

**ATTACHMENT D**  
**Grievances, Reconsiderations, Appeals and**  
**State Fair Hearings**

**1.0 Scope**

**1.1**

This Attachment details the contractual requirements for the Grievance, Reconsideration, Appeal and State Fair Hearing processes available to Members and Providers participating in KanCare, the Kansas Medical Assistance Program's managed care program. KanCare is administered through the Kansas Department of Health and Environment, Division of Health Care Finance (KDHE-DHCF), the single state Medicaid agency. The Grievance, Reconsideration, Appeal and State Fair Hearing processes together are known as the KanCare Grievance and Appeal System. The KanCare Grievance and Appeal System is the exclusive means of dispute resolution for Members and Providers submitting a Grievance, disputing an Adverse Benefit Determination or disputing an Action by a KanCare CONTRACTOR(S), as "Adverse Benefit Determination" and "Action" are defined in this Attachment.

**1.1.1**

The CONTRACTOR(S) shall develop, implement, and maintain a Member Grievance and Appeal System that complies with the requirements in applicable Federal and State laws and regulations including, but not limited to, the Code of Federal Regulations (CFR) at 42 CFR § 431.200, 42 CFR Part 438, Subpart F, "Grievance and Appeal System," Kansas Statutes Annotated (K.S.A.) 77-501 et seq., "Kansas Administrative Procedures Act" (KAPA), Kansas Administrative Regulations (K.A.R.), and applicable provisions of Kansas Statute 40-3228 relating to Grievance procedures.

**1.1.2**

The Member Grievance and Appeal System shall include a Grievance process, an Appeal process, and access to the State's Fair Hearing system. Any Grievance and Appeal System requirements apply to all three components of the Grievance and Appeal System, not just to the Grievance and Appeal process. The CONTRACTOR(S) shall inform the Member of its requirement for the Member to first complete the CONTRACTOR(S)' Member Appeal process through a standard or expedited appeal process before making a request for a State Fair Hearing. Failure to complete the Appeal process is a basis for dismissal of the Member's request for a State Fair Hearing. The CONTRACTOR(S)' Member Appeal process shall be consistent with other KanCare CONTRACTOR(S) and shall be the same for all Members. The CONTRACTOR(S) shall ensure that all Members are informed of the Member Grievance and Appeal System processes and timelines in writing via the Member Handbook and on its website. Modifications to the Member Grievance and Appeal System must be submitted for the State's approval prior to implementation and cannot supplant, delay or hinder the Grievance, Appeal, and State Fair Hearing process.

**1.1.3**

The CONTRACTOR(S) shall develop, implement, and maintain a Provider Grievance, Reconsideration, and Appeal System that complies with the requirements in applicable Federal and State laws and regulations including, Kansas Statute Annotated (K.S.A.) 77-501 et seq., "Kansas Administrative Procedures Act" (KAPA), and Kansas Administrative Regulations (K.A.R.).

**1.1.4**

The Provider Grievance and Appeal System shall include a Grievance process, an optional Reconsideration process, a required Appeal process, and access to the State's Fair Hearing System. Any Grievance and Appeal System requirements apply to all four components of the Grievance and Appeal System, not just to the Grievance and Appeal process. If a Participating Provider or an equivalently-treated Non-Participating Provider contests an Action by a CONTRACTOR(S), the CONTRACTOR(S) shall inform the Participating Provider or an equivalently-treated Non-Participating Provider of the optional Reconsideration process and the requirement to complete the Provider Appeal process before making a request for a State Fair Hearing. Failure to complete the Appeal process is a basis for dismissal of the Provider's request for a State Fair Hearing. The CONTRACTOR(S)' Provider Reconsideration process and

Appeal process shall be consistent with other KanCare CONTRACTOR(S) and shall be the same for all Providers with the exception of State-approved Provider contracts that contain timeframes that are different from those established in this Attachment. The CONTRACTOR(S) shall ensure that all Providers are informed of the Provider Grievance and Appeal System processes and timelines in writing and on its website. Modifications to the Provider Grievance and Appeal System must be submitted for the State's approval prior to implementation and cannot supplant, delay or hinder the Grievance, Reconsideration, Appeal, and State Fair Hearing process.

## **2.0 Definitions**

### **2.1**

*Action*, as in the case of a CONTRACTOR(S), is the denial, in whole or in part, of payment for a service to a Provider.

### **2.2**

*Adverse Benefit Determination* is defined in federal regulation 42 CFR § 438.400 as in the case of a CONTRACTOR(S) as related to a Member:

- (1) The denial or limited authorization of a requested service, including the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;
- (2) The reduction, suspension, or termination of a previously authorized service;
- (3) The denial, in whole or in part, of payment for a service;
- (4) The failure to provide services in a timely manner, as defined by the State;
- (5) The failure of a CONTRACTOR(S) to act within the timeframes provided in 42 CFR § 438.408(b)(1) and (2) regarding the standard resolution of Grievances and Appeals;
- (6) For a resident of a rural area with only one CONTRACTOR(S), the denial of a Member's request to exercise his/her right, under 42 CFR § 438.52(b)(2)(ii), to obtain services outside the network; or
- (7) The denial of a Member's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other Member financial liabilities.

### **2.3**

*Appeal* is defined as a request for a CONTRACTOR(S) to review an Adverse Benefit Determination, as "Adverse Benefit Determination" is defined in 42 CFR § 438.400, or an Action, as "Action" is defined in this Attachment.

### **2.4**

*Authorized Representative* is defined as any person or entity acting on behalf of the Member or Provider and with the written consent of the Member or Provider. A Provider may be an Authorized Representative of a Member.

### **2.5**

*Continuation of Benefits* is defined as the continuation of previously authorized services or course of treatment during the pendency of an Appeal or State Fair Hearing concerning an Adverse Benefit Determination terminating, suspending or reducing the Member's benefits from KanCare.

### **2.6**

*CONTRACTOR(S)* is defined as the MCO that has entered into a contract with the State to provide KanCare Covered Services to a Member.

### **2.7**

*Covered Services* means all Medicaid and CHIP services provided by a CONTRACTOR in any setting, including but not limited to medical care, behavioral health care, and long-term services and supports.

### **2.8**

*Equivalent Due Process Treatment* means treating Participating and Non-Participating Providers in an equivalent manner in terms of processing a Grievance, Reconsideration, Appeal or State Fair Hearing.

This does not include or apply to reimbursement differences between Participating and Non-Participating Providers.

## 2.9

*Expedited Appeal* is defined as the accelerated review process for Appeals when the CONTRACTOR(S) determines that taking the time for a standard resolution of the Appeal could seriously jeopardize the Member's life, physical or mental health, or ability to attain, maintain, or regain maximum function. See 42 CFR §§ 438.408 and 438.410.

## 2.10

*Expedited Appeal Request* is defined as a request by a Member or an Authorized Representative to use an accelerated review process for Appeals when the CONTRACTOR(S) determines that taking the time for a standard resolution of the Appeal could seriously jeopardize the Member's life, physical or mental health, or ability to attain, maintain, or regain maximum function. See 42 CFR §§ 438.408 and 438.410.

## 2.11

*Expedited State Fair Hearing* is defined as a State Fair Hearing, as defined in this Attachment, and in accordance with the accelerated timeframes and criteria as specified in 42 CFR §§ 431.224 and 431.244 and applicable State laws and regulations.

## 2.12

*Expedited State Fair Hearing Request* is defined as a request by a Member, or a request by an Authorized Representative, for a State Fair Hearing in which final administrative action is made as expeditiously as the Member's health condition requires and no later than three (3) business days after the Office of Administrative Hearings (OAH) receives from the CONTRACTOR(S) the case information for any Appeal of a denial of a service that meets the criteria for expedited resolution as set forth in 42 CFR § 438.410(a), but was not resolved within the timeframe for expedited resolution or was resolved within the timeframe for expedited resolution, but reached a decision wholly or partially adverse to the Member.

## 2.13

*Grievance* is defined as an expression of dissatisfaction about any matter other than an Adverse Benefit Determination, as "Adverse Benefit Determination" is defined in this Attachment, or an Action, as "Action" is defined in this Attachment. Possible subjects for Grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a Provider or employee, or failure to respect the Member's rights regardless of whether remedial action is requested. Grievance includes a Member's right to dispute an extension of time proposed by the CONTRACTOR(S) to make a Service Authorization decision.

## 2.14

*KDHE-DHCF* is defined as the Kansas Department of Health and Environment, Division of Health Care Finance. KDHE-DHCF is the single-state Medicaid Agency for Kansas and the State Agency responsible for the administration and management of the KanCare medical assistance program.

## 2.15

*Member* is defined as a Title XIX or Title XXI Beneficiary who has been certified by the State as eligible to enroll under this CONTRACT, and whose name appears on the CONTRACTOR enrollment information which the State will transmit to the CONTRACTOR every month in accordance with an established notification schedule.

## 2.16

*Non-Participating Provider* is defined as a Provider that has not entered into a provider agreement with the CONTRACTOR(S) or Subcontractor(s) to serve the Members.

## 2.17

*Notice of Action* is defined as a written document issued by a CONTRACTOR(S) to a Provider that provides notice of an Action and meets the format and timing requirements specified in this Attachment.

2.18

*Notice of Adverse Benefit Determination* is defined as a written document issued by a CONTRACTOR(S) to a Member that provides notice of an Adverse Benefit Determination and meets the requirements of 42 CFR § 438.404.

2.19

*Notice of Member Appeal Resolution* is defined as a written document issued by a CONTRACTOR(S) to a Member that provides notice of resolution of an Appeal of an Adverse Benefit Determination and meets the format requirements of 42 CFR § 438.408(d)(2) and timing requirements specified in this Attachment.

2.20

*Notice of Provider Appeal Resolution* is defined as a written document issued by a CONTRACTOR(S) to a Provider that provides notice of resolution of an Appeal of an Action and meets the format and timing requirements specified in this Attachment.

2.21

*Notice of Expedited Appeal Resolution* is defined as a written document issued by a CONTRACTOR(S) to a Member that provides notice of resolution of an Expedited Appeal of an Adverse Benefit Determination and meets the format requirements of 42 CFR § 438.408(d)(2) and timing requirements specified in this Attachment.

2.22

*Notice of Member Grievance Resolution* is defined as a written document issued by a CONTRACTOR(S) to a Member that provides notice of resolution of a Grievance and meets the format requirements of 42 CFR § 438.408(d)(1) and timing requirements specified in this Attachment.

2.23

*Notice of Provider Grievance Resolution* is defined as a written document issued by a CONTRACTOR(S) to a Provider that provides notice of resolution of a Grievance and meets the requirements specified in this Attachment.

2.24

*Notice of Provider Reconsideration Resolution* is defined as a written document issued by a CONTRACTOR(S) to a Provider that provides notice of resolution of a Reconsideration of an Action and meets the format and timing requirements specified in this Attachment.

2.25

*Participating Provider* is defined as any Provider that has entered into a provider agreement with CONTRACTOR(S) or Subcontractor(s) to serve Members and receives Medicaid or CHIP funding directly or indirectly to order, refer, or render Covered Services.

2.26

*Prior Authorization* means approval granted for payment purposes by the CONTRACTOR to a Provider to provide specified services to a specified Member.

2.27

*Provider* is defined as any individual or entity that is engaged in the delivery of Covered Services, or ordering or referring for those Covered Services, and is legally authorized to do so by the State in which it delivers the Covered Services. When used in this Attachment, Provider refers to both Participating and Non-Participating Providers.

2.28

*Reconsideration* is defined as a request by a Provider for a CONTRACTOR(S) to review an Action, as "Action" is defined in this Attachment.

2.29

*Send* means to deliver by mail or in electronic format as specified in 42 CFR § 431.201.

2.30

*Service Authorization* means the process of receiving written approval from the CONTRACTOR for specified Covered Services or products prior to the Covered Services or products being rendered.

2.31

*State* is defined as the State of Kansas, including, but not limited to, any entity or agency of the State.

2.32

*State Fair Hearing* is defined as an administrative hearing involving the presentation of evidence and argument before a presiding officer from the Kansas Office of Administrative Hearings concerning an Adverse Benefit Determination or an Action as “Adverse Benefit Determination” and “Action” are defined in this Attachment. The presiding officer will hear the matter, determine the result, and issue a decision.

2.33

*Subcontract* means any written agreement between the CONTRACTOR and Subcontractor.

2.34

*Subcontractor* is defined as an individual or entity with a Subcontract with a CONTRACTOR that relates directly or indirectly to the performance of the CONTRACTOR(S)' obligations under the contract. A Participating Provider is not a Subcontractor by virtue of a provider agreement with the CONTRACTOR.

2.35

*Waiver* is defined as a Home and Community Based waiver of Medicaid provisions for specified groups.

### **3.0 Principles**

#### **3.1 Continuation of Benefits for a Member:**

When a Member requests an Appeal or a State Fair Hearing concerning the termination, suspension or reduction of a previously authorized service, the Member may receive continuation of those previously authorized services or benefits during the pendency of the Appeal or State Fair Hearing. The timing and extent of the continued services or benefits shall follow the procedure described for Members in this Attachment.

#### **3.2 Equivalent Due Process Treatment of Participating and Non-Participating Provider:**

In dealing with Non-Participating Providers, the CONTRACTOR(S) may assume that the Non-Participating Provider seeks Equivalent Due Process Treatment as a Participating Provider when the Non-Participating Provider requests a review using the Provider Grievance, Provider Reconsideration, Provider Appeal and Provider State Fair Hearing processes.

#### **3.3 Reimbursement Is Not Included Under the Equivalent Due Process Treatment of Participating and Non-Participating Provider:**

To encourage a Provider to seek affiliation with a CONTRACTOR(S), the principle of Equivalent Due Process Treatment does not extend to reimbursement. A Participating Provider may be treated more favorably than a Non-Participating Provider in terms of payment of submitted claims.

