

**Policy Title:** Health Home Notice of Determination and Fair Hearing Policy

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**Approved By:** Miranda Blakeslee

**Applicable to:** Health Homes Serving Adults (HHS)

**Purpose:** To inform Care Management Agencies (CMA) and Care Managers (CM) of policies and procedures for issuing notices and participating in the Fair Hearing process.

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## Definitions

**Adequate Notice** - Notice issued that meets the specifications of 18 NYCRR § 358- 2.22; adequate notice is given when an application for Health Home (HH) enrollment is accepted or denied.

**Aid Continuing** - The right of a Health Home (HH) enrollee to have services continue until the Decision After Fair Hearing is issued; Aid Continuing directives are issued by the Office of Temporary and Disability Assistance (OTDA).

**Agency Conference** - An informal meeting that may be requested by the member in addition to requesting a Fair Hearing in which the member may submit additional information in support of their disagreement with the determination on enrollment or continued enrollment in the NYS Health Home (HH) Program.

**Effective Date** - the date in which the Health Home will act as described in the Notice of Decision/Determination (see Definition for Timely Notice).

**Evidence Packet** - Documentation supporting enrollment/disenrollment determinations can include and is not limited to: the signed consent form; the updated Plan of Care (POC); care record notes; appropriateness; eligibility assessments, documentation and medical documentation; written summary of the case; the applicable Health Home policy(s) governing the program; and, a copy of the notice being challenged.

**Fair Hearing** - A proceeding before an Administrative Law Judge that provides an opportunity for a member and the agency to present evidence in support of a determination that the member does not agree with.

**Fair Hearing Notice** - Notifications sent from Office of Temporary and Disability Assistance (OTDA) to the Department which identify when a Health Home (HH) member requests a Fair Hearing and all subsequent activities to include, date Fair Hearing is scheduled for, request for reschedule of the Fair Hearing date, Decision After Fair Hearing, etc.

**Member/Participant** - The individual enrolled in the Health Home program. The term includes the parent, guardian, legal authorized representative of the member, as applicable. These terms can be used interchangeably.

**Notice Date** - The date the Notice of Determination is issued.

**Notice of Determination/Notice of Decision** - A written notice to a member or potential member of the Health Home's (HH) determination of eligibility for enrollment in or disenrollment from the NYS Health Home Program.

**Quality Management Program (QMP)** - a proactive approach that evaluates the ability of Health Homes (HH) and Care Management Agencies to provide services to members and its impact and drives improvement in quality and effectiveness of these services. The key elements of a Quality Management Program (QMP) are Quality Assurance and Performance Improvement, processes undertaken by a HH to assess its performance in assuring care is maintained at acceptable levels in relation to specifications of standards for service quality and outcomes. Through continuous study, problems are identified, and corrections can be made to improve processes in care management service delivery to support member quality of life.

**Successful Completion** – Occurs when a member has met all of the goals in the Plan of Care and no longer meets the appropriateness criteria for continued participation in the Health Home (HH) or Children’s Waiver HCBS.

**Timely Notice** – Per 18 NYCRR § 358-2.23, a timely notice is one that is mailed at least ten (10) calendar days before the date upon which the proposed negative action is to become effective.

## Policy

Health Homes Serving Adults (HNSA) are required to establish and maintain policies and procedures to notify members/potential members of their Fair Hearing rights, and their right to participate in the Fair Hearing process if a Health Home (HH) member requests a Fair Hearing challenging enrollment, denial of enrollment, or disenrollment from the Health Home (HH).

In addition, Health Home (HH) will have clear and focused training on Medicaid notice requirements and will be required to maintain a Quality Management Program to ensure compliance with specified requirements. Care managers and providers will understand and follow the process for Fair Hearings including who to contact in the event the member/potential member is interested in pursuing a Fair Hearing. Care Management Agencies (CMA) will review the Notice of Decision form in its entirety, including Fair Hearing rights within the Notice of Determination/Decision document, with the member and their family.

