

# NHP/NHIC-Fair Hearing and Appellate Review Process

---

## **Abstract/Purpose:**

Adverse decisions of the Credentials Committee, if (and only if) taken for reasons of a practitioner's quality of care, competence, or professional conduct, shall constitute grounds for a fair hearing and an appellate review.

---

### I. POLICY:

The following adverse decisions of the Credentials Committee, if (and only if) taken for reasons of a practitioner's quality of care, competence, or professional conduct, shall constitute grounds for a fair hearing and an appellate review:

- A. denial of a practitioner's application to become a Network Health Plan/Network Health Insurance Corporation Provider
- B. restriction or suspension of the practitioner's participation as a Network Health Plan/Network Health Insurance Corporation Provider for more than 30 days
- C. termination of the practitioner's participation as a Network Health Plan/Network Health Insurance Corporation Provider;
- D. termination or non renewal of a practitioner's Provider Agreement.

It shall not be grounds for a fair hearing and an appellate review if a practitioner's participation as a Network Health Plan/Network Health Insurance Corporation Provider and/or Provider Agreement is terminated or not renewed for reasons other than the practitioner's quality of care, competence or professional conduct.

When any practitioner receives a notice of an adverse decision by the Credentials Committee that would invoke the fair hearing process as described above, he/she may request a fair hearing before a Hearing Committee. If, upon consideration of the written report and recommendation of the Hearing Committee, the Credentials Committee's decision is or remains adverse, the practitioner may request an appellate review before the Network Health Plan/Network Health Insurance Corporation Board of Directors before a final decision on the matter is made.

### II. PROCEDURE:

#### REQUESTING HEARING

- A. The Medical Director, or designee, shall be responsible for giving written notice within ten (10) days of an adverse decision of the Credentials Committee to any affected practitioner who is entitled to a fair hearing by certified mail, return receipt requested. The notice shall:
  1. Advise the practitioner of the decision, action or proposed action and the basis therefore.
  2. Advise the practitioner of his/her right to a fair hearing, and specify that he/she shall have thirty (30) days to file a written request for a fair hearing. Such request shall be sent by certified mail and may include a request for a copy of all material, favorable or

- unfavorable, which was considered in making the adverse decision.
3. State that failure to request a fair hearing within thirty (30) days, or failure to personally appear at the scheduled hearing shall constitute a waiver of the practitioner's right to the hearing.
  4. State that upon receipt of his/her request, the practitioner shall be notified of the date, time and place of the hearing, which date shall not be less than thirty (30) days nor more than sixty (60) days following receipt of the request by Medical Director, or designee, unless the practitioner requests an earlier date in his/her request for a hearing.
  5. Advise the practitioner of his/her right to be represented at the hearing by an attorney, or by any other individual chosen by the practitioner. The practitioner shall include in the request for a hearing the name, address and phone number of such representative, and if representative is not an attorney, the occupation of such representative. The practitioner shall be advised that if he/she fails to notify the Medical Director, or designee, in the request for hearing that he/she desires to be represented by an attorney/other individual, he/she shall be deemed to have waived the right to be so represented.
  6. Advise the practitioner of his/her right to call, examine and cross-examine witnesses, to present relevant evidence, and to submit a written statement at the close of the hearing.
  7. State that upon completion of the hearing, the practitioner shall receive a copy of the written report and recommendation of the Hearing Committee, including a statement of the basis of the recommendation.
- B. The failure of a practitioner to request a hearing within thirty (30) days and in the manner herein provided, or failure to personally appear at the scheduled hearing, shall be deemed a waiver of his/her right to such hearing. The adverse decision of the Credentials Committee becomes final. The Medical Director, or designee, shall promptly notify the affected practitioner his/her status by certified mail, return receipt requested.
  - C. Within fifteen (15) days of the date of final adverse decision, as defined above, the Medical Director, or designee, shall file a report with the State of Wisconsin Department of Regulation and Licensing, the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank, whenever reporting is required by law.