#### **3.4 A Federally-Banned Provider:**

If a Participating Provider or a Non-Participating Provider is banned by federal authorities controlling the Medicaid or Medicare programs, that Provider shall be banned from participation in the KanCare and / or Kansas Medical Assistance Program. If the State notifies the CONTRACTOR(S) of such a ban concerning a Participating Provider, the CONTRACTOR(S) shall remove the Provider from the CONTRACTOR(S)' list of Participating Providers.

### **3.5 Computing Period of Time:**

In computing any period of time prescribed by this Attachment, the day from which the designated period of time begins to run shall not be included.

## **4.0 Member Grievances, Appeals and State Fair Hearings**

### **4.1 Member Grievance System**

The CONTRACTOR(S) shall establish a Grievance and Appeal System, including written policies and procedures that meet the following requirements:

#### **4.1.1**

Provides Members reasonable assistance in completing forms and other procedural steps, not limited to auxiliary aids and services upon request, such as providing interpreter services and a toll-free number with Teletypewriter/Telecommunications Device (TTY/TDD) and interpreter capability;

#### **4.1.2**

Acknowledges receipt of each Grievance;

#### **4.1.3**

Ensures that individuals who make decisions on Grievances are individuals:

##### **4.1.3.1**

Who were neither involved in previous levels of review or decision-making nor a subordinate of any such individual;

##### **4.1.3.2**

Who, if deciding any of the following, are individuals who have the appropriate clinical expertise, as determined by the State, in treating the Member's condition or disease if any of the following apply:

##### **4.1.3.2.1**

A Grievance regarding denial of expedited resolution of an Appeal;

##### **4.1.3.2.2**

Any Grievance involving clinical issues;

#### **4.1.4**

Provides the Grievance procedures and timeframes to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

#### **4.1.5**

Includes the Member's right to submit Grievances and their requirements and timeframes for filing;

#### **4.1.6**

Includes the availability of assistance in filing a Grievance;

#### **4.1.7**

Includes the toll-free number to submit oral Grievances;

#### **4.1.8**

Ensures the CONTRACTOR(S) maintains records of all Grievances received.

## **4.2 Member Grievance Process**

### **4.2.1**

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting and resolving Grievances by Members or their Authorized Representatives through the Grievance process administered by the CONTRACTOR(S) or a Subcontractor(s). The Grievance process shall ensure the following:

#### **4.2.1.1**

The Grievance process shall be the same for all Members;

#### **4.2.1.2**

The Member or Member's Authorized Representative may submit a Grievance either orally or in writing. The CONTRACTOR(S) cannot require a written form from the Member or Member's Authorized Representative for a Grievance;

#### **4.2.1.3**

A Member may submit a Grievance at any time;

#### **4.2.1.4**

The CONTRACTOR(S) shall acknowledge each oral or written Grievance received from a Member or their Authorized Representative in writing within ten (10) calendar days of receipt. For Grievances resolved the same day of receipt, the CONTRACTOR(S) is not required to issue an acknowledgement, but shall acknowledge receipt of the Grievance in the Notice of Member Grievance Resolution;

#### **4.2.1.5**

The CONTRACTOR(S) shall resolve each Grievance as expeditiously as the Member's health condition requires and not later than thirty (30) calendar days from the day the CONTRACTOR(S) receives the Grievance;

#### **4.2.1.6**

The CONTRACTOR(S) may extend the thirty (30) calendar day resolution period by up to fourteen (14) calendar days if the Member requests the extension or the CONTRACTOR(S) shows (to the satisfaction of the State agency, upon its request) that there is need for additional time to resolve the Grievance and how the delay is in the Member's interest. This request for additional time to resolve the Grievance shall be made two (2) business days in advance of the thirty (30) calendar day deadline to the State;

#### **4.2.1.7**

If the CONTRACTOR(S) extends the timeframe not at the request of the Member, the CONTRACTOR(S) shall issue a written notice to the Member with the reason for the decision to extend the timeframe within two (2) calendar days and make reasonable efforts to give the Member prompt oral notice of the delay. The CONTRACTOR(S) shall resolve the Grievance as expeditiously as the Member's health condition requires and no later than the date the extension expires. The written notice of the extension shall inform the Member of a right to file a Grievance if the Member disagrees with that decision to extend the timeframe;

#### **4.2.1.8**

The CONTRACTOR(S) shall resolve 98% of Grievances and provide a Notice of Member Grievance Resolution as specified in this Attachment within thirty (30) calendar days from the date the Grievance is received. If the Member's request was made orally or telephonically, the date of the oral or telephonic request shall be used as the start of this period. If the Member's request was made in writing, the date of receipt of the written request shall be used as the start of this resolution period;

#### **4.2.1.9**

The CONTRACTOR(S) shall resolve 100% of Grievances within sixty (60) calendar days from the date the Grievance is received and provide a Notice of Member Grievance Resolution as specified in this Attachment;

#### 4.2.1.10

Unless the State has granted a written extension as described above, the CONTRACTOR(S) is subject to remedies, including liquidated damages, if Member Grievances are not resolved and the Notice of Member Grievance Resolution is not sent to the Member by the timeframes indicated herein. See Attachment G;

#### 4.2.1.11

All notices containing the Member Grievance Resolution shall meet the requirements of 42 CFR § 438.408(d) and shall be in writing. It shall use easily understood language of no more than a 5.9 grade level and format, be available in alternative formats, and in an appropriate manner that takes into consideration those with special needs. The Notice of Member Grievance Resolution shall be available in the State-established prevalent non-English languages. All Members shall be informed that information is available in alternative formats and how to access those formats;

#### 4.2.1.12

The CONTRACTOR(S) shall also inform Members how to submit a Grievance directly with the State, once the Member has completed the CONTRACTOR(S)' Grievance process, if they are unable to obtain culturally appropriate care;

#### 4.2.1.13

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that Grievances are resolved in compliance with written policy and within the required timeframe. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in a Member's Grievance. The designated employee must have a significant role in monitoring, investigating and hearing Grievances. The CONTRACTOR(S) shall have a routine process to detect patterns of Grievances. Management, supervisory, and quality improvement staff shall be involved in developing policy and procedure improvements to address the Grievances.

#### 4.2.1.14

The CONTRACTOR(S)' Grievance procedures shall be provided to Members in writing and through oral interpretive services. A written description of the CONTRACTOR(S)' Grievance procedure shall be available in the prevalent non-English language identified by the State, at no more than a 5.9 or below grade reading level;

#### 4.2.1.15

The CONTRACTOR(S) shall include a written description of the Grievance process in the Member handbook and website. The CONTRACTOR(S) shall maintain and publish in the Member handbook and website at least one (1) toll-free telephone number with TTY/TDD and interpreter capabilities for filing Grievances;

#### 4.2.1.16

The CONTRACTOR(S)' Grievance process shall allow for electronic submission of Grievances and shall require that every Grievance received in person, by telephone, voice mail, e-mail or in writing from a Member or Member's Authorized Representative shall be acknowledged, recorded in a written record and logged with the following details:

##### 4.2.1.16.1

Date the Member or Member's Authorized Representative filed the Grievance;

##### 4.2.1.16.2

Identification of the individual filing the Grievance;

##### 4.2.1.16.3

Date received by the CONTRACTOR(S);



4.2.1.16.4

Date acknowledgement letter was sent;

4.2.1.16.5

Identification of the individual recording the Grievance;

4.2.1.16.6

Nature of the Grievance;

4.2.1.16.7

How the CONTRACTOR(S) resolved the Grievance;

4.2.1.16.8

Corrective action required;

4.2.1.16.9

Date resolved;

4.2.1.16.10

Date Notice of Member Grievance Resolution was sent to the Member;

4.2.1.17

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Member or Authorized Representative for making a Grievance;

4.2.1.18

If the Member makes a request for disenrollment, the CONTRACTOR(S) must give the Member information on the disenrollment process and direct the Member to the State's fiscal agent. If the request for disenrollment includes a Grievance by the Member, the Grievance will be processed separately from the disenrollment request, through the Grievance process;

4.2.1.19

The CONTRACTOR(S) shall cooperate with the State's fiscal agent and the State or designees of either to resolve all Member Grievances. Such cooperation may include, but is not limited to, providing internal Member Grievance information or assistance to the State or internal CONTRACTOR(S) Grievance committees.

**4.2.2 Timeframe for Issuance of Notice of Member Grievance Resolution**

4.2.2.1

The CONTRACTOR(S) shall send the Notice of Member Grievance Resolution to the Member or Authorized Representative within three (3) calendar days following the date of resolution of the Grievance.

**4.3 Notice of Adverse Benefit Determination for Members**

**4.3.1 Notice of Adverse Benefit Determination System for Members**

The CONTRACTOR(S) shall develop, implement, and maintain a system for issuing a notice to a Member for an Adverse Benefit Determination, as that term is defined by this Attachment, made by the CONTRACTOR(S) against the Member. The CONTRACTOR(S) shall issue a Notice of Adverse Benefit Determination notifying the Member, in accordance with Kansas statutes and federal regulations, when the CONTRACTOR(S) issues an Adverse Benefit Determination to the Member. The Notice of an Adverse Benefit Determination shall meet the requirements of 42 CFR § 438.404 and shall be in writing. It shall use easily understood language of no more than a 5.9 grade level and format, be available in alternative formats, and in an appropriate manner that takes into consideration those with special needs. The Notice of Adverse Benefit Determination shall be available in the State-established prevalent non-English languages. All Members shall be informed that information is available in alternative formats and how to access those

formats. The CONTRACTOR(S) shall notify the affected Provider and Member, in writing, of any decision by the CONTRACTOR(S) to deny a Service Authorization request, to authorize a service in an amount, duration or scope that is less than requested or to terminate, suspend or reduce previously authorized services.

#### **4.3.2 Content of Notice of Adverse Benefit Determination for Members**

##### **4.3.2.1**

The CONTRACTOR(S)' notice to the Member shall, at a minimum, include any information required by Kansas statute that relates to a CONTRACTOR(S)' Notice of Adverse Benefit Determination and any information required by 42 CFR § 438.404, including but not limited to:

##### **4.3.2.1.1**

Dates, types and amount of service requested (if the Adverse Benefit Determination pertains to a Service Authorization request);

##### **4.3.2.1.2**

Date of the Notice of Adverse Benefit Determination;

##### **4.3.2.1.3**

Date the Notice of Adverse Benefit Determination was sent;

##### **4.3.2.1.4**

Adverse Benefit Determination the CONTRACTOR(S) has made or intends to make;

##### **4.3.2.1.5**

Reasons for the Adverse Benefit Determination, including the right of the Member to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the Member's Adverse Benefit Determination. Such information includes medical necessity criteria, and any processes, strategies, or evidentiary standards used in setting coverage limits;

##### **4.3.2.1.6**

Date the Adverse Benefit Determination was made or will be made;

##### **4.3.2.1.7**

The Member's right to request an Appeal of the CONTRACTOR(S)' Adverse Benefit Determination, including information on exhausting the CONTRACTOR(S)'S one level of Appeal described at 42 CFR § 438.402(b) and the right to request a State Fair Hearing consistent with 42 CFR § 438.402(c);

##### **4.3.2.1.8**

If the Adverse Benefit Determination is based upon a statute, regulation, policy or procedure, the CONTRACTOR(S) shall provide the statute, regulation, policy or procedure supporting the Adverse Benefit Determination;

##### **4.3.2.1.9**

The circumstances under which an Appeal process can be expedited and how to request it;

##### **4.3.2.1.10**

An explanation of the Member's right to request an Appeal through the CONTRACTOR(S)' Appeal process immediately following receipt of the CONTRACTOR(S)' Notice of Adverse Benefit Determination. The explanation shall include the Member's right to request an Appeal within sixty (60) calendar days of the date of the Notice of Adverse Benefit Determination, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. The Notice of Adverse Benefit Determination shall include the address and contact information for submission of the Appeal;

#### 4.3.2.1.11

The procedures by which the Member may Appeal the CONTRACTOR(S)' Adverse Benefit Determination;

#### 4.3.2.1.12

The circumstances under which a Member may continue to receive benefits pending resolution of the Appeal or State Fair Hearing, the procedures by which the Member may request that benefits be continued, and the circumstances under which the Member may be required to pay the costs of these services;

#### 4.3.2.1.13

The Member's right to represent him/herself or be represented by an Authorized Representative when requesting an Appeal through the CONTRACTOR(S) or requesting a State Fair Hearing;

#### 4.3.2.1.14

A toll-free number that the Member can call to request the assistance of a Member representative, submit an Appeal, or request a State Fair Hearing;

#### 4.3.2.1.15

The specific change in Federal or State law that requires the Adverse Benefit Determination; and

#### 4.3.2.1.16

An explanation of the Member's right to a State Fair Hearing and the procedures by which the Member may request it, or in cases of an Adverse Benefit Determination based on a change in law, the circumstances under which a State Fair Hearing will be granted, if applicable.

### **4.3.3 Notice of Adverse Benefit Determination for Service Authorization Denials**

#### 4.3.3.1

The CONTRACTOR(S) shall notify the requesting Provider and give the Member written notice of any decision by the CONTRACTOR(S) to deny a Service Authorization request or to authorize a service in an amount, duration or scope that is less than requested. The notice must meet the requirements of 42 CFR § 438.404, except that the notice to the Provider need not be in writing.

### **4.3.3.2 Timeframe for Notice of Adverse Benefit Determination for Standard Service Authorization Denials**

#### 4.3.3.2.1

The CONTRACTOR(S) shall give written notice as expeditiously as the Member's health condition requires, which may not exceed fourteen (14) calendar days following receipt of the request for service, with a possible extension of up to fourteen (14) additional calendar days, if the Member or the Provider requests an extension or the CONTRACTOR(S) shows (to the satisfaction of the State agency, upon its request) that there is a need for additional information and how the extension is in the Member's interest;

#### 4.3.3.2.2

If the CONTRACTOR(S) extends the timeframe, the CONTRACTOR(S) shall give the Member written notice of the reason to extend the timeframe and inform the Member of the right to submit a Grievance if he or she disagrees with that decision, and issue and carry out its determination as expeditiously as the Member's health condition requires and no later than the date the extension expires.

