



NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF HEALTH INSURANCE PROGRAMS

Guidance for Required Changes to Final Adverse Determination Notices

I. Purpose

To provide guidance to Mainstream Managed Care Plans (MMC), HIV Special Needs Plans (HIV SNP), Health and Recovery Plans (HARP), Managed Long Term Care Partial Capitation Plans (MLTCP), and Medicaid Advantage Plus Plans (MAP), collectively referred to as Medicaid Managed Care Plans (MMCP), on required changes to Final Adverse Determination (FAD) notices. This guidance applies to MMCP and their management contractors who are delegated to conduct and issue coverage and/or utilization review determinations.

II. Authority

Centers for Medicare and Medicaid Services (CMS) Regulations at 42 C.F.R. Part 431, Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract, Managed Long Term Care Partial Capitation Model Contract, and Medicaid Advantage Plus Model Contract.

III. Overview of Changes to FAD Notices

a. Federal Regulatory Requirements

i. Expedited Fair Hearings

A. Federal regulations at 42 C.F.R. §431.206 require the State to inform enrollees of their right to request an expedited fair hearing.

1. FAD notices must include language regarding an enrollee's right to request an expedited fair hearing.

ii. In Person Fair Hearing Requests

A. Federal regulations at 42 C.F.R. §431.221(a) require the State to provide enrollees the ability to request a Fair Hearing in person.

1. Consistent with Office of Administrative Hearings (OAH) Transmittal 24-02, the New York City OAH office has moved effective June 3rd, 2024.
 - i. FAD notices must include the updated New York City OAH address.
2. Enrollees have the ability to file a fair hearing in person at the Albany OAH office.
 - i. FAD notices must include the Albany OAH address.

b. Programmatic Requirements

i. Service Field

A. A field describing the requested service, amount, duration, and date of service must be added to FAD notices for consistency with other Medicaid model notice templates.

ii. Initial Adverse Determination (IAD) Notice Date Field

A. A field identifying the date of the corresponding IAD notice must be added to FAD notices for the purposes of scheduling Fair Hearings.

IV. Required FAD Notice Changes

MMCPs must update their FAD notices, as outlined in this section.

a. Federal Regulatory Changes

i. Expedited Fair Hearing Language

A. FAD notices must be updated to include the following language in the appropriate areas of the notice, as shown in **Attachments A and B**:

1. The Fair Hearing decision will be made in 90 days. If a delay will seriously risk your health, life, or ability to function, you can ask for a fast track Fair Hearing. You must send the State information that shows that you need a fast track Fair Hearing. This information can be from your provider, or someone who knows about your situation. Send in this information when you ask for a fast track Fair Hearing using any of the ways listed below. You can also send this information after you ask for a fast track Fair Hearing using UploadNY at <https://upload.ny.gov/en-US/>.
2. If the State denies your request for a fast track Fair Hearing, they will call you and send you a letter. If your request for a fast track Fair Hearing is denied, the State will process your Fair Hearing in 90 days.
3. If the State approves your request for a fast track Fair Hearing, they will call you to give you the time and date of your hearing. All Fast Track Fair Hearings will be held by phone.

ii. In Person Fair Hearing Requests

A. FAD notices must be updated to include the following New York City OAH address, in the appropriate area of the notice, as show in **Attachment C**:

Office of Temporary and Disability Assistance
Office of Administrative Hearings
5 Beaver Street
New York, NY 10004

B. FAD notices must be updated to include the following Albany OAH address, in the appropriate area of the notice, as shown in in **Attachment C**:

Office of Temporary and Disability Assistance
Office of Administrative Hearings
40 North Pearl Street
Albany, NY 12243

- b. Programmatic Changes
 - i. Service Field
 - A. FAD notices must be updated to include a service field describing the requested service, amount, duration, and date of service, as shown in **Attachment D**.
 - ii. IAD Notice Date Field
 - A. FAD notices must be updated to include a field identifying the date of the corresponding IAD notice, as show in **Attachment D**.

V. Applicability to MAP Appeal Decision Notices

MAP Appeal Decision Notices are impacted by the programmatic requirements described in section III. b). MAP plans will receive an updated Appeal Decision Notice from CMS that includes the addition of a service field and date of coverage determination notice field.

VI. Model Notice Submission Process

- a. MMCPs must resubmit their FAD notices, with the required changes described in section IV, to DOH for review and approval prior to implementing the changes. Model notice submissions should be sent to DOH **no later than 11/12/24**.
- b. Model notice submissions should be sent to the following mailboxes:
 - i. bigaplans@health.ny.gov for MMC, HARP, and HIV SNP;
 - ii. mltc.docs@health.ny.gov for MLTCP and MAP.
- c. MMCPs model notice submissions must include:
 - i. A coversheet for each model notice;
 - ii. Model notices with the required changes outlined in section IV in redline;
 - iii. An estimated timeframe for the implementation of updated FAD notices (e.g., 90 days from DOH approval);
 - iv. An attestation that states that the only changes made to the notices are the required changes described in this guidance.
- d. Model notice submissions that do not include all required information, as outlined in section VI. d), will be returned to the MMCP for correction.
- e. Updated FAD notice templates can be found on the following Service Authorization and Appeals webpages:
 - i. For Mainstream Medicaid Managed Care Plans, HARP and HIV SNP (https://www.health.ny.gov/health_care/managed_care/plans/appeals/)
 - ii. For Medicaid Managed Long Term Care Plans (https://www.health.ny.gov/health_care/managed_care/plans/appeals/42_cfr_438.htm)

VII. Implementation

- a. MMCPs and their management contractors shall implement the required changes as soon as possible after receiving DOH approval.
- b. Questions about this guidance can be sent to the following mailboxes:
 - i. bigaplans@health.ny.gov for MMC, HARP and HIV SNP;
 - ii. mltc.docs@health.ny.gov for MLTCP and MAP.

