

## Adverse Actions Hearing Policy and Plan for Providers – CR306

<b>Subject:</b> Adverse Actions Hearing Process For Providers	<b>Revised Effective:</b> 11/5/20
<b>Policy #:</b> CR306	<b>Review Schedule:</b> Annual or as needed

**Applicability:**

- Credentialing
- Legal Services
- Medical Services
- Provider Network Services
- Quality Management

**NOTE:** Not all actions affecting a provider’s participation status are subject to this policy and procedure. This policy is specific to proposed adverse action affecting a provider’s credentials. Disputes relative to claims appeals are addressed in policy and procedure ADM204 Provider-Carrier Disputes.

**Policy:**

A Provider’s participation in the Colorado Access network may be adversely affected based on a Provider’s quality of care, lack of professional competency and/or unprofessional conduct impacting quality of care. Actions pursuant to this policy must be taken in the reasonable belief that the action is in the furtherance of quality health care and/or patient safety, after a reasonable effort to obtain the facts, after adequate notice and hearing procedures are afforded to the Provider, and based upon a reasonable belief that the action was warranted by the facts known.

Colorado Access offers a review process for all proposed adverse actions impacting a Provider’s credentials where the proposed adverse action relates to quality of care, professional competency or unprofessional conduct affecting quality of care.

For actions proposed against a Provider’s credentials, for quality of care, professional competency or unprofessional conduct impacting quality of care, Colorado Access follows a review process that ensures quality of care, patient safety, consistency, fairness, uniformity, and protection of member’s rights. The Provider is afforded the opportunity to request a hearing in order to review any action proposed to be taken which will adversely impact their participation status.

**Definitions:**

<b>Adverse Action</b>	means action which will reduce, restrict, suspend, revoke or deny a provider’s credentials in a manner that affects the provider’s participation status for reasons of quality of care, professional competency or conduct affecting quality of care.
<b>Credentials</b>	means the authorization granted through the credentialing process by Colorado Access to a Provider to participate as a provider of healthcare services to Colorado Access members, and includes membership on the Colorado Access medical staff.

<b>Hearing Panel</b>	<p>means a panel of at least three (3) qualified individuals, mutually acceptable to the Provider and Colorado Access, appointed by Colorado Access to hear matters subject to the fair hearing process described in this policy.</p> <p>Qualified individuals are participating providers who are clinical peers of the provider requesting the fair hearing process, who are not involved in the day-to-day operations of Colorado Access, and not in direct economic competition with the Provider.</p>
<b>Provider</b>	<p>means a state-licensed, state-certified, or state-authorized facility or a practitioner or physician delivering healthcare services to Colorado Access members through a provider or facility participation agreement.</p>
<b>Professional Review Committee</b>	<p>means any committee authorized under Colorado Revised Statutes (“C.R.S.”) Title 12, Article 30 to review and evaluate the competence, professional conduct of, or the quality and appropriateness of patient care provided by, any person licensed under Colorado Revised Statutes Title 12, Article 36 or licensed under C.R.S. Title 12, Article 38 and granted authority as an advanced practice nurse. Professional Review Committee includes a credentialing committee a hearing panel appointed to conduct a hearing under C.R.S. § 12-30-204(8)(a), and an appeal panel.</p>
<b>Records</b>	<p>means any and all written, electronic, or oral communications by any person arising from any activities of a Professional Review Committee, including a governing board, a peer review or credentials committee, a hearing panel or other individual or committee, established by an authorized entity under Title 12 of C.R.S. Article 30, or by the agent or staff thereof, including any: (1) letters of reference; (2) complaint, response, or correspondence related to the complaint or response; (3) interviews or statements, reports, memoranda, assessments, and progress reports developed to assist in personal review activities; (4) assessments and progress reports to assist in professional review activities, including reports and assessments developed by independent consultants in connection with professional review activities; and (5) recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents related to professional review activities or the committee on anticompetitive conduct and typically constituting records of administrative proceedings. “Records” does not include any written, electronic, or oral communications by any person that are otherwise available from a source outside the scope of professional review activities, including medical records and other health information.</p>

## **Procedures:**

### **1. Investigations and Actions Based on Provider Quality of Care, Competence and Unprofessional Conduct.**

The credentials committee or Chief Medical Officer may review or initiate an investigation into any alleged incident or allegation concerning a provider's quality of care, competence or alleged unprofessional conduct affecting quality of care. If, upon review or investigation, there is a recommendation for adverse action to be taken with respect to any provider's credentials based on quality of care, incompetence or unprofessional conduct impacting quality of care, the provider shall have an opportunity for fair hearing.