### **4.3.3.3 Timeframe for Notice of Adverse Benefit Determination for Expedited Service Authorization Denials**

#### 4.3.3.3.1

For cases in which a Provider indicates, or the CONTRACTOR(S) determines, that following the standard timeframe could seriously jeopardize the Member's life, physical or mental health, or ability to attain, maintain, or regain maximum function, the CONTRACTOR(S) shall make an expedited authorization decision and provide written Notice of Adverse Benefit Determination as expeditiously as the Member's

health condition requires and no later than 72 hours after receipt of the request for service. The CONTRACTOR(S) may extend the 72 hour time period by up to fourteen (14) calendar days if the Member requests an extension, or if the CONTRACTOR(S) shows (to the satisfaction of the State agency, upon its request) a need for additional information and how the extension is in the Member's interest;

#### 4.3.3.3.2

If the CONTRACTOR(S) extends the timeframe, the CONTRACTOR(S) shall give the Member written notice of the reason to extend the timeframe and inform the Member of the right to submit a Grievance if he or she disagrees with that decision, and issue and carry out its determination as expeditiously as the Member's health condition requires and issue notice no later than the date the extension expires.

#### **4.3.3.4 Timeframe for Notice of Adverse Benefit Determination for Untimely Service Authorization Decisions**

##### 4.3.3.4.1

If Service Authorization decisions are not reached within the timeframes for either standard or expedited service authorizations, including extended timeframes, such untimely service authorizations constitute a denial and are Adverse Benefit Determinations. The CONTRACTOR(S) shall issue notice no later than the date that the timeframes expire.

#### **4.3.4 Notice of Adverse Benefit Determination for Termination, Suspension or Reduction of Services**

##### 4.3.4.1

The CONTRACTOR(S) shall notify the requesting Provider and give the Member written notice of any decision by the CONTRACTOR(S) to terminate, suspend or reduce previously authorized services. The CONTRACTOR(S) must issue the notice within the timeframes specified below. The notice must meet the requirements of 42 CFR § 438.404, except that the notice to the Provider need not be in writing.

#### **4.3.4.2 Timeframe for Notice of Adverse Benefit Determination for Termination, Suspension or Reduction of Services**

##### 4.3.4.2.1

The CONTRACTOR(S) shall send written notice at least ten (10) calendar days before the effective date of the Adverse Benefit Determination when the Adverse Benefit Determination is a termination, suspension, or reduction of previously authorized Covered Services, except:

##### 4.3.4.2.1.1

If the State has facts indicating that action should be taken because of probable fraud and abuse by the Member, and those facts have been verified, the period of advanced notice is shortened to five (5) calendar days before the date of Adverse Benefit Determination;

##### 4.3.4.2.1.2

If one of the following events occurs, the period of advanced notice is shortened to the day of the Adverse Benefit Determination:

##### 4.3.4.2.1.2.1

The State has factual information confirming the death of a Member;

##### 4.3.4.2.1.2.2

The State receives a signed written Member statement requesting service termination or giving information requiring termination or reduction of services (where the Member indicates that he/she understands that this shall be the result of supplying that information);

##### 4.3.4.2.1.2.3

The Member is admitted to an institution where he/she is ineligible for further services;

4.3.4.2.1.2.4

The Member's address is unknown and mail directed to him/her has no forwarding address;

4.3.4.2.1.2.5

The Member has been accepted for Medicaid services by another local jurisdiction;

4.3.4.2.1.2.6

The Member's physician prescribes the change in the level of care.

#### **4.4 Member Standard Appeals**

##### **4.4.1 Member Appeals System**

4.4.1.1

The CONTRACTOR(S) shall establish a Member Appeal System, including written policies and procedures that meet the following requirements:

4.4.1.1.1

Provides Members reasonable assistance in completing forms and other procedural steps, not limited to providing auxiliary aids and services upon request, such as interpreter services and a toll-free number with TTY/TDD and interpreter capability;

4.4.1.1.2

Acknowledges receipt of each Appeal;

4.4.1.1.3

Ensures that individuals who make decisions on Appeals are individuals:

4.4.1.1.3.1

Who were neither involved in previous levels of review or decision-making nor a subordinate of any such individual;

4.4.1.1.3.2

Who, if deciding any of the following, are individuals who have the appropriate clinical expertise in treating the Member's condition or disease if any of the following apply:

4.4.1.1.3.2.1

An Appeal of an Adverse Benefit Determination based on lack of medical necessity;

4.4.1.1.3.2.2

Any Appeal involving clinical issues;

4.4.1.1.3.3

Who take into account all comments, documents, records, and other information submitted by the Member or their Authorized Representative without regard to whether such information was submitted or considered in the initial Adverse Benefit Determination;

4.4.1.1.4

Provides that oral inquiries seeking to Appeal an Adverse Benefit Determination are treated as Appeals (to establish the earliest possible filing date for the Appeal) and must be confirmed in writing, unless the Member or Provider requests expedited resolution. The CONTRACTOR(S) must process an oral request for an Appeal if the written Appeal is not received;

4.4.1.1.5

Provides the Member a reasonable opportunity, in person and in writing, to present evidence and testimony and make legal and factual arguments. The CONTRACTOR(S) must inform the Member of the limited time

available for this sufficiently in advance of the resolution timeframe for Appeals as specified in 42 CFR § 438.408(b) and (c) in the case of expedited resolution;

#### 4.4.1.1.6

Provides the Member and his or her Authorized Representative the Member's case file, including medical records, other document and records, any new or additional evidence considered, relied upon, or generated by the CONTRACTOR(S) (or at the direction of the CONTRACTOR(S)) in connection with the Appeal of the Adverse Benefit Determination. This information must be provided free of charge and sufficiently in advance of the resolution timeframe for Appeals as specified in 42 CFR § 438.408(b) and (c);

#### 4.4.1.1.7

Includes as parties to the Appeal:

##### 4.4.1.1.7.1

The Member and his or her Authorized Representative; or

##### 4.4.1.1.7.2

The legal representative of a deceased Member's estate;

#### 4.4.1 1.8

Provides the Appeal procedures and timeframes to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

#### 4.4.1.1.9

Includes the Member's right to submit Appeals and their requirements and timeframes for filing;

#### 4.4.1.1.10

Includes the availability of assistance in filing;

#### 4.4.1.1.11

Includes the toll-free number to submit oral Appeals;

#### 4.4.1.1.12

Includes the Member's right to request Continuation of Benefits as defined in 42 CFR § 438.420(b)(1) and this Attachment during an Appeal or State Fair Hearing, and whether the Member may be liable for the cost of any continued benefits if the CONTRACTOR(S)'s Adverse Benefit Determination is upheld in a State Fair Hearing;

#### 4.4.1.1.13

Ensures the CONTRACTOR(S) maintains records of all Appeals received.

### 4.4.2 **Member Appeals Process**

#### 4.4.2.1

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting and resolving Appeals by Members or their Authorized Representatives through the Appeal process administered by the CONTRACTOR(S) or a Subcontractor(s). The Appeal process shall ensure the following:

##### 4.4.2.1.1

The Appeal procedure shall be the same for all Members;

##### 4.4.2.1.2

The Member or Member's Authorized Representative may submit an Appeal either orally or in writing. The CONTRACTOR(S) cannot require a written form from the Member or Member's Authorized Representative for an Appeal. An oral Appeal must be followed with a written Appeal unless an expedited Appeal is

requested. The CONTRACTOR(S) must process an oral request for an Appeal if the written Appeal is not received;

#### 4.4.2.1.3

When a Member or his/her Authorized Representative requests review of an Adverse Benefit Determination either orally or in writing, the CONTRACTOR(S) shall regard this as a request to Appeal an Adverse Benefit Determination;

#### 4.4.2.1.4

The timeframe within which a Member or Member's Authorized Representative must submit a request for an Appeal with the CONTRACTOR(S) shall be sixty (60) calendar days from the date of the Notice of the Adverse Benefit Determination, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent;

#### 4.4.2.1.5

The CONTRACTOR(S) shall acknowledge each oral or written Appeal received from a Member or their Authorized Representative in writing within five (5) calendar days of the earliest request for an Appeal. If the Member's request was made orally or telephonically, the date of the oral or telephonic request shall be used as the start of this period. If the Member's request was made in writing, the date of receipt of the written request shall be used as the start of this period. The CONTRACTOR(S), in its acknowledgement, may request the Member to sign a written Appeal form if the original request was made orally or telephonically. A Member's refusal or failure to return a written or signed Appeal form cannot be used as a basis for the CONTRACTOR(S)' refusal to process the Appeal. For Expedited Appeal Requests, the CONTRACTOR(S) is not required to issue an acknowledgement, but shall acknowledge receipt of the expedited Appeal request in the Notice of Expedited Appeal Resolution;

#### 4.4.2.1.6

The CONTRACTOR(S) shall resolve each Appeal and provide notice as expeditiously as the Member's health condition requires and no later than thirty (30) calendar days from the date the CONTRACTOR(S) receives the Appeal;

#### 4.4.2.1.7

The CONTRACTOR(S) may extend the thirty (30) calendar day resolution period by up to fourteen (14) calendar days, if the Member requests the extension or the CONTRACTOR(S) shows (to the satisfaction of the State agency, upon its request) that there is need for additional time to resolve the Appeal and how the delay is in the Member's interest. This request for additional time to resolve the Appeal shall be made two (2) business days in advance of the thirty (30) calendar day deadline to the State;

#### 4.4.2.1.8

If the CONTRACTOR(S) extends the timeframe not at the request of the Member, the CONTRACTOR(S) shall issue a written notice to the Member with the reason for the decision to extend the timeframe. The CONTRACTOR(S) must resolve the Appeal as expeditiously as the Member's health condition requires and no later than the date the extension expires;

#### 4.4.2.1.9

The CONTRACTOR(S) shall resolve 100% of Appeals within thirty (30) calendar days of the date the CONTRACTOR(S) receives the earliest request for an Appeal from the Member, unless it is an Appeal requiring expedited resolution, and provide Notice of Appeal Resolution of the CONTRACTOR(S)' decision. If the Member's request was made orally or telephonically, the date of the oral or telephonic request shall be used as the start of this resolution period. If the Member's request was made in writing, the date of receipt of the written request shall be used as the start of this resolution period;

#### 4.4.2.1.10

Unless the State has granted a written extension as described above, the CONTRACTOR(S) is subject to remedies, including liquidated damages, if Member Appeals are not resolved and Notice of Appeal Resolution is not sent by the timeframes indicated herein. See Attachment G;

#### 4.4.2.1.11

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that Appeals are resolved in compliance with written policy and within the required timeframe. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in a Member's Appeal of an Adverse Benefit Determination. The designated employee must have a significant role in monitoring, investigating and hearing Appeals. The CONTRACTOR(S) shall have a routine process to detect patterns of Appeals. Management, supervisory, and quality improvement staff shall be involved in developing policy and procedure improvements to address the Appeals;

#### 4.4.2.1.12

The CONTRACTOR(S) shall provide a reasonable opportunity to present evidence, and allegations of fact or law, in person, as well as in writing. The CONTRACTOR(S) shall allow the Member and the Member's representative the opportunity, before and during the Appeal process, to examine the Member's case file, including clinical records, and any other documents and records considered during the Appeal process. The CONTRACTOR(S) shall inform the Member of the time available for providing this information and that, in the case of an expedited resolution, limited time will be available;

#### 4.4.2.1.13

The CONTRACTOR(S)'s Appeal procedures shall be provided to Members in writing and through oral interpretive services. A written description of the Appeal procedures must be available in the prevalent non-English languages identified by the State, at no more than a 5.9 grade reading level;

#### 4.4.2.1.14

The CONTRACTOR(S) shall include a written description of the Appeals process in the Member handbook and website. That description shall include the CONTRACTOR(S)' requirement for the Member to complete the CONTRACTOR(S)' Appeal process before making a request for a State Fair Hearing. The CONTRACTOR(S) shall maintain and publish in the Member handbook and website at least one (1) toll-free telephone number with TTY/TDD and interpreter capabilities for requesting an Appeal of an Adverse Benefit Determination;

#### 4.4.2.1.15

The CONTRACTOR(S)' Appeal process shall allow for electronic submission of Appeals and shall require that every Appeal received in person, by telephone, voice mail, e-mail or in writing from a Member or Authorized Representative shall be acknowledged, recorded in a written record and logged with the following details:

##### 4.4.2.1.15.1

Date of the Notice of Adverse Benefit Determination;

##### 4.4.2.1.15.2

Date notice was sent;

##### 4.4.2.1.15.3

Effective date of the Adverse Benefit Determination;

##### 4.4.2.1.15.4

Date the Member or Member's Authorized Representative requested the Appeal;

##### 4.4.2.1.15.5

Date received by the CONTRACTOR(S);

##### 4.4.2.1.15.6

Date acknowledgement letter was sent;



4.4.2.1.15.7

Identification of the individual filing the Appeal;

4.4.2.1.15.8

Identification of the individual recording the Appeal;

4.4.2.1.15.9

Nature of the Appeal;

4.4.2.1.15.10

How the CONTRACTOR(S) resolved the Appeal;

4.4.2.1.15.11

Corrective action required;

4.4.2.1.15.12

Date resolved;

4.4.2.1.15.13

Date of the Notice of Appeal Resolution; and

4.4.2.1.15.14

Date the Notice of Appeal Resolution was sent;

4.4.2.1.16

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Member or his/her representative for filing an Appeal;

4.4.2.1.17

Continuation of Benefits for Members Receiving Non-Waiver Services and Benefits: In accordance with 42 CFR § 438.420(a) and (b), the CONTRACTOR(S) shall continue the Member's previously authorized non-waiver services and benefits including the benefit that is the subject of the Appeal, if all of the following criteria are met:

4.4.2.1.17.1

The Member or his/her Authorized Representative (excluding a Provider) requests an Appeal timely and Continuation of Benefits, with timely defined as on or before the later of the following: within ten (10) calendar days of the CONTRACTOR(S) sending the Notice of Adverse Benefit Determination or the intended effective date of the CONTRACTOR(S)' proposed Adverse Benefit Determination;

4.4.2.1.17.2

The Appeal request involves the termination, suspension, or reduction of a previously authorized course of treatment;

4.4.2.1.17.3

The services were ordered by an authorized Provider;

4.4.2.1.17.4

The original period covered by the authorization has not expired; and

4.4.2.1.17.5

The Member timely files for continuation of the benefits.