#### SCHEDULING AND NOTICE OF HEARING

- A. Within ten (10) days after receipt of a request for fair hearing from a practitioner entitled to the same, the Medical Director, or designee, shall schedule and arrange for such review. The hearing date shall be not less than thirty (30) days nor more than sixty (60) days from the date of receipt of the request for hearing, unless the practitioner in writing requests and the Medical Director, or designee, agrees to an earlier date.
- B. The notice of the hearing shall state the time, place and date of the hearing, the names of the individuals chosen to serve on the Hearing Committee, a list of witnesses who may testify on behalf of the Credentials

Committee, and shall contain a short and plain statement of the basis for the adverse action which identifies acts, omissions or transactions with which the practitioner is charged and, when appropriate, identifies other reasons or subject matter which justify the adverse decision. A copy of all material, favorable or unfavorable, which was considered in making the adverse decision will be furnished upon request by the practitioner, or his/her representative.

- C. Any objection to the Hearing Committee appointees shall be submitted by the practitioner or his/her representative, specifying grounds therefore, in writing, by certified mail to the Medical Director, or designee, within ten (10) days after receipt of notice of the hearing, otherwise committee shall stand as appointed.
- D. At least ten (10) days prior to the hearing, each party shall furnish to the other a written list of the names and addresses of individuals that party intends to call as witnesses at the hearing. Each party shall update its witness list if and when additional witnesses are identified at least two (2) days prior to hearing, and neither party shall call witnesses not named in advance except in rebuttal.

#### COMPOSITION OF HEARING COMMITTEE

- A. When fair hearing relates to an adverse decision of the Credentials Committee, such shall be conducted by a designated committee consisting of at least three (3), but not more than five appointees, one of whom shall be designated as chairperson.
- B. No appointee may be in direct economic competition with the practitioner.
- C. No appointee may be an individual who requested corrective action or served on the Credentials Committee, which made the adverse decision.
- D. All appointees of the Hearing Committee shall sign a Confidentiality Agreement prior to receipt of any information regarding the practitioner to be reviewed.
- E. The Medical Director, or designee, shall appoint at least one representative (attorney or non-attorney) to represent the Credentials Committee at the hearing. The representative shall present facts in support of the adverse decision and examine witnesses.

#### CONDUCT OF HEARING

- A. There shall be at least three (3) members of the Hearing Committee present when the review takes place and no member may vote by proxy.
- B. An accurate record of the hearing must be kept. The mechanism, e.g., court reporter, electronic recording unit, detailed transcription or minutes, shall be established by the Medical Director, or designee.
- C. The personal presence of the practitioner for whom the hearing has been scheduled shall be required. A practitioner who fails without good cause to appear and proceed at such hearing shall be deemed to have waived his/her rights and to have accepted the adverse decision involved, and the same shall thereupon become and remain in effect.
- D. Extension or acceleration of any time limits in the hearing process must be mutually agreed between the Medical Director, or designee, and the

- practitioner to be reviewed. Requests for postponement of a review shall be granted only upon a showing of good cause. A review shall be postponed no more than two (2) times.
- E. The Chairperson of the Hearing Committee, shall preside over the hearing to determine the order of procedure during the hearing, to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence, to maintain decorum at the hearing, to make all rulings on matters of law, procedure and considerations of evidence, and to vote on any final recommendations or other matters brought to a vote. The Chairperson may order that oral evidence be taken only under oath/affirmation.
  - F. The use of a Hearing Officer to preside at a hearing in place of the Chairperson is optional. The use and appointment of a Hearing Officer shall be determined by the Medical Director or designee. A Hearing Officer may or may not be an attorney, but must be experienced in conducting hearings. The Hearing Officer shall act in an impartial manner as the presiding officer of the hearing. If requested by the Hearing Committee, the Hearing Officer may participate in its deliberations and act as its advisor, but shall not be entitled to vote.
  - G. The hearing process should not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. The hearing process should not be judicial in form, but rather a forum for professional evaluation and discussion. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be considered, regardless of the existence of any common law or statutory rule that might make evidence inadmissible over objection in civil or criminal action.
  - H. The practitioner or his/her representative, and the representative appointed by the Medical Director, or designee, shall be entitled to submit either prior to or during the hearing, memoranda concerning any issue of procedure or of fact and such memoranda shall become a part of the hearing record. In reaching a decision, the Hearing Committee may take notice of any generally accepted technical or scientific matter relating to the issues under consideration at the hearing and of any facts which may be judicially noticed by the Wisconsin courts.
  - I. Both the practitioner and the Credentials Committee representative must be given the opportunity to call, examine and cross examine witnesses, introduce exhibits and present relevant evidence, question witnesses on matters relevant to the issues, impeach any witness, rebut any evidence, and submit a written statement at the close of the review.
  - J. If the practitioner does not testify, he/she may be called and examined by the Credentials Committee representative as if he/she were being cross-examined (i.e. asking leading questions).
  - K. Witness statements may be distributed at the review. Individuals who gave witness statements should be available by phone, or in person, for questioning by the practitioner or Credentials Committee representative. Witnesses who are not identified at least two (2) days prior to the hearing can only testify as rebuttal witnesses. Witness statements shall become part of the record of the hearing.
  - L. The Credentials Committee representative presents evidence in support of the adverse decision first. The practitioner presents evidence to

