

## **Gigliotti response to questions regarding Rights of Minors to Medicaid Notices**

>>> "Gigliotti, Lisa (DELEG)" <GigliottiL@michigan.gov> 8/25/2009 2:44 PM >>>  
Dear Rosemary,

After consultation with Judge Snider, below please find a response to your query. - Lisa  
Gigliotti

Question- If a minor Medicaid beneficiary aged 14 or older requests mental health  
services without the consent or knowledge of his parents pursuant to MCL 330.1707:

1. Does the minor have a right to appeal?
2. Does the minor have the right to request an appeal?
3. Is the MH provider required to provide written notice to the minor?

The Code of Federal Regulations (CFR) state:

Sec. 438.400 Statutory basis and definitions.

(a) Statutory basis. This subpart is based on sections 1902(a)(3),  
1902(a)(4), and 1932(b)(4) of the Act.

(1) Section 1902(a)(3) requires that a State plan provide an  
opportunity for a fair hearing **any person** whose claim for  
assistance is denied or not acted upon promptly.

Michigan law states:

### **MCL 330.1707 Rights of minor.**

Sec. 707.

(1) A minor 14 years of age or older may request and receive mental  
health services and a mental health professional may provide mental  
health services, on an outpatient basis, excluding pregnancy  
termination referral services and the use of psychotropic drugs,  
without the consent or knowledge of the minor's parent, guardian, or  
person in loco parentis. Except as otherwise provided in this section,  
the minor's parent, guardian, or person in loco parentis shall not be  
informed of the services without the consent of the minor unless the  
mental health professional treating the minor determines that there is  
a compelling need for disclosure based on a substantial probability  
of harm to the minor or to another individual, and if the minor is  
notified of the mental health professional's intent to inform the  
minor's parent, guardian, or person in loco parentis.

(2) Services provided to a minor under this section shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor.

(3) Services provided to a minor under this section shall be limited to not more than 12 sessions or 4 months per request for services. After the twelfth session or fourth month of services the mental health professional shall terminate the services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.

(4) The minor's parent, guardian, or person in loco parentis is not liable for the costs of services that are received by a minor under subsection (1).

(5) This section does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect under section 3 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.623 of the Michigan Compiled Laws. History: Add. 1984, Act 186, Imd. Eff. July 3, 1984;?Am. 1995, Act 290, Eff. Mar. 28, 1996.

Interpreting the federal regulations in conjunction with the rights afforded a minor 14 years of age and older under state law leads to the conclusion that a minor Medicaid beneficiary 14 years of age or older possesses a right to an appeal and may request a Medicaid fair hearing on his own.

With regard to whether the MH provider is required to provide written notice to the minor, the following CFR provision applies:

Sec. 438.404 Notice of action.

(a) Language and format requirements. The **notice must be in writing** and must meet the language and formal requirements of Sec. 438.10(c) and (d) to ensure ease of understanding.

(b) Content of notice. The notice must explain the following:

(1) The action the MCO or PIHP or its contractor has taken or intends to take.

(2) The reasons for the action.

(3) The enrollee's or the provider's right to file an MCO or PIHP appeal.

(4) If the State does not require the enrollee to exhaust the MCO or PIHP level appeal procedures, the enrollee's right to request a State fair hearing.

(5) The procedures for exercising the rights specified in this paragraph.

(6) The circumstances under which expedited resolution is available and how to request it.

(7) The enrollee's right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

Interpreting the federal regulations in conjunction with the rights afforded a minor 14 years of age and older under state law leads to the conclusion that a MH provider must provide a **written** notice to a minor Medicaid beneficiary 14 years of age or older.

With regard to your suggestion about verbally notifying a minor of his right to a fair hearing, it appears you are cognizant that the verbal notice does not meet the requirements of the CFR and are attempting to derive a resolution that complies with the CFR's requirements and respects the minor's right to request without knowledge of parent.

Without providing legal advice, a possible suggestion is verbally notifying the minor of the provider's obligation to provide "**written notice**" and inquiring how the minor would like to receive the written notice.

Options could be offered regarding receiving written notice, for example, explain to minor that he can pick up copy of the notice from the CMH office, it can be mailed to another adult, i.e., person who referred him to CMH, the high school counselor, but explain it can be mailed only if the minor authorizes the written notice to be mailed to that individual. In any event, perhaps the CMH intake staff can print the written notice that includes a statement similar to:

"You told us you preferred to pick up a copy of your writing notice of fair hearing rights and below is the information."

"You asked us to mail your notice of fair hearing rights in a separate, sealed, in an envelope with your name and marked "confidential" to your high school counselor."

A copy of the written notice, with CMH staff notes indicating attempts to provide written notice could be placed in the minor's file.

Although this was not part of your question I thought I would mention that the limitations on services a minor may request under statute appear to meet more of a MHP level of service than CMH level of service. If CMH has contract with an MHP to provide the MHP's MH services, CMH should coordinate to ensure the MHP does not inform the parent. If the CMH does not have a contract with an MHP to provide the MHP's MH services but the CMH believes the MHP is the appropriate entity to provide those services, the CMH should assist with referral to MHP in manner that does not inform parent but makes MHP aware that care is being referred under the statutory minor exception.

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>>> Rosemary Rokita 8/7/2009 2:46 PM >>>

A question came up regarding denial notices provided to minors who are seeking services without their parents' knowledge. These are minors (14 and over) who fall under the Mental Health Code - Recipient Rights, "Rights of Minor MCL330.1707". When we deny a minor (during a phone screening) who has medicaid, are we required to send the notice? The concern is in mailing the notice we may alert parents that the child has requested mental health services without their knowledge. One suggestion was that we verbally inform minors of their right to appeal, and note on our documentation that the notice was not mailed out as minor was exercising their "right of Minor" to request services. Or let the minor make the decision of mailing or not mailing a notice?

Part 2 of the question, is whether the minor even has a right to a notice or an appeal as they are a minor and it would require their parent/legal guardian to request the appeal for them. Do we verbally tell the minor their rights to appeal and then let them decide whether to inform parent that they were seeking services and were denied? There may be other legal concerns/perspectives I'm not aware of as well? Thank you.

Rosemary Rokita  
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