#### 4.4.2.1.18

For a Member receiving non-waiver services and benefits, and who requests an Appeal and Continuation of Benefits with the CONTRACTOR(S), the services and benefits continued pending the outcome of the Appeal shall end ten (10) calendar days following the sending date of the Notice of Appeal Resolution concerning the termination, suspension or reduction of previously authorized services and benefits unless a Member requests a State Fair Hearing. The Notice of Appeal Resolution shall advise the Member that the Appeal decision may be reviewed through a request for a State Fair Hearing. If a Member submits a request for a State Fair Hearing and Continuation of Benefits within ten (10) calendar days of the sending date of the Notice of Appeal Resolution, services and benefits shall be continued through the date of the decision in the State Fair Hearing;

#### 4.4.2.1.19

For a Member receiving non-Waiver services and benefits, and in accordance with 42 CFR § 438.420(d), if the final resolution of the Appeal or State Fair Hearing is adverse to the Member, and upholds the CONTRACTOR(S)' Adverse Benefit Determination, then to the extent that the services and benefits were furnished to the Member while the Appeal or State Fair Hearing was pending to comply with the Continuation of Benefits requirements, the CONTRACTOR(S) may recover such costs from the Member;

#### 4.4.2.1.20

For a Member receiving non-Waiver services and benefits, if the CONTRACTOR(S) continues or reinstates the Member's services and benefits while the Appeal is pending at the CONTRACTOR(S) or pending the State Fair Hearing decision, the services and benefits shall be continued until one (1) of the following occurs:

##### 4.4.2.1.20.1

The Member withdraws the Appeal or State Fair Hearing request;

##### 4.4.2.1.20.2

The Member does not request Continuation of Benefits within ten (10) calendar days of the CONTRACTOR(S) sending the Notice of Adverse Benefit Determination;

##### 4.4.2.1.20.3

A State Fair Hearing officer issues a State Fair Hearing decision adverse to the Member.

#### 4.4.2.1.21

Continuation of Benefits for Members Receiving Waiver Services and Benefits: in accordance with Special Terms and Conditions #32, the CONTRACTOR(S) shall continue the Member's HCBS Waiver services and benefits currently received by the Member, including the services and benefits that are the subject of the Appeal, if all of the following criteria are met:

##### 4.4.2.1.21.1

The Member or Authorized Representative requests an Appeal timely, with timely defined as on or before sixty (60) calendar days from the date of the CONTRACTOR(S)' Notice of Adverse Benefit Determination, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent, that terminates, suspends or reduces the previously authorized services and benefits;

##### 4.4.2.1.21.2

The Appeal involves the termination, suspension or reduction of a previously authorized course of treatment;

##### 4.4.2.1.21.3

The services were ordered by an authorized Provider;

##### 4.4.2.1.21.4

The original period covered by the authorization has not expired.

#### 4.4.2.1.22

For a Member receiving HCBS waiver services and benefits, the previously authorized waiver services and benefits shall be continued for sixty-three (63) calendar days from the date of the Notice of Adverse Benefit Determination that terminates, suspends or reduces the previously authorized waiver services and benefits. If the Member requests an Appeal within those sixty-three (63) calendar days, the Member's current waiver services and benefits shall continue for the duration of the Appeal;

#### 4.4.2.1.23

For a Member receiving HCBS Waiver services and benefits, the services and benefits continued pending the outcome of the Appeal shall end ten (10) calendar days following the sending date of the Notice of Member Appeal Resolution concerning the termination, suspension or reduction of previously authorized services unless a Member requests a State Fair Hearing. The Notice of Member Appeal Resolution shall advise the Member that the Appeal decision may be reviewed through a request for a State Fair Hearing. If a Member or his/her Authorized Representative (excluding a provider) submits a request for a State Fair Hearing and Continuation of Benefits within ten (10) calendar days of the sending date of the Notice of Member Appeal Resolution, service and benefits shall be continued through the date of the decision in the State Fair Hearing;

#### 4.4.2.1.24

For a Member receiving HCBS Waiver services and benefits, and at the request of the Member or Member's Authorized Representative, the previously authorized Waiver services and benefits may be terminated and replaced with another Waiver's services and benefits. If the replacement Waiver services and benefits begin within sixty-three (63) calendar days of the date of the notice of Adverse Benefit Determination terminating the previously authorized waiver services and benefits, the services and benefits of the previously authorized waiver services and benefits shall be continued only until the replacement waiver's services and benefits begin. If the replacement waiver's services and benefits do not begin within sixty-three (63) calendar days of the date of the notice of Adverse Benefit Determination terminating the previously authorized waiver services and benefits, the services and benefits of the previously authorized waiver's services and benefits shall be continued for sixty-three (63) calendar days from the date of the Notice of Adverse Benefit Determination terminating the previously authorized Waiver services and benefits;

#### 4.4.2.1.25

For a Member receiving HCBS Waiver services and benefits, if the CONTRACTOR(S) continues or reinstates the Member's Waiver services and benefits while the Appeal is pending at the CONTRACTOR(S) or pending the State Fair Hearing decision, the services and benefits shall be continued until one (1) of the following occurs:

##### 4.4.2.1.25.1

The Member withdraws the Appeal or State Fair Hearing request;

##### 4.4.2.1.25.2

The Member does not request an Appeal within sixty-three (63) calendar days of the date of the CONTRACTOR(S) notice of Adverse Benefit Determination or request a State Fair Hearing within ten (10) calendar days of the sending date of the Notice of Appeal Resolution;

##### 4.4.2.1.25.3

A State Fair Hearing officer issues a State Fair Hearing decision adverse to the Member; or

##### 4.4.2.1.25.4

The Member or Member's Authorized Representative requests that the previously authorized HCBS Waiver services and benefits be terminated and replaced with another HCBS waiver services and benefits that will begin during the sixty-three (63) calendar days following the date of the CONTRACTOR(S)' Notice of Adverse Determination.

#### 4.4.2.1.26

If the final resolution of the Appeal or State Fair Hearing is adverse to the Member receiving Waiver

services and benefits, and upholds the CONTRACTOR(S)' Adverse Benefit Determination, then to the extent that the waiver services and benefits were furnished to the Member while the Appeal or State Fair Hearing was pending to comply with the continuation of benefits requirements, the Member will not have to pay the CONTRACTOR(S) for waiver services and benefits provided during the Appeal or State Fair Hearing unless fraud has occurred;

#### 4.4.2.1.27

Continuation of Benefits only applies to the termination, suspension, or reduction of previously authorized services. A request for future services is not included within Continuation of Benefits;

#### 4.4.2.1.28

The CONTRACTOR(S) shall inform Providers and Subcontractor(s), at the time they enter into a provider agreement or Subcontract, of the Member's right to request Continuation of Benefits during an Appeal or State Fair Hearing, and whether the Member may be liable for the cost of any continued benefits if the CONTRACTOR(S)' decision is upheld;

#### 4.4.2.1.29

If the authorization period has expired or the authorized units of service are exhausted, Members or their Authorized Representative may request an extension of services. Such extensions are considered a new request for services; however, and the CONTRACTOR(S) is not obligated to continue services if such new request is denied;

#### 4.4.2.1.30

The CONTRACTOR(S) shall consider the Member, the Member's Authorized Representative or an estate representative of a deceased Member as a party to the Appeal. A Member may seek a State Fair Hearing if the Member is not satisfied with the CONTRACTOR(S)' decision in response to an Appeal;

#### 4.4.2.1.31

If the CONTRACTOR(S) reverses a decision to deny, limit, or delay services that were not furnished while the Appeal was pending, the CONTRACTOR(S) must authorize or provide the disputed services promptly and as expeditiously as the Member's health condition requires;

#### 4.4.2.1.32

If the CONTRACTOR(S) reverses a decision to deny authorization of services and the Member received the disputed services while the Appeal was pending, the CONTRACTOR(S) shall pay for those services;

#### 4.4.2.1.33

If a Member makes a request for disenrollment, the CONTRACTOR(S) shall give the Member information on the disenrollment process and direct the Member to the State's fiscal agent. If the request for disenrollment is denied by the State, the CONTRACTOR(S) shall advise the Member of his/her right to request a State Fair Hearing in lieu of an Appeal to the CONTRACTOR(S);

#### 4.4.2.1.34

The CONTRACTOR(S) shall ensure that punitive action is not taken against a Provider who requests an Appeal on the Member's behalf or supports a Member's Appeal request;

#### 4.4.2.1.35

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to resolve all Member Appeals. Such cooperation may include, but is not limited to, providing internal Member Appeal information to the State.

#### **4.4.3 Notice of Member Appeal Resolution**

##### **4.4.3.1**

The written Notice of Member Appeal Resolution shall include:

##### **4.4.3.1.1**

Date of the Notice of Member Appeal Resolution;

##### **4.4.3.1.2**

Date the Notice of Appeal Resolution was sent;

##### **4.4.3.1.3**

The results of the resolution process and the date of the Appeal resolution;

##### **4.4.3.1.4**

For decisions not wholly in the Member's favor:

##### **4.4.3.1.4.1**

The right to request a State Fair Hearing within one hundred twenty (120) calendar days of the date of the notice, plus three (3) calendar days from the date the CONTRACTOR(S)' Notice of Member Appeal Resolution is sent;

##### **4.4.3.1.4.2**

How to request a State Fair Hearing;

##### **4.4.3.1.4.3**

The right to request to continue to receive benefits, pursuant to 42 CFR § 438.420 and this Attachment, pending a State Fair Hearing;

##### **4.4.3.1.4.4**

How to request the Continuation of Benefits in a timely manner;

##### **4.4.3.1.4.5**

Notice that if the CONTRACTOR(S)' Adverse Benefit Determination is upheld in a State Fair Hearing, whether the Member may be liable for the cost of any continued benefits;

##### **4.4.3.1.4.6**

That in the State Fair Hearing the Member may represent himself/herself or use legal counsel, a relative, a friend, or a spokesperson;

##### **4.4.3.1.4.7**

An explanation of the individual's right to a State Fair Hearing, or in cases of an Adverse Benefit Determination based on change in law, the circumstances under which a State Fair Hearing will be granted;

##### **4.4.3.1.4.8**

Any other information required by Kansas statute or regulation that relates to a managed care organization's notice of disposition of an Appeal.

#### **4.4.4 Timeframe for Issuance of Notice of Member Appeal Resolution**

##### **4.4.4.1**

The CONTRACTOR(S) shall send the Notice of Member Appeal Resolution to the Member or Authorized Representative within three (3) calendar days following the date of resolution of the Appeal. The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Notices of Member Appeal Resolution are not sent by the timeframes indicated herein. See Attachment G.

## **4.5 Member Expedited Appeals**

### **4.5.1 Member Expedited Appeal System**

#### **4.5.1.1**

The CONTRACTOR(S) shall establish a Member Expedited Appeal System, including written policies and procedures that meet the following requirements:

##### **4.5.1.1.1**

Provides Members reasonable assistance in completing forms and other procedural steps, not limited to providing auxiliary aids and services upon request, such as interpreter services and a toll-free number with TTY/TDD and interpreter capability;

##### **4.5.1.1.2**

Acknowledges receipt of each Appeal in the Notice of Expedited Appeal Resolution;

##### **4.5.1.1.3**

Ensures that individuals who make decisions on Appeals are individuals;

##### **4.5.1.1.4**

Who were neither involved in previous levels of review or decision-making nor a subordinate of any such individual;

##### **4.5.1.1.5**

Who, if deciding any of the following, are health care professionals who have the appropriate clinical expertise in treating the Member's condition or disease if any of the following apply:

###### **4.5.1.1.5.1**

An Appeal of a denial based on lack of medical necessity;

###### **4.5.1.1.5.2**

Any Appeal involving clinical issues;

##### **4.5.1.1.6**

Provides the Appeal procedures and timeframes to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

##### **4.5.1.1.7**

Includes an explanation regarding the Member's right to an Expedited Appeal and the circumstances under which the Member or Provider may request it;

##### **4.5.1.1.8**

Includes an explanation regarding the circumstances under which the Member may make an Expedited State Fair Hearing Request from the CONTRACTOR(S), how to obtain an Expedited State Fair Hearing, and the right to representation at an Expedited State Fair Hearing;

##### **4.5.1.1.9**

Includes the requirements and timeframes for filing an Expedited Appeal and an Expedited State Fair Hearing Request;

##### **4.5.1.1.10**

Includes the availability of assistance in filing;

##### **4.5.1.1.11**

Includes the toll-free number to submit an oral Expedited Appeal or an oral Expedited State Fair Hearing Request;

#### 4.5.1.1.12

Includes the Member's right to request Continuation of Benefits as defined in 42 CFR § 438.420(b)(1) and this Attachment during an expedited Appeal or expedited State Fair Hearing and whether the Member may be liable for the cost of any continued benefits if the CONTRACTOR(S)' Adverse Benefit Determination is upheld in a State Fair Hearing;

#### 4.5.1.1.13

Ensures the CONTRACTOR(S) maintains records of all Expedited Appeal Requests.

