

January 23, 2023

Via Email: DOMPolicy@medicaid.ms.gov
Attn: Robin Bradshaw

Drew Snyder, Director
Mississippi Division of Medicaid
Walter Sillers Building, Suite 1000
550 High Street
Jackson, Mississippi 39201

Re: Mississippi Administrative Procedures Notice Filing 26710

Rule: *Title 23 Division of Medicaid, Part 300 Appeals, Chapters 1 -4, Rules 1.1, 1.2, 2.1-2.21, 3.1-3.6(NEW), 4.1, 4.2 (NEW)*

Dear Director Snyder:

Maxey Wann represents the Mississippi Health Care Association (“MHCA”) and we submit written comments to the Division of Medicaid (“Medicaid” or “Division”) on behalf of MHCA and its membership in response to Mississippi Administrative Procedures Notice Filing, number 26710, filed with the Mississippi Secretary of State December 29, 2022 (the “Notice Filing”). The MHCA is a trade association representing member entities comprised of nursing homes, assisted living, and ICF-IID facilities.

We offer the following comments on the proposed rule changes. First, we appreciate the Division’s time and effort to update the terminology and formatting of Part 300. Many of the updates help modernize the administrative hearing processes.

We support the allowance of telephonic hearings at the agreement of the parties to the administrative process and new Rule 3.8 which provides methods for a consolidated hearing in appropriate circumstances.

Proposed Rule 3.2 and Rule 3.5: We offer the following comments on the Division’s authority to assess costs to a Provider unsuccessful in the administrative process. The proposed revisions expand the hearing officer’s authority to recommend cost assessments to a losing Provider as part of the hearing officer’s findings and recommendations. We have concern with the addition of the authority of the hearing officer to recommend broad assessments of costs against a Provider. Under Rule 3.5, the Division’s authority to assess costs is stated, appearing to expand the costs which might be assessed to a losing Provider and Rule 3.5 removes language currently in Part 300 which limits the Division’s ability to assess costs until after the conclusion of any judicial appeal. The threat of having excessive costs imposed on a Provider unsuccessful in the administrative process frustrates the due process right of the Provider to utilize the administrative process. Further, the identified costs which might be assessed under the proposed language exceed the authority granted the Division by the Mississippi legislature.

Proposed Rule 3.5: The proposed revisions delete current guidelines for the hearing officer to prepare findings of fact and issue recommendations within not more than sixty (60) days after the close of evidence. We believe this language (currently in Rule 1.1(B)(6)) should continue to be included in the rules governing administrative hearings for Providers.

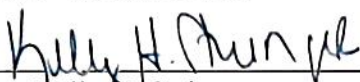
Proposed Rule 3.6: We offer the following comments on rules governing post-decision relief. The time-period for a Provider to request appeal is within 60 days of the Provider's notice of the Final Decision of the Division. The proposed revision alters this period from 60 days from notice to 60 days from the date of the Division's Final Decision. The Provider is due a 60-day period from notice to file any appeal of a Final Decision of the Division to a court of proper jurisdiction. The 60-day period from Provider notice is statutorily mandated under Miss. Code Ann. § 43-13-121. Rules 3.6(B) and (C) create requirements that a Provider post an appeal bond and a supersedeas bond when appealing a Final Decision to a court of proper jurisdiction and that failure to secure such bonds is grounds for dismissal of any judicial appeal. This exceeds the Division's authority and acts to prevent Providers from seeking their full rights under the administrative system. The requirement of posting an appeal or supersedeas bond requires legislative authority which the Division has not been given. Nor does there exist authority for the Division to make the filing of a bond, whether an appeal bond or a supersedeas bond, a ground for dismissal of a Provider's judicial appeal.

Thank you for your consideration of the comments set forth herein. If you should have any questions or request any additional information, please do not hesitate to contact me.

Sincerely,

MAXEY WANN PLLC

By:


Kelly H. Stringer