challenge the adverse decision second by an appropriate showing that the charges or grounds involved lack any factual basis or any action based thereon is arbitrary, unreasonable or capricious. The burden of proof shall at all times remain with the practitioner.

- M. The Hearing Committee shall be entitled to consider any pertinent material contained in the practitioner's credential or peer review files and all other information that can and may be considered in connection with credentialing/recredentialing and continued participation as a practitioner for Network Health Plan/Network Health Insurance Corporation. The Hearing Committee shall be entitled to conduct independent review, research and interviews, but may utilize the products of this in its decision only if the parties are aware of and have the opportunity to rebut any information gathered.
- N. A Case Summary of Events, from both parties, to include all the facts of the case and any witness statements, may be requested by the Hearing Committee and is to be submitted to the Hearing Committee and both parties at least two (2) business days prior to the hearing. Notice of the request to submit a Case Summary of Events must be sent to all parties not less than ten (10) days prior to the hearing. Failure to submit a Case Summary of Events when requested constitutes a waiver of the party's case.
- O. The Hearing Committee is required to consider and decide the case objectively and in good faith. The Hearing Committee may, without special notice, recess the review and reconvene the same for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Recesses cannot extend the time within which an action is required to be taken under the hearing process without express consent of both parties. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee shall conduct its deliberations outside the presence of the parties at a time convenient to itself.
- P. Within ten (10) days after the Hearing Committee concludes its deliberations, the Hearing Committee shall make written report and recommendation. All findings and recommendations must be supported by reference to the review record and other documentation which was considered. The Hearing Committee shall forward the written report and recommendation, the review record and all other documentation to the Medical Director, or designee. The Medical Director, or designee, shall also transmit a copy of report and recommendations to the affected practitioner, delivered by certified mail, return receipt requested. The report may recommend confirmation, modification, or rejection of the original adverse decision of the Credentials Committee.

#### REVIEW OF HEARING REPORT AND RECOMMENDATION

- A. Within thirty (30) days after receipt of the report of the Hearing Committee, the Medical Director, or designee, shall present the written report and recommendation to the Credentials Committee, at which time the Credentials Committee shall consider the report and recommendation and affirm, modify, or reverse its decision.

- B. If the Credentials Committee's decision, after consideration of written report and recommendation made by the Hearing Committee, is favorable to the practitioner, the decision shall become the final decision. The Medical Director, or designee, shall notify the practitioner, in writing by certified mail, return receipt requested, of the final decision of the Credentials Committee.
- C. If the decision of the Credentials Committee is or remains adverse to the practitioner, the affected practitioner shall have the right to request an appellate review by the Network Health Plan/Network Health Insurance Corporation Board of Directors. The Medical Director, or designee, shall notify the practitioner, in writing by certified mail, return receipt requested of the adverse decision and that the practitioner has a right to request an appellate review by the Network Health Plan/Network Health Insurance Corporation Board of Directors.