### **4.5.2 Member Expedited Appeal Process**

#### 4.5.2.1

The CONTRACTOR(S) shall establish and maintain an Expedited Appeal process that complies with 42 CFR § 438.410, when the CONTRACTOR(S) determines (for a request from a Member) or the Provider indicates (in making the request on the Member's behalf or supporting the Member's request) that taking the time for a standard resolution could seriously jeopardize the Member's life, physical or mental health, or ability to attain, maintain, or regain maximum function. The CONTRACTOR(S) must follow all Appeal requirements for standard Member Appeals as set forth in this Attachment and applicable federal and State regulations, except where differences are specifically noted;

#### 4.5.2.2

The Expedited Appeal process shall be the same for all Members;

#### 4.5.2.3

The Member or Member's Authorized Representative may submit an Expedited Appeal either orally or in writing. The CONTRACTOR(S) cannot require a written form from the Member or Member's Authorized Representative for an Expedited Appeal;

#### 4.5.2.4

The CONTRACTOR(S) shall inform the Member that he/she must complete the CONTRACTOR(S)' Expedited Appeal process before making a request for an Expedited State Fair Hearing;

#### 4.5.2.5

After the CONTRACTOR(S) receives the Expedited Appeal Request, it shall resolve 100% of Expedited Appeals and notify the Member of the receipt of the Expedited Appeal Request and the outcome of the Expedited Appeal, as expeditiously as the Member's health condition requires and no later than 72 hours from the date the CONTRACTOR(S) receives the request;

#### 4.5.2.6

For an Expedited Appeal, the timeframe for notifying the Member of the outcome of the Expedited Appeal may be extended up to fourteen (14) calendar days if the Member requests an extension or the CONTRACTOR(S) shows (to the satisfaction of the State, upon its request) that there is a need for additional information and how the delay is in the Member's interest;

#### 4.5.2.7

If the CONTRACTOR(S) extends the timeframe not at the request of the Member, the CONTRACTOR(S) shall:

##### 4.5.2.7.1

Make reasonable efforts to provide oral notice of the delay;

##### 4.5.2.7.2

Issue a written notice to the Member with the reason for the delay within two (2) calendar days and inform the Member of the right to file a Grievance if the Member disagrees with that decision.

#### 4.5.2.8

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Member or an Authorized Representative for requesting an Expedited Appeal. The CONTRACTOR(S) must ensure that punitive action is not taken against a Provider who requests an Expedited Appeal or supports a Member's request.

#### 4.5.2.9

If the CONTRACTOR(S) denies an Expedited Appeal Request, it shall:

##### 4.5.2.9.1

Transfer the Appeal to the standard thirty (30) calendar day resolution timeframe for an Appeal, and

##### 4.5.2.9.2

Make reasonable efforts to give the Member prompt oral notice of the denial of the Expedited Appeal Request and give a written notice to the Member within two (2) calendar days.

#### 4.5.2.10

The decision to deny an Expedited Appeal Request for an Expedited Appeal does not constitute an Adverse Benefit Determination or require a Notice of Adverse Benefit Determination. The Member may submit a Grievance in response to this decision;

#### 4.5.2.11

If the CONTRACTOR(S)' decision is adverse to the Member, the CONTRACTOR(S) shall issue the Appeal resolution notice described above. The CONTRACTOR(S) shall notify the Member of his/her right to request an Expedited State Fair Hearing from OAH. The CONTRACTOR(S) shall provide documentation to OAH and the Member indicating how the decision was made prior to OAH's Expedited State Fair Hearing;

#### 4.5.2.12

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that Expedited Appeals are resolved in compliance with written policy and within the required timeframe. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in a Member's Expedited Appeal of an Adverse Benefit Determination. The designated employee must have a significant role in monitoring, investigating and hearing Appeals. The CONTRACTOR(S) shall have a routine process to detect patterns of Expedited Appeals. Management, supervisory, and quality improvement staff shall be involved in developing policy and procedure improvements to address the Expedited Appeals;

#### 4.5.2.13

The CONTRACTOR(S) shall inform the Member of the limited time available for the Member to present evidence and allegations of fact or law, in person and in writing, in the case of an Expedited Appeal;

#### 4.5.2.14

The CONTRACTOR(S)' Expedited Appeal procedures shall be provided to Members in writing and through oral interpretive services. A written description of the Expedited Appeal procedures must be available in the prevalent non-English language identified by the State, at no more than a 5.9 grade reading level;

#### 4.5.2.15

The CONTRACTOR(S) shall include a written description of the Expedited Appeals process in the Member handbook and website. The CONTRACTOR(S) shall maintain and publish in the Member handbook and website at least one (1) toll-free telephone number with TTY/TDD and interpreter capabilities for requesting an Expedited Appeal Request of an Adverse Benefit Determination;

#### 4.5.2.16

The CONTRACTOR(S)' Expedited Appeal process shall allow for electronic submission of Appeals and shall require that every Expedited Appeal received from a Member or Authorized Representative shall be



acknowledged, recorded in a written record and logged with the following details:

4.5.2.16.1

Date of the Notice of Adverse Benefit Determination;

4.5.2.16.2

Date notice was sent;

4.5.2.16.3

Effective date of the Adverse Benefit Determination;

4.5.2.16.4

Date the Member or Member's Authorized Representative requested the Expedited Appeal;

4.5.2.16.5

Date received by the CONTRACTOR(S);

4.5.2.16.6

Identification of the individual filing the Expedited Appeal;

4.5.2.16.7

Identification of the individual recording the Expedited Appeal;

4.5.2.16.8

Nature of the Expedited Appeal;

4.5.2.16.9

How the CONTRACTOR(S) resolved the Expedited Appeal;

4.5.2.16.10

Corrective action required;

4.5.2.16.11

Date resolved; and

4.5.2.16.12

Date the Notice of Appeal Resolution was sent;

4.5.2.17

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Member or his/her representative for filing an Expedited Appeal.

4.5.2.18

Continuation of Benefits for Members Receiving Non-Waiver and Waiver Services and Benefits: In accordance with 42 CFR § 438.420(b) and this Attachment, the CONTRACTOR(S) shall continue the Member's previously authorized non-Waiver and Waiver services and benefits, including the benefit that is the subject of the expedited Appeal, according to the procedures in the Member Appeal section of this Attachment, subject to the exceptions below:

4.5.2.18.1

Continuation of Benefits only applies to the termination, suspension, or reduction of previously authorized services. A request for future services is not included within Continuation of Benefits;

4.5.2.18.2

If the authorization period has expired or the authorized units of service are exhausted, Members or their Authorized Representative may request an extension of services. Such extensions are considered a new

request for services; however, and the CONTRACTOR(S) is not obligated to continue services if such new request is denied.

#### 4.5.2.19

If the final resolution of the Expedited Appeal or Expedited State Fair Hearing is adverse to the Member receiving non-waiver services and benefits, and upholds the CONTRACTOR(S)' Adverse Benefit Determination, then to the extent that the non-waiver services and benefits were furnished to the Member while the Expedited Appeal or Expedited State Fair Hearing was pending to comply with the Continuation of Benefits requirements, the Member may have to pay the CONTRACTOR(S) for non-waiver services and benefits provided during the Expedited Appeal or Expedited State Fair Hearing;

#### 4.5.2.20

If the final resolution of the Expedited Appeal or Expedited State Fair Hearing is adverse to the Member receiving waiver services and benefits, and upholds the CONTRACTOR(S)' Adverse Benefit Determination, then to the extent that the waiver services and benefits were furnished to the Member while the Appeal or State Fair Hearing was pending to comply with the Continuation of Benefits requirements, the Member will not have to pay the CONTRACTOR(S) for waiver services and benefits provided during the Appeal or State Fair Hearing unless fraud has occurred;

#### 4.5.2.21

The CONTRACTOR(S) shall inform Providers and Subcontractor(s), at the time they enter into a provider agreement or Subcontract, of the Member's right to request Continuation of Benefits during an Expedited Appeal or Expedited State Fair Hearing, and whether the Member may be liable for the cost of any continued benefits if the CONTRACTOR(S)' decision is upheld;

#### 4.5.2.22

The CONTRACTOR(S) shall consider the Member, an Authorized Representative, or an estate representative of a deceased Member as a party to the Expedited Appeal. A Member may seek a State Fair Hearing if the Member is not satisfied with the CONTRACTOR(S)' decision in response to an Expedited Appeal;

#### 4.5.2.23

If the CONTRACTOR(S) reverses a decision to deny, limit, or delay services that were not furnished while the Expedited Appeal was pending, the CONTRACTOR(S) must authorize or provide the disputed services promptly and as expeditiously as the Member's health condition requires;

#### 4.5.2.24

If the CONTRACTOR(S) reverses a decision to deny authorization of services and the Member received the disputed services while the Appeal was pending, the CONTRACTOR(S) shall pay for those services;

#### 4.5.2.25

The CONTRACTOR(S) shall ensure that punitive action is not taken against a Provider who requests an Expedited Appeal on the Member's behalf or supports a Member's Expedited Appeal Request;

#### 4.5.2.26

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to resolve all Member Expedited Appeals. Such cooperation may include, but is not limited to, providing internal Member Expedited Appeal information to the State.

### **4.5.3 Timeframe for Issuance of Notice of Member Expedited Appeal Resolution**

#### 4.5.3.1

The CONTRACTOR(S) shall send the Notice of Member Expedited Appeal Resolution to the Member or Authorized Representative within 72 hours following the date of receipt of the Expedited Appeal Request. The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Notices of Member Expedited Appeal Resolution are not sent by the timeframes indicated herein. See Attachment G.

#### **4.5.4 Deemed Exhaustion of the Member Appeal Process**

##### **4.5.4.1**

Failure of the CONTRACTOR(S) to adhere to the notice and timing requirements in this Attachment and as specified in 42 CFR part 438, subpart F, means that the Member is deemed to have exhausted the CONTRACTOR(S)' Appeals process and the Member may initiate a State Fair Hearing.

#### **4.6 Member State Fair Hearings**

##### **4.6.1 Member State Fair Hearing System**

###### **4.6.1.1**

The CONTRACTOR(S) shall establish a Member State Fair Hearing System, including written policies and procedures that meet the following requirements;

###### **4.6.1.2**

Provides Members reasonable assistance in completing forms and other procedural steps, not limited to providing auxiliary aids and services upon request, such as interpreter services and a toll-free number with TTY/TDD and interpreter capability;

###### **4.6.1.3**

Provides the State Fair Hearing procedures and timeframes to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

###### **4.6.1.4**

Includes the Member's right to submit a State Fair Hearing and the requirements and timeframes for filing;

###### **4.6.1.5**

Informs Members that they have the right to access the State Fair Hearing process following receipt of the CONTRACTOR(S)' Notice of Appeal Resolution. In the case of an Expedited State Fair Hearing process, the CONTRACTOR(S) must inform the Member that he/she must first complete the CONTRACTOR(S)' Expedited Appeal process before requesting an Expedited State Fair Hearing;

###### **4.6.1.6**

Informs Members that they may be represented by an Authorized Representative in the State Fair Hearing process;

###### **4.6.1.7**

Includes the availability of assistance in filing;

###### **4.6.1.8**

Includes the availability of a toll-free number to submit oral requests for State Fair Hearings;

###### **4.6.1.9**

Includes the Member's right to request Continuation of Benefits as defined in 42 CFR § 438.420(b)(1) and this Attachment during a State Fair Hearing and whether the Member may be liable for the cost of any continued benefits if the CONTRACTOR(S)' Adverse Benefit Determination is upheld in a State Fair Hearing;

###### **4.6.1.10**

Includes the establishment of a process by the CONTRACTOR(S) to research State Fair Hearing requests that includes analysis of the dispute and compilation of State Fair Hearing evidence in compliance with section 5.5.3 of this Attachment.

#### 4.6.1.11

Ensures the CONTRACTOR(S) maintains records of all State Fair Hearing requests received.

### **4.6.2 Member State Fair Hearing Process**

#### 4.6.2.1

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, and reporting State Fair Hearings, including requests for expedited State Fair Hearings, submitted by Members or their Authorized Representatives administered by the CONTRACTOR(S) or a Subcontractor(s). The State Fair Hearing process shall ensure the following:

##### 4.6.2.1.1

The State Fair Hearing process shall be the same for all Members;

##### 4.6.2.1.2

The Member may request a State Fair Hearing either orally or in writing. The CONTRACTOR(S) cannot require a written form from the Member for a request for a State Fair Hearing or use the lack of a written or signed form from the Member as a basis for refusal to process the request;

##### 4.6.2.1.3

The timeframe within which a Member or Member's authorized representative must submit a request for a State Fair Hearing with the CONTRACTOR(S) or OAH shall be one hundred and twenty (120) calendar days from the date of the Notice of Appeal Resolution, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent;

##### 4.6.2.1.4

The CONTRACTOR(S) shall forward all requests received from Members for a State Fair Hearing to the OAH within one (1) business day of the Member's request for a State Fair Hearing;

##### 4.6.2.1.5

A Member or Member's Authorized Representative must request Continuation of Benefits during a State Fair Hearing in accordance with the procedures in the Member Appeal section of this Attachment;

##### 4.6.2.1.6

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that State Fair Hearing requests are processed in compliance with written policy and within the timeframes required by the State. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in processing a Member's State Fair Hearing request. The designated employee must have a significant role in monitoring, investigating and processing State Fair Hearing requests. The CONTRACTOR(S) shall have a routine process to detect and record patterns of State Fair Hearings. Management, supervisory, and quality improvement staff shall be involved in developing policy and procedure improvements to address Member State Fair Hearing requests;

##### 4.6.2.1.7

The CONTRACTOR(S)' State Fair Hearing process shall be provided to Members in writing and through oral interpretive services. A written description of the CONTRACTOR(S)' State Fair Hearing process shall be available in the prevalent non-English language identified by the State, at no more than a 5.9 or below grade reading level;

##### 4.6.2.1.8

The CONTRACTOR(S) shall include a written description of the State Fair Hearing process in the Member handbook and website. The CONTRACTOR(S) shall maintain and publish in the Member handbook and website at least one (1) toll-free telephone number with TTY/TDD and interpreter capabilities for filing a request for a State Fair Hearing;

4.6.2.1.9

The CONTRACTOR(S)' State Fair Hearing process shall allow for electronic submission of requests for State Fair Hearings and shall require that every State Fair Hearing request received in person, by telephone, voice mail, e-mail or in writing from a Member or Authorized Representative shall be recorded in a written record and logged with the following details:

4.6.2.1.9.1

Date of the Notice of Adverse Benefit Determination;

4.6.2.1.9.2

Date notice was sent;

4.6.2.1.9.3

Effective date of the Action;

4.6.2.1.9.4

Date the Member or Member's Authorized Representative requested the State Fair Hearing;

4.6.2.1.9.5

Date forwarded to OAH;

4.6.2.1.9.6

Identification of the individual filing the request for a State Fair Hearing;

4.6.2.1.9.7

Identification of the individual recording the request;

4.6.2.1.9.8

Nature of the State Fair Hearing;

4.6.2.1.9.9

Resolution of the State Fair Hearing;

4.6.2.1.9.10

Corrective action required, and;

4.6.2.1.9.11

Date resolved.