### **2. Notification and Hearing Process for Proposed Actions to be Imposed on Provider for Quality of Care, Professional Competence and/or Conduct**

- A. Upon recommendation that an adverse action should be taken, Colorado Access will give the Provider written notice of the proposed action. Such notice will include:
  - 1. A statement that an adverse action has been proposed against the Provider;
  - 2. The reasons for the proposed action;
  - 3. That the Provider has the right to request a hearing and to present relevant information;
  - 4. That the provider has ten (10) days to request a hearing.
  - 5. A copy of this procedure and Attachment A, the Hearing Plan
- B. The Provider will be notified, by email and by mail via the USPS to the last known mailing address, within five (5) business days of the proposed adverse action.
- C. If a request for a hearing is not received from the Provider within ten (10) days of mailing the notice, it will be assumed the Provider waives the right to a hearing.
- D. If a request for hearing is received from the Provider within ten (10) days of the notice, the process for hearing will be initiated.
- E. The Hearing Panel will issue a decision either orally at the hearing or in writing within thirty (30) calendar days.

### **3. Precautionary Suspension**

Notwithstanding any of the provisions in this policy, if at any time the Chief Medical Officer, Senior Medical Director or the Credentials Committee determines that a Provider's continued provision of services to Colorado Access members poses an imminent threat to patient safety or to quality of patient care, the Credentials Committee or the Chief Medical Officer/Senior Medical Director may take immediate action to suspend the Provider's credentials, which action shall be effective at the time taken, subject to the fair hearing process if the precautionary suspension remains in effect for more than thirty (30) days. Investigation of circumstances giving rise to a precautionary suspension will be performed on an expedited basis. If the suspension of participation status lasts more than thirty days, the Provider will be offered a hearing before the expiration of the thirty-day period, unless the period for a hearing is agreed upon between Colorado Access and the provider.

#### **4. Documentation**

- A. Records documenting the Credentials Committee investigation, hearing process and final adverse action (or declination to follow a recommendation for adverse action) will be maintained in the Legal Department and also filed in the Provider's confidential credentialing file.
- B. Records will be maintained according to policy and procedure CMP210 Record Retention and Destruction.
- C. All proceedings, recommendations, records and reports involving investigations, recommendations for adverse actions, fair hearings and final adverse actions against a Provider's credentials shall be confidential except as required for inclusion in mandatory reports to the National Practitioner Data Bank, state licensing authority, state agency, or for accreditation.

#### **Attachments:**

- A. Hearing Plan

#### **References:**

CMP210 Record Retention and Destruction

## ATTACHMENT A - HEARING PLAN

### 1. GENERAL

Colorado Access may grant or deny participation in any or all Colorado Access provider networks to any provider of health care services.

Where Colorado Access denies, suspends (for a period greater than thirty (30) days), limits or terminates a provider's granted credentials based on quality of patient care or patient safety, the affected Provider will be entitled to request a hearing under this Hearing Plan. Where Colorado Access takes such action, it shall be referred to as a "Professional Review Action."

### 2. GROUNDS FOR A HEARING

Any one or more of the following recommended actions shall constitute grounds for a formal hearing:

- A. Provider's re-credentialing application for continued network participation (i.e., any agreement under which a Provider is allowed to provide care for Colorado Access) is denied or rejected as a result of a Professional Review Action.
- B. A Provider's credentials are revoked, terminated, or not renewed, as a result of a Professional Review Action.
- C. The imposition of summary suspension from network participation as a result of a Professional Review Action taken against a provider's credentials, if the summary suspension remains in effect for a period in excess of thirty calendar days.

