file a request for a Fair Hearing before the Department of Vermont Health Access' internal appeal process is completed, the fair hearing request will be put on hold until completion of the internal appeal process or deemed completion.

2. Authority for the AHS Secretary to Reverse a Fair Hearing

The very same federal regulations that govern fair hearings and require Vermont to implement an internal appeal, directly conflict with the authority to reverse a favorable state fair hearing decision as provided in current Vermont law, 3 V.S.A. §3091(h). The Secretary reversal process conflicts with the "effectuation" of a favorable decision. Under that regulation, 42 C.F.R § 438.424, DHVA is required to pay the claim within 72 hours after the favorable fair hearing decision. 3 V.S.A. §3091(h) should be revised in accordance with the federal regulation.

3. Asset Verification System

Although this reform may help streamline Medicaid application processing and verification, we have privacy concerns about how this is implemented. Beneficiaries should be provided with clear notice of their rights and the scope and extent of the authorization for access to their private financial information.