4.6.2.1.10

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Member, or Authorized Representative, for filing a State Fair Hearing request.

4.6.2.1.11

The CONTRACTOR(S) shall follow the directions of the State concerning:

4.6.2.1.11.1

The preparation of and the contents for the Agency Summary (see applicable K.A.R. as a guide), including notification to the Member that both the CONTRACTOR(S) and the State will be appearing at the State Fair Hearing, with names of those who will be appearing;

4.6.2.1.11.2

The sending of the Agency Summary and any addendums;

4.6.2.1.11.3

The identification of CONTRACTOR(S) witnesses to testify at the State Fair Hearing;

4.6.2.1.11.4

The motions for extensions of time to submit necessary documents;

4.6.2.1.11.5

The motions to dismiss, if any; and,

4.6.2.1.11.6

Other State Fair Hearing matters as needed.

4.6.2.1.12

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to resolve all Member State Fair Hearings. Such cooperation may include, but is not limited to, providing internal Member State Fair Hearing information to the State;

4.6.2.1.13

The State OAH is responsible for the State Fair Hearing. OAH must reach its decisions within the specified timeframes:

4.6.2.1.13.1

Standard resolution: within ninety (90) calendar days of the date the Member submitted the Appeal with the CONTRACTOR(S) (excluding the calendar days the Member took to subsequently file for a State Fair Hearing);

4.6.2.1.13.2

Expedited resolution (the Appeal was heard first through the CONTRACTOR(S)' Appeal process): as expeditiously as the Member's health condition requires and no later than three (3) calendar days after OAH receives, from the CONTRACTOR(S), the case file and information for any Appeal of a denial of a service that the CONTRACTOR(S) indicates:

4.6.2.1.13.2.1

Meets the criteria for an expedited Appeal process as set forth in 42 CFR § 438.410(a), but was not resolved within the CONTRACTOR(S)' timeframe for an Expedited Appeal, or

4.6.2.1.13.2.2

Was resolved within the CONTRACTOR(S)' timeframe for expedited resolution, but was resolved wholly or partially adversely to the Member.

4.6.2.1.14

The State is a party to the State Fair Hearing. The State will be designated as the Respondent in a State Fair Hearing for cases involving CONTRACTOR(S) decisions appealed to a State Fair Hearing by a Member or Provider. The State Medicaid Agency or a Sister State Agency authorized to administer that portion of the Kansas Medicaid Program will be designated as the Respondent in those cases involving their area of administrative delegation. The parties to the State Fair Hearing include the CONTRACTOR(S). The CONTRACTOR(S) may be noted as the contractual agent of the State. The Member or the Member's estate is also a party and may be represented;

4.6.2.1.15

The Fair Hearings Manager or an attorney for the Respondent will represent the State at all State Fair Hearings. The CONTRACTOR(S) shall participate in or be present at the State Fair Hearings;

4.6.2.1.16

The Respondent or Appellant to the State Fair Hearing may Appeal the decision of the Initial Order issued by the Presiding Officer to the State Appeals Committee (SAC). SAC will review the Initial Order and issue a Final Order. If neither the Respondent nor Appellant requests a review of the Initial Order by SAC, the Initial Order will become the Final Order. The Respondent or Appellant may Appeal the Final Order to a

district court. The Respondent or Appellant also may request a Reconsideration of the Final Order by the Secretary of KDHE-DHCF. There are filing time limits that are strictly enforced. The Initial and Final Orders specify those time limits;

#### 4.6.2.1.17

If the State Fair Hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the State Fair Hearing was pending, the CONTRACTOR(S) must authorize or provide the disputed services promptly, and as expeditiously as the Member's health condition requires;

#### 4.6.2.1.18

If the State Fair Hearing officer reverses a decision to deny authorization of services, and the Member received the disputed services while the State Fair Hearing was pending, the CONTRACTOR(S) must pay for those services;

#### 4.6.2.1.19

If a Member makes a request for disenrollment, the CONTRACTOR(S) shall give the Member information on the disenrollment process and direct the Member to the State's fiscal agent. If the request for disenrollment is denied by the State, the CONTRACTOR(S) shall advise the Member of his/her right to request a State Fair Hearing;

#### 4.6.2.1.20

The CONTRACTOR(S) shall ensure that punitive action is not taken against a Provider who requests a State Fair Hearing on the Member's behalf or supports a Member's State Fair Hearing request;

#### 4.6.2.1.21

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to process and resolve all Member State Fair Hearing requests. Such cooperation may include, but is not limited to, providing internal Member State Fair Hearing information to the State.

## **5.0 Provider Grievances, Reconsiderations, Appeals and State Fair Hearings**

### **5.1 Provider Grievance System**

#### 5.1.1

The CONTRACTOR(S) shall establish a Provider Grievance and Appeal System, including written policies and procedures that meet the following requirements:

##### 5.1.1.1

Acknowledges receipt of each Grievance;

##### 5.1.1.2

Ensures that individuals who make decisions on Grievances are individuals:

##### 5.1.1.2.1

Who were neither involved in previous levels of review or decision-making nor a subordinate of any such individual;

##### 5.1.1.3

Provides the Grievance procedures and timeframes in writing to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

##### 5.1.1.4

Includes the Provider's right to submit Grievances and their requirements and timeframes for filing;

##### 5.1.1.5

Includes the toll-free number to submit oral Grievances;

#### 5.1.1.6

Ensures the CONTRACTOR(S) maintains records of all Grievances received as noted below.

## **5.2 Provider Grievance Process**

### 5.2.1

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting and resolving Grievances by Providers or their Authorized Representatives through the Grievance process administered by the CONTRACTOR(S) or a Subcontractor(s). The Grievance process shall ensure the following:

#### 5.2.1.1

The Grievance procedure shall be the same for both Participating and Non-Participating Providers.

#### 5.2.1.2

The Provider or Provider's Authorized Representative may submit a Grievance either orally or in writing. The CONTRACTOR(S) cannot require a written form from the Provider or Provider's Authorized Representative for a Grievance;

#### 5.2.1.3

The timeframe within which a Provider must submit a Grievance with the CONTRACTOR(S) is one hundred and eighty (180) calendar days of the date of the incident being grieved;

#### 5.2.1.4

The CONTRACTOR(S) shall acknowledge each oral or written Grievance received from a Provider or their Authorized Representative in writing within ten (10) calendar days of receipt. For Grievances resolved the same day of receipt, the CONTRACTOR(S) is not required to issue an acknowledgement, but shall acknowledge receipt of the Grievance in the Notice of Provider Grievance Resolution;

#### 5.2.1.5

The CONTRACTOR(S) shall resolve each Grievance and send Notice of Provider Grievance Resolution;

#### 5.2.1.6

The CONTRACTOR(S) shall resolve 98% of Grievances within thirty (30) calendar days from the date the Grievance is received. If the Provider's request was made orally or telephonically, the date of the oral or telephonic request shall be used as the start of this period. If the Provider's request was made in writing, the date of receipt of the written request shall be used as the start of this Grievance resolution period;

#### 5.2.1.7

The CONTRACTOR(S) shall resolve 100% of the Grievances within sixty (60) calendar days from the date the Grievance is received;

#### 5.2.1.8

All notices containing the Grievance resolution decisions shall be in writing;

#### 5.2.1.9

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that Grievances are resolved in compliance with written policy and within the required timeframe. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in a Provider's Grievance. The designated employee must have a significant role in monitoring, investigating and hearing Grievances. The CONTRACTOR(S) shall have a routine process to detect patterns of Grievances. Management, supervisory, and quality improvement staff shall be involved in developing policy and procedure improvements to address the Grievances;

#### 5.2.1.10

The CONTRACTOR(S)' Grievance procedures shall be provided in writing to Providers in the Provider handbook and on its website. Upon request, a CONTRACTOR(S) shall provide a copy of the Grievance



procedures to a Non-Participating Provider or direct the Non-Participating Provider to the CONTRACTOR(S)' website. The CONTRACTOR(S) shall maintain and publish in the Provider handbook and website at least one (1) toll-free telephone number for requesting Grievances;

5.2.1.11

The CONTRACTOR(S)' Grievance process shall allow for electronic submission of Grievances and shall require that every Grievance received in person, by telephone, voice mail, e-mail or in writing from a Provider or Provider's Authorized Representative shall be acknowledged, recorded in a written record and logged with the following details:

5.2.1.11.1

Date the Provider or Provider's Authorized Representative requested the Grievance;

5.2.1.11.2

Identification of the individual filing the Grievance;

5.2.1.11.3

Date received by the CONTRACTOR(S);

5.2.1.11.4

Date acknowledgement letter was sent;

5.2.1.11.5

Identification of the individual recording the Grievance;

5.2.1.11.6

Nature of the Grievance;

5.2.1.11.7

How the CONTRACTOR(S) resolved the Grievance;

5.2.1.11.8

Corrective action required;

5.2.1.11.9

Date resolved, and;

5.2.1.11.10

Date Notice of Provider Grievance Resolution was sent.

5.2.1.12

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Provider or his/her representative for making a Grievance;

5.2.1.13

The CONTRACTOR(S) will cooperate with the State's fiscal agent and the State or designees of either to resolve all Provider Grievances. Such cooperation may include, but is not limited to, providing internal Provider Grievance information or assistance to the State or internal CONTRACTOR(S) Grievance committees;

5.2.1.14

In no event shall the CONTRACTOR(S) allow a Provider who has been barred from participation in the Kansas Medical Assistance Program to request a Grievance.

## **5.2.2 Timeframe for Issuance of Notice of Provider Grievance Resolution**

### **5.2.2.1**

The CONTRACTOR(S) shall send the Notice of Provider Grievance Resolution to the Provider within five (5) business days following the date of resolution of the Grievance. The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Notices of Grievance Resolution are not sent by the timeframes indicated herein. See Attachment G.

## **5.3 Notice of Action for Providers**

### **5.3.1 Notice of Action System for Providers**

The CONTRACTOR(S) shall develop, implement, and maintain a system for issuing a Notice of Action to a Provider, as that term is defined by this Attachment, taken by the CONTRACTOR(S) against the Provider. The CONTRACTOR(S) shall issue a Notice of Action notifying the Provider in accordance with this Attachment and applicable State regulations when the CONTRACTOR(S) issues an Action to the Provider. The notice shall be in writing and contain the elements noted below. The notice may be in the form of a letter or Remittance Advice.

### **5.3.2 Content of Notice of Action for Providers**

#### **5.3.2.1**

The CONTRACTOR(S)' notice to the Provider shall, at a minimum, include the following elements:

##### **5.3.2.1.1**

Date of the Notice of Action;

##### **5.3.2.1.2**

Date the Notice of Action was sent;

##### **5.3.2.1.3**

The Action the CONTRACTOR(S) has made or intends to make;

##### **5.3.2.1.4**

The reasons for the Action;

##### **5.3.2.1.5**

The date the Action was made or will be made;

##### **5.3.2.1.6**

If the Action is based upon a determination that the service is not medically necessary, the CONTRACTOR(S) shall provide an explanation of the medical basis for the decision, application of policy or accepted standards of medical practice to the individual's medical circumstances, in its notice to the Provider;

##### **5.3.2.1.7**

If the Action is based upon a statute, regulation, policy or procedure, the CONTRACTOR(S) shall provide the statute, regulation, policy or procedure supporting the Action;

##### **5.3.2.1.8**

An explanation of the Provider's right to request either a Reconsideration or an Appeal through the CONTRACTOR(S)' Reconsideration process or Appeal process following receipt of the CONTRACTOR(S)' notice containing the adverse decision;

##### **5.3.2.1.9**

An explanation of the optional nature of the CONTRACTOR(S)' Reconsideration process and the CONTRACTOR(S)' requirement for the Provider to complete the CONTRACTOR(S)' Appeal process before

requesting a State Fair Hearing;

#### 5.3.2.1.10

An explanation of the Provider's right to submit a Reconsideration within one hundred twenty (120) calendar days of the date of the Notice of Action and the Provider's right to submit an Appeal request within sixty (60) calendar days of the date of the Notice of Action, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. The notice shall include the address and contact information for submission of the Reconsideration and submission of the Appeal;

#### 5.3.2.1.11

An explanation of the Provider's right to terminate the Reconsideration process and submit an Appeal request to the CONTRACTOR(S) within sixty (60) calendar days of the date of the Notice of Action, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. Submission of the Appeal request is not dependent upon completion of the process or receipt of a Notice of Reconsideration Resolution;

#### 5.3.2.1.12

An explanation that if a Provider chooses to submit a Reconsideration, and wait until receipt of the Notice of Reconsideration Resolution, that a Provider has the right to submit an Appeal request to the CONTRACTOR(S) within sixty (60) calendar days of the date of the Notice of Reconsideration Resolution, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. If a Provider fails to submit an Appeal request within sixty-three (63) calendar days and has submitted a Reconsideration Request, the Provider must wait until receipt of the Notice of Reconsideration Resolution. See section 5.4.2.1.5;

#### 5.3.2.1.13

The procedures by which the Provider may request a Reconsideration or an Appeal regarding the CONTRACTOR(S)' Action, including the address and contact information for submission of the Reconsideration and submission of an Appeal through the CONTRACTOR(S);

#### 5.3.2.1.14

The Provider's right to represent him/herself or be represented by legal counsel or another spokesperson when requesting a Reconsideration or an Appeal through the CONTRACTOR(S);

#### 5.3.2.1.15

The specific change in Federal or State law that requires the Action; and

#### 5.3.2.1.16

The Provider's right to a State Fair Hearing following completion of the Provider Appeal Process or, in cases of an Action based on a change in law, the circumstances under which a State Fair Hearing will be granted.