#### REQUESTING AN APPELLATE REVIEW

- A. Within ten (10) days of receipt of an adverse decision by the Credentials Committee, after consideration of the written report and recommendation made by the Hearing Committee, the Medical Director, or designee, shall give written notice to the affected practitioner by certified mail, receipt requested, of the decision and the basis therefore and the practitioner right to an appellate review. The notice shall:
  - 1. Advise the practitioner of the decision and the basis therefore.
  - 2. Specify that the practitioner shall have fifteen (15) days to file a written request for an appellate review. Such request shall be sent by certified mail and may include a request for a copy of the record of the hearing and all other material that was considered in reaching the adverse result, if not previously forwarded.
  - 3. Advise the practitioner of his/her right to be represented at the review by an attorney or by any other individual chosen by the practitioner. The practitioner shall include in the request for an appellate review the name, address and phone number of such representative, and if representative is not an attorney, the occupation of such representative. The practitioner shall be advised that if he/she fails to notify the Medical Director, or designee, in the request for an appellate review that he/she desires to be represented by an attorney/other individual, he/she shall be deemed to have waived the right to be so represented.
  - 4. State that upon completion of the appellate review, the practitioner shall receive a copy of the written report and decision of the NHP/NHIC Board of Directors, including a statement of the basis of the decision.
  - 5. State that failure to request an appellate review within fifteen (15) days shall constitute a waiver of the practitioner's right to the review and the decision of the Credentials Committee shall become final.
- B. Within fifteen (15) days of the date of final adverse decision, as defined above, the Medical Director, or designee, shall file a report with the State of Wisconsin Department of Regulation and Licensing, the National

Practitioner Data Bank and the Healthcare Integrity Data Bank, whenever reporting is required by law.

#### SCHEDULING AND NOTICE OF APPELLATE REVIEW

- A. Upon receipt of a timely request for an appellate review, the Medical Director, or designee, shall deliver the request to the Chairperson of the NHP/NHIC Board of Directors.
- B. Within ten (10) days after receipt of request, the Chairperson, or designee, shall schedule and arrange for an appellate review. The appellate review shall be scheduled as soon as the arrangements for it can be reasonably made, but not later than thirty-five (35) days from the date the Medical Director received the request from the practitioner for an appellate review.
- C. At least twenty (20) days prior to the scheduled appellate review date, the practitioner shall receive notice of the time, place, and date of the review by certified mail, receipt requested. If review is scheduled in less than 20 days from receipt of request for an appellate review, the practitioner shall be notified by telephone of the time, place and date of the review as soon as arrangements have been made. The telephone conversation shall be documented. A letter confirming the date, time and place shall also be sent to the practitioner by certified mail, receipt requested.
- D. The time of the appellate review may be extended by the Chairperson of the NHP/NHIC Board of Directors for good cause.
- E. The appellate review may be held during a regularly scheduled NHP/NHIC Board of Directors meeting.

#### COMPOSITION OF APPELLATE REVIEW COMMITTEE

- A. The NHP/NHIC Board of Directors shall determine whether the appellate review shall be conducted by the Board as a whole or as a subcommittee composed of three (3) to five (5) members of the Board. Subcommittee members shall be appointed by the Chairperson of the Board, one (1) member shall be designated as chairperson and the subcommittee would represent the Board as a whole. The subcommittee will be identified as the Appellate Review Committee.

#### CONDUCT OF APPELLATE REVIEW

- A. The proceedings by the Board/Appellate Review Committee shall not be a new or additional hearing, but shall be in the nature of an appellate review based upon the Credentials Committee's decision, materials and documents presented at the time of the hearing, the record of the hearing, and all subsequent results and actions.
- B. The practitioner seeking review shall submit a written statement detailing those findings of fact, conclusions and procedural matters with which he/she disagrees, and the reasons for such disagreement, to include any matters raised at any step in the hearing process. The statement shall be submitted to the Board/Appellate Review Committee through the Chairperson of the Board at least ten (10) days prior to the scheduled

