



State of New Jersey

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Division of Medical Assistance and Health Services

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**MEDICAID COMMUNICATION NO. 26-06**

**DATE: June 23, 2026**

**TO:** NJ FamilyCare Eligibility Determining Agencies  
County and State Fair Hearing Units  
Office of Administrative Law  
Other Interested Parties

**SUBJECT:** Operational Changes to Medicaid Fair Hearing Process Effective  
July 1, 2026

As part of the State response to the end of continuous enrollment condition of the COVID-19 Public Health Emergency (PHE) Families First Coronavirus Response Act (FFCRA), the Division of Medical Assistance and Health Services (DMAHS) sought and received temporary waiver flexibilities under section 1902(e)(14)(A) of the Social Security Act (“(e)(14) waivers”) from the federal Centers for Medicare and Medicaid Services (CMS). The waivers were intended to protect NJ FamilyCare beneficiaries during the period of “unwinding” the continuous enrollment condition of FFCRA. The unwinding period in New Jersey started on April 1, 2023, and concluded on December 31, 2025.

Several of the (e)(14) waivers granted by CMS were specific to the fair hearing process. All of the (e)(14) waivers and associated flexibilities related to the fair hearing process are set to expire on June 30, 2026. CMS has advised DMAHS that further extensions of these (e)(14) waivers are unlikely to be approved, and as such DMAHS is not seeking such extensions.

This Medicaid Communication describes the resumption of the operational and policy rules in place prior to the start of the waiver-related changes to the fair hearing process and provides guidance to the Eligibility Determining Agencies (EDAs), county and State Fair Hearing Units, and Office of Administrative Law (OAL). The staff of all entities listed must follow these changes to be compliant with federal and State regulations related to the Medicaid fair hearing process.

**1. Expiration of Waiver Allowing Certain Initial Decisions to be treated as Final Agency Decisions**

Under standard Medicaid fair hearing procedures and applicable regulations, OAL Administrative Law Judges (ALJs) conduct fair hearings and issue Initial Decisions

based upon those hearings; DMAHS reviews those Initial Decisions in its role as administrative agency; and the DMAHS Director issues corresponding Final Agency Decisions which may adopt, modify, reverse, or remand the Initial Decisions, in whole or in part.

On October 2, 2023, DMAHS implemented temporary operational flexibilities in response to increased Medicaid Fair Hearing backlogs, federal timeliness concerns, and adjudicatory delays arising due to a higher volume of cases during the Medicaid unwinding period. Pursuant to the October 2, 2023, order, certain Initial Decisions issued by the OAL were administratively adopted as Final Agency Decisions without substantive DMAHS review or modification authority. This temporary process applied to three categories of cases related to denials or terminations for the following reasons:

1. being over income;
2. being over resources; and
3. failing to provide requested information.

The public notice associated with this waiver is available at:  
<https://www.nj.gov/humanservices/notices/documents/public-notices/FH%20Notice%2010.3%20impl.pdf>.

With expiration of the temporary operational flexibilities, DMAHS will resume review of Initial Decisions issued by the Office of Administrative Law. However, to promote timely resolution of Medicaid fair hearings and compliance with applicable adjudicatory timeframes, for the vast majority of cases that were previously covered by this flexibility (i.e. terminations for being over income, over resources, or failure to provide requested information), DMAHS will utilize a streamlined review process. In most such cases, DMAHS expects to issue a brief Final Agency Decision adopting the Initial Decision. More detailed review and analysis may be undertaken only in rare instances where DMAHS identifies a clear material error, where the Initial Decision presents a novel or significant legal issue, or where exceptions are timely filed and identify unusual circumstances that would warrant further review. That said, nothing in this guidance limits the authority of the DMAHS Director to adopt, modify, reject, or remand any Initial Decision as permitted by applicable law.

DMAHS is also considering options to permanently modify New Jersey's Medicaid state plan, in order to change the handling of fair hearing requests previously covered by this flexibility. Any such permanent changes will be communicated through a future Medicaid Communication and/or other appropriate notice.

## **2. Reinstatement of Federal 90-Day Final Administrative Action Requirement**

Per 42 C.F.R. § 431.244(f)(1), states generally must take final administrative action within 90 days of receipt of a fair hearing request. CMS granted a temporary (e)(14) waiver on July 21, 2022, extending the timeframe for final administrative action beyond 90 days. This (e)(14) waiver is set to expire on June 30, 2026.

