



CALIFORNIA HEALTH ADVOCATES

## Medicare Advantage: If You Have Problems with Your Medicare Advantage Plan

Medicare Advantage (MA) plans are health plans offered by private insurance companies and approved by Medicare. Just as Medicare beneficiaries in the Original Medicare program have the right to file appeals and grievances, Medicare beneficiaries enrolled in MA plans have the same rights. Each MA plan is required to include in its membership materials information about these complaint processes and give this to every enrollee. This fact sheet outlines the steps that an MA plan enrollee can take to file an appeal or grievance. It also includes a table outlining the timeframes for each step of the appeals process. For more information about Medicare Advantage Plans, see our fact sheet “Medicare Advantage (Part C): An Overview” at [cahealthadvocates.org](http://cahealthadvocates.org).

### Appeal or Grievance

As an enrollee, you have the right to file a complaint if you have problems with your MA plan. You can also appoint someone else – a family member, friend, caregiver or doctor – to be your representative in a complaint.

There are 2 kinds of complaints: appeals and grievances. You can file an appeal if your MA plan decides not to provide or pay for a service or item that you think it should provide or pay for. Two examples of situations where you can appeal an MA plan’s decision:

- If your MA plan refuses or fails to give you treatment in a timely manner that you feel should be covered by the plan.
- If your MA plan discontinues services you believe are still medically necessary.

A grievance is a complaint about a plan’s operations, activities, or behavior of its employees or providers. Examples of situations where you may file a grievance:

- If getting an appointment is difficult, or if you have to wait a long time for one to be scheduled.
- If a plan’s provider is rude to you or treats you disrespectfully.
- If you are involuntarily disenrolled even though you have been paying the monthly premiums on time.

MA plans are required to have written procedures in place that inform all MA plan members about the grievance process, including specific time frames for each step and instructions for how to file a grievance. Grievances must be transmitted in a timely manner to the appropriate decision-making levels within the MA plan and the plan must promptly take appropriate action, including a full investigation, if necessary. The person filing the complaint must be notified in writing of the investigation’s results, if the grievance is related to quality of care issues.

**Note:** In addition to filing appeals or grievances, if the quality of care for a Medicare-covered service is in question, you can also complain to your QIO (Quality Improvement Organization) which in California is Health Services Advisory Group (HSAG). To reach HSAG about a quality of care issue, call 1-866-800-8749.

### Five Levels of Appeal

**Organization Determination.** If you ask your MA plan to provide or pay for a service or item that you think should be covered or continued, the plan’s response or decision is called an organization determination. If the plan decides not to cover or continue a service or item, it must tell you in writing the reason(s) for the denial, and how to appeal the organization determination.

**1. Request for Reconsideration.** If your MA plan denies all or part of your request to provide

or pay for a service or item, you can request a reconsideration. A plan may upon reconsideration change its decision and provide the item or service. But if the plan still decides not to provide or pay for the item or service, it automatically sends your appeal for external review by MAXIMUS Federal Services.

## 2. External Review by Independent Review Entity.

MAXIMUS Federal Services ([medicareappeal.com](http://medicareappeal.com)) is contracted by the Centers for Medicare and Medicaid Services (CMS) to be the national Independent Review Entity (IRE) to review denials from MA plans. If MAXIMUS disagrees with the MA plan, MAXIMUS will send a letter to you and the plan about its decision and tell the plan to provide or pay for the service or item.

If MAXIMUS agrees with the MA plan, MAXIMUS will send you a letter about its decision and information about the next level of appeal.

**3. Administrative Law Judge (ALJ).** If you want to appeal the decision from MAXIMUS, the amount in controversy must be \$120 or more (in 2009) for a hearing with an ALJ. After hearing your case, the ALJ will send a written decision to you, the MA plan, and MAXIMUS. If the ALJ rules in your favor, MAXIMUS will send a letter to your MA plan telling the plan to provide or pay. The MA plan can appeal this decision by asking for a review by the Medicare Appeals Council, the next level of appeal.

Or, if the ALJ agrees with the MA plan, you can request a review by the Medicare Appeals Council. Information about where to send the request should be in the ALJ's decision notice.

ALJ hearings are usually held by video teleconference or over the telephone, as there are only 4 offices nationwide for in-person hearings. If you show "good cause," a request for an in-person hearing may be granted at the ALJ's discretion.

**4. Medicare Appeals Council.** The Medicare Appeals Council does not review every case it receives. If the Council decides not to review your case, you or the plan may ask for a review by a Federal court. If the Medicare Appeals Council reviews your case and agrees with the

MA plan, you may ask for a Federal court review if the amount in controversy is \$1,220 or more (in 2009).

**5. Federal Court.** To appeal a Medicare Appeals Council's decision, you may file a lawsuit in Federal district court if the amount in controversy is \$1,220 or more (in 2009). This is the last level of appeal.

**Note:** You should consider seeking legal advice before appealing to an ALJ, Medicare Appeals Council, or Federal court. Your local HICAP office can generally refer you to local legal assistance programs.