- date of the appellate review. If the statement is not submitted by the practitioner at least 10 days prior to the scheduled date of the appellate review, the Credentials Committee's decision shall be upheld. A written statement may be submitted by the Credentials Committee, as appropriate, and if submitted, the Chairperson of the Board shall provide a copy thereof to the practitioner at least three (3) days prior to the scheduled date of the appellate review. The Board/Appellate Review Committee shall consider the written statements of the practitioner and, if submitted, of the Credentials Committee as part of their review.
- C. The Chairperson of the Board/Appellate Review Committee shall be the presiding officer and shall determine the order of the procedure during the review, make all required rulings, maintain decorum, and vote on any final decisions or other matters brought to a vote.
  - D. The Board/Appellate Review Committee, in its sole discretion, may allow the parties or their representatives to personally appear and make oral statements in favor of their positions. Any party or representative so appearing shall be required to answer questions directed to him/her by any member of the Board/Appellate Review Committee. The proceedings are closed at the conclusion of oral statements.
  - E. New or additional matters or evidence not raised or presented during the original hearing or in the hearing report, and not otherwise reflected in the record, shall be introduced at the appellate review only under unusual circumstances. The Board/Appellate Review Committee, in its sole discretion, shall determine whether the new matters or evidence shall be considered or accepted. The party requesting the consideration of new matters or evidence shall explain the reasons for not presenting it earlier during the hearing process.
  - F. The Board/Appellate Review Committee shall have all the powers granted to the Hearing Committee, and those additional powers as are reasonable appropriate to the discharge of its responsibilities.
  - G. There shall be at least three (3) members of the Board/Appellate Review Committee present when the review takes place and no member may vote by proxy. If a member is absent from any significant part of the proceedings, he/she shall not be permitted to participate in the deliberations or the decision.
  - H. The Board/Appellate Review Committee may recess the review proceedings and reconvene the same without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Recesses cannot exceed the time within which an action is required to be taken under the appellate review process without express consent of both parties.
  - I. Upon the conclusion of oral statements, if allowed by the Board/Appellate Review Committee, the appellate review shall be closed. The Board/Appellate Review Committee shall conduct its deliberations outside the presence of the parties at a time convenient to itself.
  - J. At their sole discretion, the Board/Appellate Review Committee may refer the matter back to the Hearing Committee for further review and require a recommendation to be returned to the Board/Appellate Review Committee within twenty (20) days in accordance with the Board/Appellate Review Committee's instructions. Any written report following referral shall be shared with the practitioner.

- K. Within ten (10) days after closing of deliberations or after receipt of the Hearing Committee's recommendation, the Board/Appellate Review Committee shall render its final decision to affirm, modify or reverse the adverse action of the Credentials Committee in writing and shall send notice of the final decision to the affected practitioner by certified mail, return receipt requested.
- L. If the final decision is adverse, the Chairperson of the NHP/NHIC Board of Directors, or designee, shall file a report, within fifteen (15) days of the date of final adverse decision, with the State of Wisconsin Department of Regulation and Licensing, the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank, whenever reporting is required by law.

### GENERAL PROVISIONS

- A. No practitioner shall be entitled as a right to more than one evidentiary hearing and appellate review on any matter that shall have been the subject of action by the Credentials Committee and/or Network Health Plan/Network Health Insurance Corporation Board of Directors.
- B. If at any time after receipt of notice of an adverse recommendation, action or result, a practitioner fails to make request for hearing/appellate review or to personally appear, or otherwise fails to comply with the hearing or appellate review process, he/she shall be deemed to have consented to the adverse decision and to have voluntarily waived all rights to which he/she otherwise have been entitled to under the hearing/appellate review process with respect to the matter involved.
- C. By requesting a hearing or appellate review, a practitioner agrees to be bound by the provisions of the Fair Hearing and Appellate Review Process in all matters relating thereto.
- D. Any time limits set forth in Fair Hearing and Appellate Review Process may be extended or accelerated by mutual agreement of the practitioner and the Medical Director or Chairperson of the NHP/NHIC Board of Directors. The time period specified in the Fair Hearing and Appellate Review Process are to guide those bodies in accomplishing their tasks and shall not be deemed to create any right for reversal of the adverse decision if the hearing process or appellate review is not completed within the time periods specified.
- E. Technical or insignificant deviations from the procedures set forth in the Fair Hearing and Appellate Review Process shall not be grounds for invalidating the action taken.
- F. Any practitioner who incurs legal fees in his/her behalf shall be solely responsible for payment thereof.