### **5.3.3 Timeframe for Notice of Action to Providers**

#### 5.3.3.1

The CONTRACTOR(S) shall send written Notice of an Action to the Provider within one (1) business day following the date of Action affecting the claim. The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Notices of Action are not sent by the timeframes indicated herein. See Attachment G.

## **5.4 Provider Payment Dispute Resolution Process**

### **5.4.1 Provider Reconsideration System**

#### 5.4.1.1

The CONTRACTOR(S) shall establish a Provider Reconsideration System, including written policies and procedures, that allows a provider to dispute a claim payment determination prior to requesting an Appeal and

that is not required as a precursor to the submission of an Appeal. The Provider Reconsideration System shall meet the following requirements:

5.4.1. 1.1

Provides the Reconsideration procedures and timeframes in writing to all Providers and Subcontractor(s) at the time they enter into a contract;

5.4.1.1.2

Includes the Provider's right to submit Reconsiderations and their requirements and timeframes for filing;

5.4.1.1.3

Ensures the CONTRACTOR(S) maintains records of all Reconsiderations received.

**5.4.2 Provider Reconsideration Process**

5.4.2.1

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting and resolving Reconsiderations by Providers or their authorized representatives through the Reconsideration process administered by the CONTRACTOR(S) or a Subcontractor(s). The Provider Reconsideration process shall ensure the following:

5.4.2.1.1

The Reconsideration procedure shall be the same for all Providers with the exception of State-approved Provider contracts that contain timeframes that are different from those established in this Attachment;

5.4.2.1.2

A Provider or Provider's Authorized Representative may submit a request for Reconsideration orally or in writing;

5.4.2.1.3

The Provider has the option to submit either a Reconsideration request or an Appeal request to the CONTRACTOR(S) following receipt of the CONTRACTOR(S)' Notice of Action;

5.4.2.1.4

The timeframe within which a Provider may submit a request for Reconsideration with the CONTRACTOR(S) shall be one hundred twenty (120) calendar days of the date of the Notice of Action, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. The Provider's rights to Appeal are preserved throughout the Reconsideration process;

5.4.2.1.5

If a Provider chooses to request a Reconsideration, a Provider may terminate the Reconsideration process and submit an Appeal request with the CONTRACTOR(S) within sixty (60) calendar days of the date of the notice of Action, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. If a Provider does not submit an Appeal request within sixty-three (63) calendar days of the date of the Notice of Action, the Provider must wait to receive the Notice of Reconsideration resolution before filing an Appeal. The Provider must submit a request for an Appeal with the CONTRACTOR(S) within sixty (60) calendar days of the date of the Notice of Reconsideration Resolution, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent;

5.4.2.1.6

The Provider's right to represent him/herself or be represented by legal counsel or another spokesperson when requesting a Reconsideration or an Appeal through the CONTRACTOR(S);

5.4.2.1.7

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that Reconsiderations are resolved in compliance with this Attachment, written policy and within the required timeframe. The CONTRACTOR(S) shall have policies and procedures in place outlining the

designated employee's role in a Reconsideration of an Action. The designated employee must have a significant role in monitoring, investigating and hearing Reconsiderations. The CONTRACTOR(S) shall have a routine process to detect patterns of Reconsiderations. Management, supervisory, and quality improvement staff must be involved in developing policy and procedure improvements to address the Reconsiderations;

#### 5.4.2.1.8

The CONTRACTOR(S) shall provide a reasonable opportunity to present evidence, and allegations of fact or law, in person, as well as in writing. The CONTRACTOR(S) shall allow the Provider and the Provider's representative the opportunity, before and during the Reconsideration process, to examine the case file, including clinical records, and any other documents and records considered during the Reconsideration process. The CONTRACTOR(S) shall inform the Provider of the time available for providing this information;

#### 5.4.2.1.9

The CONTRACTOR(S)' Reconsideration procedures shall be provided in writing to Providers in the Provider handbook and on its website. Upon request, a CONTRACTOR(S) shall provide a copy of the Reconsideration procedures to a Non-Participating Provider or direct the Non-Participating Provider to the CONTRACTOR(S)' website;

#### 5.4.2.1.10

The CONTRACTOR(S) shall provide the Reconsideration procedures in writing to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

#### 5.4.2.1.11

The CONTRACTOR(S)' Reconsideration process shall allow for electronic submission of Reconsiderations and shall require that every Reconsideration received in person, by telephone, voice mail, e-mail or in writing from a Provider or Provider's Authorized Representative shall be acknowledged, recorded in a written record, and logged with the following details:

##### 5.4.2.1.11.1

Date of the Notice of Action;

##### 5.4.2.1.11.2

Date notice was sent;

##### 5.4.2.1.11.3

Effective date of the Action;

##### 5.4.2.1.11.4

Date the Provider or Authorized Representative requested the Reconsideration;

##### 5.4.2.1.11.5

Date received by the CONTRACTOR(S);

##### 5.4.2.1.11.6

Identification of the individual filing the Reconsideration;

##### 5.4.2.1.11.7

Identification of the individual recording the Reconsideration;

##### 5.4.2.1.11.8

Nature of the Reconsideration;

##### 5.4.2.1.11.9

How the CONTRACTOR(S) resolved the Reconsideration;

##### 5.4.2.1.11.10

Corrective action required;

5.4.2.1.11.11

Date resolved; and

5.4.2.1.11.12

Date the Notice of Reconsideration Resolution was sent to Provider.

5.4.2.1.12

The CONTRACTOR(S) shall consider the Provider or Provider's Authorized Representative as a party to the Reconsideration;

5.4.2.1.13

If the CONTRACTOR(S) or State Fair Hearing officer reverses a decision to deny payment, the CONTRACTOR(S) shall authorize or provide the disputed payment promptly;

5.4.2.1.14

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Provider, or his/her representative, for filing a Reconsideration.

5.4.2.1.15

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to resolve all Provider Reconsiderations. Such cooperation may include, but is not limited to, providing internal Provider Reconsideration information to the State;

5.4.2.1.16

In no event shall the CONTRACTOR(S) allow a Provider who has been barred from participation in the Kansas Medical Assistance Program to request a Reconsideration.

**5.4.3 Notice of Reconsideration Resolution for Providers**

5.4.3.1

The CONTRACTOR(S) shall develop, implement, and maintain a system for issuing a Notice of Reconsideration Resolution to a Provider for an Action, as that term is defined by this Attachment, taken by the CONTRACTOR(S) against the Provider. The CONTRACTOR(S) shall issue a Notice of Reconsideration Resolution notifying the Provider in accordance with this Attachment and applicable State regulations when the CONTRACTOR(S) issues an adverse decision to the Provider. The notice shall be in writing and contain the elements noted below. The notice may be in the form of a letter or Remittance Advice.

**5.4.4 Content of Notice of Reconsideration Resolution**

5.4.4.1

The CONTRACTOR(S)' notice to the Provider shall, at a minimum, include the following elements:

5.4.4.1.1

Date of Notice of Reconsideration Resolution;

5.4.4.1.2

Date the Notice of Reconsideration Resolution was sent;

5.4.4.1.3

The Action the CONTRACTOR(S) has made or intends to make;

5.4.4.1.4

The reasons for the Action;

5.4.4.1.5

The date the Action was made or will be made;

#### 5.4.4.1.6

If the Action is based upon a determination that the service is not medically necessary, the CONTRACTOR(S) shall provide an explanation of the medical basis for the decision, application of policy or accepted standards of medical practice to the individual's medical circumstances, in its notice to the Provider;

#### 5.4.4.1.7

If the Action is based upon a statute, regulation, policy or procedure, the CONTRACTOR(S) shall provide the statute, regulation, policy or procedure supporting the Action;

#### 5.4.4.1.8

An explanation of the Provider's right to submit an Appeal request to the CONTRACTOR(S) immediately following receipt of the Reconsideration resolution notice within sixty (60) calendar days of the date of the notice, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent. The notice shall include the address and contact information for submission of the Appeal;

#### 5.4.4.1.9

The procedures by which the Provider may request an Appeal regarding the CONTRACTOR(S)' Action;

#### 5.4.4.1.10

The Provider's right to represent him/herself or be represented by legal counsel or another spokesperson when requesting an Appeal through the CONTRACTOR(S);

#### 5.4.4.1.11

The specific change in Federal or State law that requires the Action;

#### 5.4.4.1.12

The Provider's right to a State Fair Hearing following completion of the Provider Appeal Process or, in cases of an Action based on a change in law, the circumstances under which a State Fair Hearing will be granted;

#### 5.4.4.1.13

Any other information required by Kansas statute or regulation that relates to a CONTRACTOR(S)' Notice of Reconsideration Resolution.

### **5.4.5 Timeframe for Notice of Reconsideration Resolution to Providers**

#### 5.4.5.1

The CONTRACTOR(S) shall send the Notice of Reconsideration Resolution to the Provider within five (5) business days following the date of Notice of resolution of the Reconsideration. The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Notices of Reconsideration Resolution are not sent by the timeframes indicated herein. See Attachment G.

### **5.4.6 Provider Appeals System**

#### 5.4.6.1

The CONTRACTOR(S) shall establish a Provider Appeal System, including written policies and procedures that meet the following requirements:

##### 5.4.6.1.1

Acknowledges receipt of each Provider Appeal;

##### 5.4.6.1.2

Provides the Appeal procedures and timeframes in writing to all Providers and Subcontractors at the time they enter into a provider agreement or Subcontract;

##### 5.4.6.1.3

Includes the Provider's right to submit Appeals and their requirements and timeframes for filing;

#### 5.4.6.1.4

Ensures the CONTRACTOR(S) maintains records of all Appeals received.

### **5.4.7. Provider Appeals Process**

#### 5.4.7.1

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, reporting and resolving Appeals by Providers or their Authorized Representatives through the Appeal process administered by the CONTRACTOR(S) or a Subcontractor(s). The Provider Appeal Process shall ensure the following:

##### 5.4.7.1.1

The Appeal procedure shall be the same for all Providers with the exception of State-approved Provider contracts that contain timeframes that are different from those established in this Attachment;

##### 5.4.7.1.2

A Provider or Provider's Authorized Representative must submit an Appeal in writing;

##### 5.4.7.1.3

The timeframe within which a Provider must submit a request for an Appeal with the CONTRACTOR(S) shall be sixty (60) calendar days of the date of the Notice of Action, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent;

##### 5.4.7.1.4

When a Provider or Authorized Representative requests review of an Action, and does not choose to submit a Reconsideration request, the CONTRACTOR(S) shall regard this as a request to Appeal an Action;

##### 5.4.7.1.5

The CONTRACTOR(S) shall acknowledge each written Appeal received from a Provider or Authorized Representative in writing within ten (10) calendar days of the date the CONTRACTOR(S) receives the Appeal request;

##### 5.4.7.1.6

The CONTRACTOR(S) shall resolve 98% of Provider Appeals within thirty (30) calendar days of the date the CONTRACTOR(S) receives the Appeal request;

##### 5.4.7.1.7

The CONTRACTOR(S) shall resolve 100% of Provider Appeals within sixty (60) calendar days of the date the CONTRACTOR(S) receives the Appeal request;

##### 5.4.7.1.8

The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Provider Appeals are not resolved by the timeframes indicated herein. See Attachment G;

##### 5.4.7.1.9

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that Provider Appeals are resolved in compliance with written policy and within the required timeframe. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in a Provider's Appeal of an Action. The designated employee must have a significant role in monitoring, investigating and hearing Appeals. The CONTRACTOR(S) shall have a routine process to detect patterns of Appeals. Management, supervisory, and quality improvement staff must be involved in developing policy and procedure improvements to address the Appeals;



5.4.7.1.10

The CONTRACTOR(S) shall provide a reasonable opportunity to present evidence, and allegations of fact or law, in person, as well as in writing. The CONTRACTOR(S) shall allow the Provider and the Provider's representative the opportunity, before and during the Appeal process, to examine the case file, including clinical records, and any other documents and records considered during the Appeal process. The CONTRACTOR(S) shall inform the Provider of the time available for providing this information;

5.4.7.1.11

The CONTRACTOR(S)' Appeal procedures shall be provided in writing to Providers in the Provider handbook and on its website. Upon request, a CONTRACTOR(S) shall provide a copy of the Appeal procedures to a Non-Participating Provider or direct the Non-Participating Provider to the CONTRACTOR(S)' website;

5.4.7.1.12

The CONTRACTOR(S) shall provide the Appeal procedures and timeframes in writing to all Providers and Subcontractor(s) at the time they enter into a provider agreement or a Subcontract;

5.4.7.1.13

The CONTRACTOR(S)' Appeal process shall allow for electronic submission of Appeals and may require that every Appeal be submitted by written communication or through the CONTRACTOR(S)' secure web portal. Every Provider Appeal received shall be acknowledged, recorded in a written record, and logged with the following details:

5.4.7.1.13.1

Date of the Notice of Action;

5.4.7.1.13.2

Date notice was sent;

5.4.7.1.13.3

Effective date of the Action;

5.4.7.1.13.4

Date the Provider or Authorized Representative requested the Appeal;

5.4.7.1.13.5

Date received by the CONTRACTOR(S);

5.4.7.1.13.6

Date acknowledgement letter was sent;

5.4.7.1.13.7

Identification of the individual filing the Appeal;

5.4.7.1.13.8

Identification of the individual recording the Appeal;

5.4.7.1.13.9

Nature of the Appeal;

5.4.7.1.13.10

How the CONTRACTOR(S) resolved the Appeal;

5.4.7.1.13.11

Corrective action required;

5.4.7.1.13.12  
Date resolved; and

5.4.7.1.13.13  
Date Notice of Appeal Resolution was sent to the Provider.

5.4.7.1.14  
The CONTRACTOR(S) shall consider the Provider or Provider's Authorized Representative as a party to the Appeal. A Provider may seek a State Fair Hearing if the Provider is not satisfied with the CONTRACTOR(S)' decision in response to an Appeal;

5.4.7.1.15  
If the CONTRACTOR(S) or State Fair Hearing officer reverses a decision to deny payment, the CONTRACTOR(S) shall authorize or provide the disputed payment promptly;

5.4.7.1.16  
The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Provider, or his/her representative, for filing an Appeal;

5.4.7.1.17  
The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to resolve all Provider Appeals. Such cooperation may include, but is not limited to, providing internal Provider Appeal information to the State;

5.4.7.1.18  
In no event shall the CONTRACTOR(S) allow a Provider who has been barred from participation in the Kansas Medical Assistance Program to request an Appeal.