Attachment A: Expedited Fair Hearing Language for the FAD no AC

How can I ask for a Fair Hearing?

You have a total of 120 calendar days from the date of this notice to ask for a Fair Hearing. The deadline to ask for a Fair Hearing is **[date+120]**.

The Fair Hearing decision will be made in 90 days. If a delay will seriously risk your health, life, or ability to function, you can ask for a fast track Fair Hearing. You must send the State information that shows that you need a fast track Fair Hearing. This information can be from your provider, or someone who knows about your situation. Send in this information when you ask for a fast track Fair Hearing using any of the ways listed below. You can also send this information after you ask for a fast track Fair Hearing using UploadNY at <https://upload.ny.gov/en-US/>.

To ask for a Fair Hearing, you can:

After you ask for a Fair Hearing, the State will send you a notice with the time and place of the hearing. At the hearing you will be asked to explain why you think this decision is wrong. A hearing officer will hear from both you and the plan and decide whether our decision was wrong. **If the State denies your request for a fast track Fair Hearing, they will call you and send you a letter. If your request for a fast track Fair Hearing is denied, the State will process your Fair Hearing in 90 days.**

If the State approves your request for a fast track Fair Hearing, they will call you to give you the time and date of your hearing. All Fast Track Fair Hearings will be held by phone.

To prepare for the hearing:

Attachment B: Expedited Fair Hearing Language for the FAD with AC

If you want to keep your services the same

- You **must** ask for a Fair Hearing within 10 calendar days or by the date this decision takes effect, whichever is later.
- The last day to ask for a Fair Hearing and keep your services the same is [date+10].
- Your services will stay the same until we make our decision. If the Fair Hearing is not decided in your favor, you may have to pay for the services provided while waiting for the decision.

You have a total of 120 calendar days from the date of this notice to ask for a Fair Hearing. The deadline to ask for a Fair Hearing is [date+120].

The Fair Hearing decision will be made in 90 days. If a delay will seriously risk your health, life, or ability to function, you can ask for a fast track Fair Hearing. You must send the State information that shows that you need a fast track Fair Hearing. This information can be from your provider, or someone who knows about your situation. Send in this information when you ask for a fast track Fair Hearing using any of the ways listed below. You can also send this information after you ask for a fast track Fair Hearing using UploadNY at <https://upload.ny.gov/en-US/>.

How Can I Ask for a Fair Hearing?

After you ask for a Fair Hearing, the State will send you a notice with the time and place of the hearing. At the hearing you will be asked to explain why you think this decision is wrong. A hearing officer will hear from both you and the plan and decide whether our decision was wrong. If the State denies your request for a fast track Fair Hearing, they will call you and send you a letter. If your request for a fast track Fair Hearing is denied, the State will process your Fair Hearing in 90 days.

If the State approves your request for a fast track Fair Hearing, they will call you to give you the time and date of your hearing. All Fast Track Fair Hearings will be held by phone.

To prepare for the hearing:

Attachment C: Addresses for In Person Fair Hearing Requests

**Note: This change applies to both the FAD no AC and FAD with AC notices.*

To ask for a Fair Hearing, you can:

- **Call:** 1-800-342-3334 (TTY call 711 and ask operator to call 1-877-502-6155)
- **Request online using the form at:** <http://otda.ny.gov/oah/FHReq.asp>
- **Use the Managed Care Fair Hearing Request Form that came with this notice.** Return it with this notice by mail, fax, or in person. Keep a copy of the request and notice for yourself.

MAIL FAIR HEARING REQUEST FORM TO:

New York State Office of Temporary and Disability Assistance
Office of Administrative Hearings
Managed Care Unit
P.O. Box 22023
Albany, New York 12201-2023

FAX FAIR HEARING REQUEST FORM TO: 518-473-6735

OR

- **WALK IN – New York City:**
Office of Temporary and Disability Assistance
Office of Administrative Hearings
5 Beaver Street
New York, New York 10004

Albany:
Office of Temporary and Disability Assistance
Office of Administrative Hearings
40 North Pearl Street
Albany, New York 12243

Attachment D: Service and IAD Notice Date Fields

**Note: This change applies to both the FAD no AC and FAD with AC notices.*

[Date]

[Enrollee]

[Address]

[City, State Zip]

Enrollee Number: [ID number or CIN]

Coverage type: [coverage type]

Service: [describe requested service including amount/duration/date of service]

Plan reference number: [plan reference number]

Provider: [provider to perform the service]

Facility: [Facility]

Service developer/manufacturer: [service developer/manufacturer]

Date of Initial Adverse Determination notice: [IAD notice date]

Date appeal filed: [date appeal filed]

Date of appeal determination: [date of appeal determination]]