## Expedited Appeals

Many medical conditions require immediate attention when a service has been denied or terminated. Patients whose health or life could be seriously jeopardized without the requested care may be candidates for an Expedited Appeal.

When a doctor requests an Expedited Appeal, the MA plan must review the case within 72 hours. This doctor does not need to be your assigned doctor (primary care physician), nor does the doctor need to be a member of your MA plan.

However, if you or your representative requests an Expedited Appeal, the MA plan can choose to grant your request for an expedited appeal and decide the appeal within 72 hours, or deny your request for an expedited appeal and process the appeal within the standard 14-day period.

**Note:** You may also file a grievance if the plan denies your request for an Expedited Appeal. You may file a grievance at any time. The grievance process addresses complaints outside of the formal appeals process.

## Fast Track Appeals

You have the right to request a fast track appeal to California's Quality Improvement Organization (QIO), HSAG, in the following situations:

- You are being discharged from the hospital but you are not medically ready to leave, or

you have not received clear discharge instructions; or

- You are receiving care from a skilled nursing facility, home health agency, hospice or comprehensive outpatient rehabilitation facility and receive notice that those services

will end soon but you need those services to continue.

Call HSAG at 1-800-841-1602 or 1-800-881-5980 (TDD-hearing impaired); [hsag.com](http://hsag.com).

## Medicare Advantage Appeals Time Table

**Organization Determination** – If you, the enrollee, request for a service or item to be covered or to continue, the plan must notify you of its determination as expeditiously as your health condition requires, but no later than 14 days after the plan receives your request for an organization determination.

<p><b>Standard</b> – If the plan decides not to cover or continue the requested service or item, the plan must notify you in writing within 14 days of receiving your request. In the notice, the plan must state the reason(s) for the denial and how to appeal the decision.</p>	<p><b>Fast decision</b> – The plan must notify you of its decision within 72 hours if it determines that your health or life could be seriously harmed by waiting for a decision in the standard 14-day period.</p>
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**1. Reconsideration by the Plan** – You have 60 days from the date of notice of the organization determination to request a reconsideration. This is the 1<sup>st</sup> level of appeal.

<p><b>Standard</b> – For a <i>service</i> request, the plan has 30 days from the receipt of the request for reconsideration to notify you of its decision.</p> <p>For a <i>payment</i> request, the plan has 60 days from the receipt of the request for reconsideration to notify you of its decision.</p>	<p><b>Expedited request</b> – The plan has 72 hours from the receipt of the request for reconsideration to notify you of its decision.</p>
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If upon reconsideration the plan does not change its decision, it automatically sends your case file to an Independent Review Entity.

**2. Review by MAXIMUS Federal Services (Independent Review Entity).** This is the 2<sup>nd</sup> level of appeal.

MAXIMUS will notify you in writing when it has your case file.

You have the right to send MAXIMUS information about your case. If you decide to send MAXIMUS information, they must get it within 10 days after the date you receive MAXIMUS’ notice that they have your case file.

<p><b>Standard</b> – For a <i>service</i> request, MAXIMUS has 30 days to notify you of its decision.</p> <p>For a <i>payment</i> request, MAXIMUS has 60 days to notify you of its decision.</p>	<p><b>Expedited request</b> – MAXIMUS has 72 hours to notify you of its decision.</p>
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MAXIMUS must send a written decision to you and the plan. If MAXIMUS agrees with the plan, the decision letter from MAXIMUS should include instructions about the next level of appeal.

**3. Administrative Law Judge (ALJ)** – You have 60 days from the date of MAXIMUS' decision letter to request a hearing with an ALJ if the amount in controversy is  $\geq$  \$120. This is the 3<sup>rd</sup> level of appeal.

The ALJ office will schedule a hearing and inform you of the time and place of the hearing (if it is an in-person hearing – most hearings are held by video teleconference or phone). The ALJ will make a decision based on your case file and information presented at the hearing. The ALJ must send a written decision to you, the plan and MAXIMUS.

If the ALJ agrees with the plan, you may request a review by the Medicare Appeals Council. If the ALJ disagrees with the plan, the plan may request a review at the next level.

**4. Medicare Appeals Council** – You have 60 days from the date of the ALJ's written decision to request a review by the Medicare Appeals Council. This is the 4<sup>th</sup> level of appeal.

The Medicare Appeals Council does not review every case it receives. If it decides not to review a case, or if it does review your case and decides against you, you may ask for a review at the next level.

**5. Federal Court** – You have 60 days from the date of the Medicare Appeals Council's written decision to request a review by a Federal court if the amount in controversy is  $\geq$ \$1,220. This is the 5<sup>th</sup> and last level of appeal.

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This fact sheet contains general information and should not be relied upon to make individual decisions. If you would like to discuss your specific situation, call the Health Insurance Counseling and Advocacy Program (HICAP). HICAP provides free and objective information and counseling on Medicare and can help you understand your specific rights and health care options. You can call **1-800-434-0222** to make an appointment at the HICAP office nearest you.