### 3. HEARING PROCEDURE

- A. Notice of Adverse Action or Proposed Adverse Action. Whenever Colorado Access takes or proposes to take any of the actions set forth in part 2 above, Colorado Access shall give the affected Provider written notice, of the right to request a hearing. The notice will include:
  - 1. That an action has been proposed against the Provider based on a professional review of the Provider's care.
  - 2. That the adverse action taken or proposed as a result of professional review, if adopted, may be reported to the Provider's Colorado licensing board, or to the National Practitioner Data Bank.
  - 3. A brief description of the reasons for the action or the proposed action.
  - 4. That the Provider may request a hearing.
  - 5. That the hearing must be requested within ten (10) calendar days of the date of the notice.
  - 6. That the Provider has the hearing rights described in CR306 Adverse Actions Hearing Policy and Plan for Providers.
- B. Request for Hearing. The Provider shall have ten (10) calendar days following the notice of the action or proposed action to submit a written request to Colorado Access for a hearing. If the Provider does not request a hearing within the time and in the manner set forth above,

he/she shall be deemed to have accepted the recommendation, decision, or action imposed and it shall become Colorado Access's final action.

- C. Representation. The Provider may be represented at the hearing by a lawyer or any other person. Colorado Access may likewise be represented by a lawyer at the hearing.
- D. Time and Place for Hearing. Upon receiving a written request for a hearing, Colorado Access will promptly schedule and arrange for the hearing and will give the Provider notice of the time, place and date of the hearing. Colorado Access shall use all reasonable efforts to ensure that the date of the commencement of the hearing shall not be less than thirty (30) calendar days, nor more than sixty (60) calendar days from the date Colorado Access received the request for a hearing.
- E. Notice of Hearing. Colorado Access will state in writing the reasons for the action or proposed action including a list of any patient charts under review. In the event that the Provider's re-credentialing application was denied, Colorado Access will specifically state the grounds for the denial.
- F. Witnesses. Each party shall furnish to the other a written list of the names and addresses of the individuals, so far as is then reasonably anticipated, who will give testimony or evidence in support of that party at the hearing at least ten (10) business days prior to the hearing.
- G. Documents. At the request of either party, the parties must exchange all documents that will be introduced at the hearing. The documents must be exchanged at least ten (10) business days prior to the hearing.
- H. Hearing Panel. The Chief Medical Officer (or his/her designee) shall appoint a Hearing Panel consisting of at least three (3) Providers. Colorado Access shall designate a Chairman of the Hearing Panel. The Chairman of the Hearing Panel shall determine the order of or procedure for presenting evidence and argument during the hearing. He/she shall have the authority and discretion to decide when evidence may or may not be introduced, to rule on challenges to hearing committee members, to rule challenges to himself serving as the Presiding Officer, and Rights of the Parties.
  - 1. At a hearing both sides shall have the following rights:
    - a. To ask Hearing Panel members questions which are directly related to determining whether they meet the qualifications set forth in this procedure and to challenge such members or the Presiding Officer;
    - b. To call and examine witnesses;
    - c. To introduce relevant documents and other evidence;
    - d. To receive all information made available to the Hearing Panel;
    - e. To cross-examine or otherwise attempt to impeach any witness who testified orally on any matter relevant to the issues; and
    - f. Otherwise to refute any evidence.
  - 2. The Provider may be called by Colorado Access and examined.
  - 3. The Hearing Panel may question witnesses or call additional witnesses if it deems such action appropriate.
  - 4. Each party has the right to submit a written statement in support of his/her position

at the close of the hearing. The Hearing Panel may require such a statement to be filed following the conclusion of the presentation of oral testimony.

- I. Rules of Evidence. The rules of law relating to the examination of witnesses and presentation of evidence shall not apply in any hearing conducted hereunder. Any relevant evidence, including hearsay, shall be admitted by the Chairman if it is the sort of evidence which responsible persons are accustomed to relying on in the conduct of serious affairs regardless of the admissibility of such evidence in a court of law.

#### **4. BASIS OF DECISION**

- A. If the Hearing Panel should find the recommended action to be supported by the evidence submitted at the hearing, it shall recommend the action, or such action as it finds warranted with respect to the provider's credentials.
- B. The decision of the Hearing Panel shall be based on the evidence produced at the hearing and any written statements submitted to the Hearing Panel.

#### **5. DECISION OF THE HEARING PANEL**

The Hearing Panel shall issue a written report stating its decision. The report shall include sufficient detail to enable the Provider and Colorado Access to determine the basis for the Hearing Panel's decision on each matter contained in the notice of hearing. The decision and report shall be delivered to Colorado Access and the Provider within ten (10) business days of the hearing.