As a condition of this waiver, CMS required that DMAHS provide continuation of benefits to *all* beneficiaries who requested a fair hearing related to their termination of benefits. The waiver further specified that the cost of the services provided during this period could not be recouped by the State, even if the member's termination of benefits was ultimately upheld by the fair hearing process. DMAHS implemented these changes by providing automatic (without requiring an affirmative request from the beneficiary) reinstatement and continuation of benefits for all fair hearing requests where benefits had been reduced or terminated.

With the expiration of this waiver, DMAHS is implementing the following changes to the fair hearing process:

- Effective July 1, 2026, continuation of benefits while a fair hearing is pending will no longer automatically be granted. Fair hearing notices will instead require beneficiaries to affirmatively elect continuation of benefits at the same coverage level pending appeal. Alternatively, a beneficiary can elect to terminate their benefits while the fair hearing is pending and have the benefits retroactively restored on a fee-for-service basis if the appeal is successful. If the beneficiary does not affirmatively elect to have benefits continued, then the benefits will be paused.
- Pursuant to N.J.A.C. § 10:49-10.4(b), if a beneficiary elects to continue benefits while their fair hearing is pending, and is ultimately found to be ineligible, DMAHS may recoup the cost of any services (including MCO capitation payments) provided in the interim. However, in the event that the fair hearing process extends beyond the 90-day limit specified at 42 C.F.R. § 431.244(f)(1), DMAHS will not (with limited exceptions identified below) attempt to recoup the cost of any services delivered beyond the initial 90-day period. Recovery may still occur for the entire time period in cases involving fraud, misrepresentation, or abuse of the fair hearing process.

While implementing these policy changes, DMAHS is redoubling its efforts to ensure compliance with the 90-day regulatory timeframe for fair hearing resolution. To support these efforts, DMAHS requests that Eligibility Determining Agencies take the following steps with respect to the fair hearing process:

- Prioritize timely communication, early issue resolution, reduction of unnecessary case transmittals, prompt submission of documentation, and efficient coordination with DMAHS and OAL.
- Immediately notify the DMAHS Fair Hearing Unit of withdrawals, approvals, settlements, rescinded adverse determinations, and other resolutions eliminating the need for a hearing. All notifications must be promptly submitted to [mahs.fhwithdrawals@dhs.nj.gov](mailto:mahs.fhwithdrawals@dhs.nj.gov). Relevant supporting documentation, including copies of withdrawal letters, approval letters, settlement agreements, rescission notices, or other documentation evidencing the resolution, must accompany all notifications.
- Ensure that notices are complete and accessible in the Document Imaging Management System (DIMS), and maintain all documentation necessary for Fair

Hearing review. Failure to scan and upload notices timely may cause delays in case processing and fair hearing resolution.

### **3. Reinstatement of the 20-Day Fair Hearing Filing Requirement**

Per N.J.A.C. § 10:49-10.3(b), claimants have 20 days from the date of receipt of the notice of action to request a fair hearing. However, in 2023, DMAHS instituted a temporary 60-day filing period for fair hearings as part of the operational measures taken in response to the demands of the unwinding process. In order to support timely resolution of fair hearings and ensure compliance with the 90-day regulatory timeframe, DMAHS will be ending the temporary operational use of a 60-day filing period and returning to the 20-day filing period specified in State regulation, effective July 1, 2026. Fair Hearing Notices sent July 1, 2026 and onward must contain the updated timing requirement.

That said, DMAHS will apply the following mailing presumptions when reviewing timeliness: (1) allowing five (5) days from the date on the notice for presumed mail processing time; and (2) allowing an additional five (5) days to account for the effect of the new postmark mailing standard rule adopted by the United States Postal Service effective December 24, 2025. See 90 Fed. Reg. 52883 (Nov. 24, 2025) (codified at 39 CFR Part 111). In other words, the 20-day clock will begin 10 days after the date on the notice, to allow for presumed receipt by the member. To clearly represent the timing calculation of these postal mailing presumptions to all beneficiaries requesting a fair hearing, Fair Hearing Notices will explain that beneficiaries have 30 days to request a fair hearing from the date on the notice. The request must be made within 30 days of the date on the notice, with either proof of mailing or faxing within that 30-day period.

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