

Washington State EHR Incentive Program
WHITE PAPER #4: EHR APPEAL PROCESS

Updated April 2015

INTRODUCTION

42 CFR § 495.370 Appeals process for a Medicaid provider receiving electronic health record incentive payments. <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/pdf/CFR-2017-title42-vol5-part495.pdf>

CMS requires states to “have a process in place . . . for a provider or entity to appeal the following issues related to the HIT incentives payment program:

1. Incentive payments
2. Incentive payment amounts
3. Provider eligibility determinations
4. Demonstration of Adopting, Implementing, Upgrading, and Meaningful Use.

HOW AND WHEN TO APPEAL

WAC 182-502-0025 Electronic health records (EHR) incentive program

<http://apps.leg.wa.gov/wac/default.aspx?cite=182-502-0025>(5) All matters of dispute are subject to the Administrative Procedure Act (APA) appeal process under chapter [34.05](#) RCW. A provider who disagrees with an agency action under this section may request a hearing. The hearing request must:

- (a) Be in writing;
- (b) Be received by the agency, at the address identified in the notice of action, within twenty-eight days of the date of the notice of action by certified mail (return receipt); and
- (c) State the reason or reasons why the provider thinks the action is incorrect.

When the EHR Incentive Program makes a decision, and a provider wishes to dispute—regarding eligibility, AIU, MU, or other issues concerning incentive payments—the provider may appeal the decision by requesting an administrative hearing. The hearing request must:

1. Be in writing
2. Be received by the agency, by certified mail (return receipt) to the address identified in the notice of action letter, within twenty-eight days of the date of the notice of action; and
3. State the reason(s) why the provider thinks the action is incorrect, and include any additional information, data, or documentation that supports the appeal.

The appeal will be heard by the Office of Administrative Hearings (OAH), an independent state agency. Administrative hearings will be governed by the rules found in Chapter 182-526 WAC, and

supplemented by the Model Rules of Procedure found in Chapter 10-08 WAC. An administrative hearing before the OAH is a legal proceeding held by an impartial decision-maker called an Administrative Law Judge (ALJ). The ALJ is an attorney who works for the OAH and is not an employee of the HCA.

The OAH will schedule an appeal hearing. Parties will appear for a hearing either in person or by telephone. Administrative hearings are designed to be informal and are usually held in a conference room. The provider or their representative, and a representative of HCA, will be allowed to provide information about the case to the ALJ, who will consider the facts and the law. Each party will receive a written decision after the hearing.

A HCA employee may not represent a provider, and the state will not pay for the provider's representative.

HEARING PROCEDURES

RCW 34.05

<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>

According to WAC 182-502-0025(5) All matters of dispute are subject to the Administrative Procedure Act (APA) appeal process under chapter 34.05 RCW.

The provider or their representative may contact the HCA representative to attempt to settle the case before the hearing, or if they have questions about the HCA decision, rules or policies. If the parties cannot reach an agreement, the provider still has the right to a hearing. Regardless, the provider must request an administrative hearing within 28 days from the receipt of the notice of action or the right to a hearing will be lost.

Hearings are in person or by phone. All hearings are recorded and all testimony is under oath or affirmation. The ALJ will decide which party will present their case first. Each party will have a chance to testify, ask questions of the other parties, and present documents. The ALJ may also ask questions. After all testimony is given, each party may make a closing argument. At the conclusion of the proceeding, the ALJ will indicate when the decision will be issued.

If a provider fails to attend the prehearing or the hearing, their case may be dismissed and they may not be able to appeal the HCA decision again. The ALJ will not normally make a decision at the hearing. The written decision—called an Initial Order—will be mailed within 30 to 60 days after the hearing, for most cases.

If the provider disagrees with the Initial Order, other actions are available, including a request for a review by the Board of Review (BOA) and by the Superior Court. Further details will be provided to EPs and hospitals as the needs arise.



Further Information:

If you have further questions regarding EHR Incentive Program in Washington State, please contact **HealthIT@hca.wa.gov**.

Name Change Disclaimer: CMS is renaming the EHR Incentive Programs to the Promoting Interoperability (PI) Programs. Washington does not plan on following the name change however, you will see reference to it in most of our documents. For more information please visit the CMS website.