#### **5.4.8. Notice of Provider Appeal Resolution**

5.4.8.1  
The CONTRACTOR(S) shall provide a written notice to the Provider regarding the Appeal Resolution within five (5) business days of the date the CONTRACTOR(S) resolves the Appeal. The written Notice of Provider Appeal Resolution shall include:

5.4.8.1.1  
Date of Notice of Appeal Resolution;

5.4.8.1.2  
Date the Notice of Appeal Resolution was sent;

5.4.8.1.3  
The results of the resolution process and the date of the Appeal resolution;

5.4.8.1.4  
For decisions not wholly in the Provider's favor:

5.4.8.1.4.1  
An explanation of the Provider's right to request a State Fair Hearing following receipt of the CONTRACTOR(S)' Notice of Appeal Resolution;

5.4.8.1.4.2  
How to request a State Fair Hearing;

5.4.8.1.4.3  
An explanation that the Provider must submit the request for State Fair Hearing within one hundred

twenty (120) calendar days of the date of the Appeal Resolution Notice, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent;

#### 5.4.8.1.4.4

The address and contact information for submission of the State Fair Hearing request;

#### 5.4.8.1.4.5

That in the State Fair Hearing the Provider may represent himself/herself or use legal counsel, a relative, a friend, or a spokesperson;

#### 5.4.8.1.4.6

An explanation of the Provider's right to request a State Fair Hearing, or in cases of an Action based on change in law, the circumstances under which a State Fair Hearing will be granted;

#### 5.4.8.1.4.7

Any other information required by Kansas statute or regulation that relates to a CONTRACTOR(S)' Notice of Provider Appeal Resolution.

### **5.4 Timeframe for Issuance of Notice of Provider Appeal Resolution**

#### 5.4.1

The CONTRACTOR(S) shall send the Notice of Provider Appeal Resolution to the Provider within five (5) business days following the date of resolution of the Appeal. The CONTRACTOR(S) is subject to remedies, including liquidated damages, if Notices of Provider Appeal Resolution are not sent by the timeframes indicated herein. See Attachment G.

### **5.5 Provider State Fair Hearings**

#### **5.5.1 Provider State Fair Hearing System**

##### 5.5.1.1

The CONTRACTOR(S) shall establish a Provider State Fair Hearing System, including policies and procedures that meet the following requirements;

##### 5.5.1.2

Provides the State Fair Hearing procedures and timeframes to all Providers and Subcontractor(s) at the time they enter into a provider agreement or Subcontract;

##### 5.5.1.3

Includes the Provider's right to a State Fair Hearing and the requirements and timeframes for filing;

##### 5.5.1.4

Informs Providers that they have the right to access the State Fair Hearing process immediately following receipt of the CONTRACTOR(S)' Appeal Resolution Notice and how to obtain a State Fair Hearing;

##### 5.5.1.5

Informs Providers that they may be represented by an authorized representative in the State Fair Hearing process;

##### 5.5.1.6

Includes the availability of a toll-free number to submit oral requests for State Fair Hearings;

##### 5.5.1.7

Includes the establishment of an internal process to research State Fair Hearing requests that includes analysis of the dispute and compilation of State Fair Hearing evidence in compliance with section 5.5.3 of this Attachment.

#### 5.5.1.8

Ensures the CONTRACTOR(S) maintains records of all State Fair Hearing requests received.

### **5.5.2 Provider State Fair Hearing Process**

#### 5.5.2.1

The CONTRACTOR(S) shall have written policies and procedures for receiving, tracking, dating, storing, responding to, reviewing, and reporting State Fair Hearings submitted by Providers or their Authorized Representatives. The State Fair Hearing process shall ensure the following:

##### 5.5.2.1.1

The State Fair Hearing process shall be the same for all Providers;

##### 5.5.2.1.2

The Provider may request a State Fair Hearing either orally or in writing. The CONTRACTOR(S) may require a written form from the Provider for a request for a State Fair Hearing;

##### 5.5.2.1.3

The timeframe within which a Provider or Provider's authorized representative must submit a request for a State Fair Hearing with the CONTRACTOR(S) or OAH shall be one hundred twenty (120) calendar days from the date of the notice of the Action, plus three (3) calendar days from the date the CONTRACTOR(S)' notice is sent;

##### 5.5.2.1.4

The CONTRACTOR(S) shall forward all requests received from Providers for a State Fair Hearing to the OAH within one (1) business day of the Provider's request for a State Fair Hearing;

##### 5.5.2.1.5

The CONTRACTOR(S) shall designate an employee of the CONTRACTOR(S) who has primary responsibility for ensuring that State Fair Hearing requests are processed in compliance with written policy and within the timeframes required by the State. The CONTRACTOR(S) shall have policies and procedures in place outlining the designated employee's role in processing a Provider's State Fair Hearing request. The designated employee must have a significant role in monitoring, investigating and processing State Fair Hearing requests. The CONTRACTOR(S) shall have a routine process to detect and record patterns of State Fair Hearings. Management, supervisory, and quality improvement staff shall be involved in developing policy and procedure improvements to address Provider State Fair Hearing requests;

##### 5.5.2.1.6

The CONTRACTOR(S)' State Fair Hearing procedures shall be provided in writing to Providers in the Provider handbook and on its website. Upon request, a CONTRACTOR(S) shall provide a copy of the State Fair Hearing procedures to a Non-Participating Provider or direct the Non-Participating Provider to the CONTRACTOR(S)' website. The CONTRACTOR(S) shall maintain and publish in the Provider handbook and website at least one (1) toll-free telephone number for requesting a State Fair Hearing, if oral requests are permitted by the CONTRACTOR(S);

##### 5.5.2.1.7

The CONTRACTOR(S)' State Fair Hearing process shall allow for electronic submission of requests for State Fair Hearings and shall require that every State Fair Hearing request received in person, by telephone, voice mail, e-mail or in writing from a Provider or Provider's Authorized Representative shall be recorded in a written record and logged with the following details:

###### 5.5.2.1.7.1

Date of Notice of Action;

###### 5.5.2.1.7.2

Date notice was sent;

5.5.2.1.7.3

Effective date of the Action;

5.5.2.1.7.4

Date the Provider or Provider's Authorized Representative requested the State Fair Hearing;

5.5.2.1.7.5

Date forwarded to OAH;

5.5.2.1.7.6

Identification of the individual filing the request for a State Fair Hearing;

5.5.2.1.7.7

Identification of the individual recording the request;

5.5.2.1.7.8

Nature of the State Fair Hearing;

5.5.2.1.7.9

Resolution of the State Fair Hearing;

5.5.2.1.7.10

Corrective action required;

5.5.2.1.7.11

Date resolved.

5.5.2.1.8

The CONTRACTOR(S) is prohibited from discriminating or taking punitive action against a Provider, or Authorized Representative, for filing a State Fair Hearing request;

5.5.2.1.9

The CONTRACTOR(S) shall follow the directions of the State concerning:

5.5.2.1.9.1

The preparation of and the contents for the Agency Summary (see applicable K.A.R. as a guide), including notification to the Provider that both the CONTRACTOR(S) and the State will be appearing at the State Fair Hearing, with names of those who will be appearing;

5.5.2.1.9.2

The sending of the Agency Summary and any addendums;

5.5.2.1.9.3

The identification of CONTRACTOR(S) witnesses to testify at the State Fair Hearing;

5.5.2.1.9.4

The motions for extensions of time to submit necessary documents;

5.5.2.1.9.5

The motions to dismiss, if any; and,

5.5.2.1.9.6

Other State Fair Hearing matters as needed.

#### 5.5.2.1.10

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to resolve all Provider State Fair Hearings. Such cooperation may include, but is not limited to, providing internal Provider State Fair Hearing information to the State;

#### 5.5.2.1.11

In no event shall the CONTRACTOR(S) allow a Provider who has been barred from participation in the Kansas Medical Assistance Program to request a State Fair Hearing;

#### 5.5.2.1.12

The State OAH is responsible for the State Fair Hearing;

#### 5.5.2.1.13

The State is a party to the State Fair Hearing. The State will be designated as the Respondent in a State Fair Hearing for cases involving CONTRACTOR(S) decisions appealed to a State Fair Hearing by a Provider. The State Medicaid Agency or a Sister State Agency authorized to administer that portion of the Kansas Medicaid Program will be designated as the Respondent in those cases involving their area of administrative delegation. The parties to the State Fair Hearing include the CONTRACTOR(S). The CONTRACTOR(S) may be noted as the contractual agent of the State. The Provider is also a party and may be represented;

#### 5.5.2.1.14

The Fair Hearings Manager or an attorney for the Respondent will represent the State at all State Fair Hearings. The CONTRACTOR(S) shall participate in or be present at the State Fair Hearings;

#### 5.5.2.1.15

The Respondent or Appellant to the State Fair Hearing may Appeal the decision of the Initial Order issued by the Presiding Officer to the State Appeals Committee (SAC). SAC will review the Initial Order and issue a Final Order. If neither the Respondent nor Appellant requests a review of the Initial Order by SAC, the Initial Order will become the Final Order. The Respondent or Appellant may Appeal the Final Order to a district court. The Respondent or Appellant also may request a Reconsideration of the Final Order by the Secretary of KDHE-DHCF. There are filing time limits that are strictly enforced. The Initial and Final Orders specify those time limits;

#### 5.5.2.1.16

If the CONTRACTOR(S) or State Fair Hearing officer reverses a decision to deny payment, the CONTRACTOR(S) must authorize or provide the disputed payment promptly;

#### 5.5.2.1.17

The CONTRACTOR(S) shall ensure that punitive action is not taken against a Provider who requests a State Fair Hearing on the Member's behalf or supports a Member's State Fair Hearing request;

#### 5.5.2.1.18

The CONTRACTOR(S) shall cooperate with the State, the State's fiscal agent, and / or designees of either to process and resolve all Provider State Fair Hearing requests. Such cooperation may include, but is not limited to, providing internal Provider State Fair Hearing information to the State.

### **5.5.3 Additional Requirements for CONTRACTOR(S)' Member and Provider Grievance, Appeal, and State Fair Hearings and Provider Reconsideration Tracking and Staff Training**

#### 5.5.3.1

The tracking systems for Member Grievances (4.2.1), Member Appeals (4.4.2.1), Member State Fair Hearings (4.6.2.1), Provider Grievances (5.2.1), Provider Reconsiderations (5.4.2.1), Provider Appeals (5.4.7.1), and Provider State Fair Hearings (5.5.2.1) must have functionality to create database extract files or other files, as determined by the State, that can be imported into the State's Grievance, Reconsideration, Appeal and State Fair Hearing database or other reporting software.

#### 5.5.3.2

Appropriate functioning in all areas of Member and Provider Grievance, Appeal and State Fair Hearing and Provider Reconsideration support shall include training of all new staff and ongoing training for current staff, in all areas of CONTRACTOR(S)' or Subcontractor(s)' organization where staff are involved in the aforementioned processes, as well as staff with direct Member contact such as call center and Member outreach staff, in order to achieve the following minimum competencies:

##### 5.5.3.2.1

Understand State and CONTRACTOR(S) policies and procedures applicable to Member and Provider Grievances, Appeals and State Fair Hearing requests and Provider Reconsideration requests;

##### 5.5.3.2.2

Understand Federal and State statutes and regulations applicable to Member and Provider Grievances, Appeals and State Fair Hearing Requests and Provider Reconsideration requests;

##### 5.5.3.2.3

Apply knowledge of State and CONTRACTOR(S) policies and procedures, as well as State and Federal statutes and regulations and associated documents, to comply with all processing, issuing of all required notices to Members and Providers (e.g., Initial and Resolution notices), and tracking requirements pertaining to the disposition of Member and Provider Grievances, Appeals and State Fair Hearing requests and Provider Reconsideration requests as specified in this Attachment;

##### 5.5.3.2.4

Apply knowledge of State and Federal statutes and regulations to ensure relevant statute or regulation is included in State Fair Hearing documents;

##### 5.5.3.2.5

Accurately identify the dispute involved in each Member and Provider Grievance, Appeal and State Fair Hearing request and Provider Reconsideration request;

##### 5.5.3.2.6

Ensure all potential witnesses, CONTRACTOR(S) and agency representatives are listed in each agency summary for State Fair Hearings;

##### 5.5.3.2.7

Research State Fair Hearing requests to determine the source of the dispute, analyze data from multiple sources, and involve the appellant and key departments within the State or CONTRACTOR(S), when necessary, to achieve resolution of the dispute prior to a State Fair Hearing, when possible;

##### 5.5.3.2.8

Compile relevant documentation for State Fair Hearings for agency summaries and dismissal requests that complies with the applicable K. A. R. and as directed by the State. See Attachment G.

##### 5.5.3.2.9

Summarize the arguments presented by the appellant and the State/CONTRACTOR(S) in agency summaries for State Fair Hearings to ensure the dispute and actions by the appellant and State/CONTRACTOR(S) are clearly identified. Accurately state the legal basis upon which dismissal requests are based and include regulations or statutes in support. See Attachment G.

5.5.3.2.10

Ensure timely delivery to the appellant, the State, and its designee, the OAH, of State Fair Hearing documentation as required by the State and the State's designee, the OAH. See Attachment G.