## Procedure

### Health Home and Care Management Agency Responsibilities

A Health Home:

- ensures that the Care Management Agency (CMA) has a procedure in place to immediately notify members or potential members and/or their parent/caretaker/guardian/ legally authorized representative upon enrollment, denial of enrollment, or disenrollment from the HH;
- issues the appropriate notice of determination/notice of decision as follows:
  - adequate notice of a determination/notice of decision to accept or deny an application for enrollment, within **five (5) calendar days** of determination or,
  - timely and adequate notice of a disenrollment within **five (5) calendar days** of determination;
- ensures that the Care Management Agency (CMA) maintains a copy of such notice in the member’s record;
- holds an informal Agency Conference with the member and their representative upon request of the member and/or their parent/caretaker/guardian/legally authorized representative;
- maintains well documented evidence to support enrollment/disenrollment determinations when a Fair Hearing is scheduled as outlined in the Definition Section under Evidence Packet;
- provides a copy of the Evidence Packet and other documents for the Fair Hearing to the member or their legally authorized representative upon their request, at no cost;
- attends the Fair Hearing, be familiar with the case, and have the authority to make binding decisions at the hearing including the authority to withdraw the decision; and,

- complies with the Decision after Fair Hearing as to enrollment in or disenrollment from the New York State Health Home (HH) Program.

## Notices Used for Health Homes Serving Adults

The Department of Health has developed three notices for HHSa to use to advise a HH member or a potential Health Home (HH) member and/or their parent/caretaker/guardian/legally authorized representative, of the HH determination on eligibility for enrollment in, continued enrollment, or disenrollment from the HH program.

The Notices of Determination/Notices of Decision inform the individual of the decision being made, the reason for the decision, their right to a Fair Hearing, how to request a Fair Hearing, their right to access their HH file and copies of documents in the case record, their right to Aid Continuing in certain circumstances, and their right to have an Informal Agency Conference with the HH and CMA.

### Notice of Determination for Enrollment in the Health Home Program (DOH-5234)

[The Notice of Determination for Enrollment into the Health Home Program \(DOH 5234\)](#) notifies the member and/or their parent, legal guardian, or legally authorized representative of their Health Home (HH) enrollment and the commencement of care management services. The notice is mailed to the member along with the Health Home Welcome Letter within five (5) calendar days from the Determination for Enrollment into the Health Home Program.

### Notice of Determination for Disenrollment from the Health Home Program (DOH-5235)

If a determination is made to disenroll a HH member or upon a member's successful completion of the HH program, timely and adequate notice by means of the [Notice of Determination for Disenrollment from the Health Home Program \(DOH 5235\)](#) is required before the HH can take any action.

To meet **timely notice** requirements, it is required that notice be mailed or sent to the member at least 10 (ten) business days before the date upon which the proposed action is to become effective. Adequate notice and requirements are outlined in 18 NYCRR § 358-3.3.

**Please note:** The HH cannot make any programmatic changes until at least ten (10) business days after the Notice of Decision was mailed (refer to 18 CRRNY 358-2.23).

If the ten (10) business days carry over into the following month, then the disenrollment date is identified and written as the last day of that following month. Any Health Home Care Management (HHCM) core services conducted during this time are billable. For example:

Notice is mailed or sent June 25th. The ten (10) business day period ends July 8th. The disenrollment date is July 31<sup>st</sup>. Health Home Care Management (HHCM) core services conducted and meeting requirements in June and July are billable.

Business days will be considered Monday through Friday and will not include Federal Holidays. For example: Notice is mailed or sent December 18<sup>th</sup>. Programmatic changes cannot occur until January 3<sup>rd</sup>.

**NOTE:** Fair Hearing rights are not to be offered when a member voluntarily discontinues HH services. In such cases, no Notice of Decision/Determination is provided to the member. The HH would ensure written notification of disenrollment is issued to the member as per the Member Disenrollment policy BCHN004.

### Notice of Determination for Denial of Enrollment in the Health Home Program (DOH-5236)

During the enrollment process, the individual's eligibility for HH enrollment is verified, including proper Medicaid coverage, HH eligibility, and appropriateness criteria. If they are found ineligible for enrollment, HH issue the [Notice of Determination for Denial of Enrollment into the Health Home Program \(DOH 5236\)](#) to the individual. The notice will be mailed to the individual within **five (5) calendar days** from the Determination of Denial of Enrollment to inform the individual that they did not meet the eligibility criteria for enrollment into the HH program and the reason for denial of enrollment.

Refer to the [Appropriateness Codes and Criteria](#) chart used for initial eligibility which describes the criteria codes and any associated timelines.

### The Fair Hearing Process

The member has sixty **(60) calendar days from the date of the Notice of Determination/ Notice of Decision to request a Fair Hearing** from the Office of Temporary and Disability Assistance (OTDA). When a Fair Hearing is requested, OTDA Office of Administrative Hearings (OAH) issues Acknowledgement of Fair Hearing Request form (OAH-4420), the Fair Hearing number assigned, and Confirmation of Aid Status. OTDA OAH will then issue Notice of Fair Hearing form (OAH-457) to the member, and the New York State Department of Health's - Health Home Team who sends the Fair Hearing notice to the Health Home (HH). This notice provides the Fair Hearing number that has been assigned by Office of Temporary and Disability Assistance (OTDA), as well as the date, time, and location of the hearing. The Notice of Fair Hearing form (OAH-457) will also indicate the Aid status and if the Health Home (HH is being directed to provide Aid Continuing, i.e., to continue providing services unchanged until the Decision After Fair Hearing Notice is issued.

The member has the right to be represented by legal counsel, a relative, a friend or other person, or to represent themselves at a Fair Hearing. At the hearing the member, their attorney, or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, the member has a right to bring witnesses to speak in their favor.

The Health Home (HH) and Care Management Agency (CMA) ensures that if needed, an appropriate representative of their agency to serve on their behalf, is present at the

Fair Hearing and attends the Fair Hearing on the scheduled date, time, and location directed on the Notice of Fair Hearing form (OAH-457). If the Health Home (HH) has a valid reason, they may request an adjournment by contacting Office of Temporary and Disability Assistance (OTDA), as listed within the Notice via phone, online or, in person at one of the two walk-in locations.

**PLEASE NOTE:** Simply needing more time may not be sufficient for the Office of Temporary and Disability Assistance (OTDA) to grant an adjournment.

Fair Hearings may be expedited, usually at the request of the member and/or their parent/caretaker/guardian/legally authorized representative, depending on the urgency of the issue(s), and may be held within three days or sooner.

### Aid Continuing

When a Notice of Determination/Decision is issued to the member, the member has the right to determine whether they want to request a Fair Hearing and whether the selection of Aid Continuing is right for them. If Office of Temporary and Disability Assistance (OTDA) orders Aid Continuing before the effective date stated in the notice, the member continues to receive Health Home Care Management services until the final outcome of the Fair Hearing is determined.

### Agency Conference

Pursuant to 18 NYCRR § 358-3.8, at any reasonable time prior to the Fair Hearing, the member can request an informal Agency Conference with the CMA and HH. If the member requests an Agency Conference, the CMA arranges for a meeting with the member and/or their representative or anyone they choose (friend, family, attorney, neighbor etc.) and allow the member to submit additional information and review the CMA/HH determination on enrollment or disenrollment from the HH Program.

The HH can withdraw its determination and enroll or re-enroll the member. If the HH decides to uphold its initial determination, the member will still be entitled to have the initial determination reviewed through the Fair Hearing process.

### Waiver of Appearance

Under certain circumstances and no later than **five (5) calendar days** before the hearing date, the Health Home (HH) may request a waiver of appearance from Office of Temporary and Disability Assistance's (OTDA). If Office of Temporary and Disability Assistance (OTDA) grants this request, the Health Home (HH) can submit a written Evidence Packet instead of appearing at the hearing location. Waiver requests will be reviewed and granted on a case-by-case basis. Blanket waivers of appearance will not be granted; however, if the agency contact does not receive a telephone call from the Office of Administrative Hearings (OAH) prior to the hearing date indicating otherwise, it will be presumed that a waiver has been granted. The waiver request contains the primary and back-up contact person's names and telephone number/s. The waiver request also contains the fair hearing number, date of hearing, and a summary of the specific facts relevant to the issue under review at the hearing. For proper inclusion in the fair hearing

record, the waiver request and Evidence Packet should be submitted immediately upon notification of the hearing request.

### Examination of Case Record – Providing Documentation Prior to Fair Hearing

Health Homes (HH) provide complete copies of its documentary evidence (Evidence Packet) to the Administrative Law Judge (ALJ). The Evidence Packet includes substantiation to support enrollment/disenrollment determinations made by the Health Home for success in defending its actions. Evidence Packets are sent via the Office of Temporary Disability Assistance's (OTDA) secure portal, [New York State Document Upload](#).

At any reasonable time prior to the Fair Hearing, the member and/or the member's authorized representative has the right to examine the contents of the member's case record. The Health Home (HH) provides copies of this Evidence Packet to the member and/or their authorized representative, upon request. If the member or their authorized representative needs additional documentation to prepare for the Fair Hearing, the Health Home (HH) will provide the requested documentation within a reasonable time prior to the fair hearing date. If the member's request is made less than five (5) business days before the hearing, the Health Home (HH) provides such copies no later than at the time of the hearing. Case file documents should be mailed only if the member specifically asks that they be mailed. If there is insufficient time for such documents to be mailed and received before the scheduled date of the Fair Hearing, the documents may be presented at the hearing instead of being mailed. Documents are provided without charge to the member and/or their legally authorized representative.

### Decision After Fair Hearing

When the Decision After Fair Hearing is issued, it is binding upon the Health Home (HH) to comply in accordance with 18 NYCRR § 358-6.4.

#### Decision in Favor of the Member

##### With Aid Continuing

If the Decision after Fair Hearing is in favor of the member, then services continue to be provided to the member and the Health Home continue to follow program policies.

##### Without Aid Continuing

If the Decision after Fair Hearing is in favor of the disenrolled member, the Department of Health (DOH) notifies the Health Home to open a new enrolled segment effective the first day of the month after which the Decision After Fair Hearing is received, and resume serving the member. In these instances, the existing consent remains valid. If the previous Plan of Care was completed within the last three hundred and sixty-five (365) days, it is still active. Initial appropriateness must be recorded within twenty-eight calendar (28) days of the new active segment (adults and children/youth). A new Continued Eligibility for Services (CES) Tool is

required three hundred and sixty-five (365) days after opening the new segment (adults).

**NOTE:** In instances when the decision after the Fair Hearing is in the member's favor but the reason for the Notice being issued to the member was due to lack of appropriateness criteria for continued Health Home (HH) enrollment, the Health Home (HH) notifies the DOH via the Health Home BML subject: Health Home Policy for guidance on next steps.

### Decision is not in Favor of the Member

#### With Aid Continuing

If the Decision after Fair Hearing is not in favor of the member, then the Health Home (HH) care manager notifies all involved professionals of the disenrollment from the Health Home program.

**NOTE:** since the final decision was made by the Administrative Law Judge (ALJ) a new Notice of Determination/Decision would not be issued.

#### Without Aid Continuing

If the Decision after Fair Hearing is not in favor of the disenrolled member, then the case remains closed, and documentation of the Fair Hearing decision is maintained in the member's record.

If the member does not feel the Health Home (HH) has complied with the Fair Hearing decision within a reasonable time after receiving the decision, the member may submit a Compliance Complaint to the Office of Temporary and Disability Assistance (OTDA) to be investigated.

Either party may request reconsideration of the Decision After Fair Hearing if the party feels there has been an error in law or fact. A request for reconsideration is sent to the OTDA Litigation Mailbox at: [litigationmail.hearings@OTDA.NY.GOV](mailto:litigationmail.hearings@OTDA.NY.GOV) or faxed to (518) 473-6735. While the reconsideration is under review, the Decision After Fair Hearing remains in effect. The Office of Temporary and Disability Assistance (OTDA) will notify the party of the result of its review, and if applicable, that it is correcting an error of law or fact in the decision, and/or reopening the hearing.

### Health Home (HH) and Health and Recovery Plans/HIV Special Needs Plans Home and Community Based Services for Adults

The Health and Recovery Plans (HARP) or Special Needs Plans (SNP) are responsible for issuing the determination regarding eligibility for Home and Community Based Services (Adults). Health Homes are to comply with requests from Health and Recovery Plans (HARP) or Special Needs Plans (SNP) to participate in the Fair Hearing.

### Training

The Health Home (HH) provides training on the Fair Hearing process, to include but not limited to:

- HH/CMA/CM roles and responsibilities

- Notices of Decision/Determination issued
- Agency Conferences
- Fair Hearing Requests
- Aid Continuing
- Disenrollment/Continued Enrollment procedures
- Documentation needed to support enrollment/disenrollment determinations
- Decision after Fair Hearing

The CMA are required to ensure all agency CM are knowledgeable and understand their role in the Fair Hearing Process.

## Quality Monitoring

The HH has a quality assurance process in place to ensure that Care Managers (CM) and Care Management Agencies (CMA) comply with HH policies and procedures. Quality indicators are to include, but are not limited to:

- The Health Home (HH) issued a correct and complete, timely and adequate notice to the member
- The Health Home (HH) tracks and monitors Fair Hearings requests filed against the
- Health Home (HH)/Care Management Agency (CMA):
  - Fair Hearing Request with Aid Continuing
  - Fair Hearing Request without Aid Continuing
- The Health Home followed protocol regarding member disenrollment or continued enrollment determinations
- The Health Home tracks the number of decisions after Fair Hearings:
  - in favor of the Health Home (HH)/ Care Management Agency (CMA)
  - in favor of the member
    - Reason for unfavorable decision
    - Are there similar issues that prompt a Fair Hearing that require technical assistance to the Care Management Agency (CMA)?
- The Health Home (HH) provided the Evidence Packet to the member and/or their authorized representative, upon their request.
- The Health Home (HH) provided additional information to the member and/or their authorized representative, upon their request.

## Relevant Statues and Standards

- 18 NYCRR Part 358
- §365-I NYS Social Services Law
- §2703 of the Patient Protection and Affordable Care Act (Pub. L. 111-148)
- §1945(h)(4) of the Social Security Act
- NYS State Plan Amendments #11-56, 12-10, 12-11 (Health Homes for Individuals with Chronic Conditions)
- NYS State Plan Amendment #15-0020 (Health Home Eligibility Criteria for Children)
- OTDA Office of Administrative Hearings (OAH) Procedures Transmittal #13-02,
- Waiver of Personal Appearance Instructions for Agencies
- MHY § 9.60 Assisted Outpatient Treatment.

## Supporting Policies and Resources

[The Notice of Determination for Enrollment into the Health Home Program \(DOH 5234\)](#)

[Notice of Determination for Disenrollment from the Health Home Program \(DOH 5235\)](#)

[Notice of Determination for Denial of Enrollment into the Health Home Program \(DOH 5236\)](#)

[Health Home Notices of Determination and Fair Hearing Policy #HH0004](#)

[New York State Document Upload](#)

[Office of Temporary and Disability Assistance \(OTDA\) – Fair Hearing](#)