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REPORT ON THE MNSURE APPEALS PROCESS FOR ELIGIBILITY DETERMINATIONS

February 1, 2014
Report to the Legislature

Report on the MNsure Appeals Process for Eligibility Determinations

As Required By Laws of Minnesota 2013, Chapter 9, Section 16

Under subdivision 6 of Minnesota Statutes, section 62V.05

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MNsure's Accessibility & Equal Opportunity (AEO) office can provide this report in accessible formats for individuals with disabilities. The AEO office can be reached via 1-855-3MNSURE (1-855-366-7873) or AEO@MNsure.org.

Cost of Report Preparation

The total cost for MNsure to prepare this report is approximately $320.00. These costs include staff time (10 managerial hours at $32/hr) in compiling and analyzing data, and preparing the written report. Incidental costs include printing, copying, and other office supplies, and are not included in this estimate.

Estimated costs are provided in accordance with Minnesota Statutes, section 3.197, which requires that the cost of preparing a required report must be provided at the beginning of all reports to the legislature.

Executive Summary

The Patient Protection and Affordable Care Act ("ACA") mandates an appeals process for certain Exchange eligibility determinations.[1] In 2013, the Minnesota Legislature authorized the MNsure board of directors to administer an appeal process for eligibility determinations. These eligibility determinations expressly exclude those for which an appeals process exists under Minnesota Statutes, section 256.045.[2]

In creating its appeal process, MNsure has entered into a service level agreement with the Minnesota Department of Human Services (DHS) and the Office of Administrative Hearings (OAH) to develop and implement its appeals process. Through its partnerships, MNsure developed business processes, administrative rules, and public education materials.

On October 1, 2013, MNsure opened for business as the new central marketplace where Minnesota individuals, families and small employers can get quality, affordable health insurance and access tax credits or assistance to help pay for coverage.

MNsure is in the early months of its first appeals cycle; yet, it has included early data metrics in this Report. MNsure looks forward to calendar year 2014 and refining its business operations for consumers; strengthening its partnerships with other State agencies and stakeholders; and cultivating its reputation with the Minnesota public.

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[1] 42 U.S.C. § 18081(f).

[2] As relevant to MNsure, this includes eligibility determinations pertaining to Medical Assistance and MinnesotaCare. While these determinations may be operationally communicated through MNsure, they remain determinations of DHS, and the administration of respective appeals similarly remains under the authority of DHS.

Statutory Background

Federal

Under the ACA, the Secretary of the United States Department of Health and Human Services ("DHHS") must establish procedures by which the Secretary administers an appeals process for certain Exchange eligibility determinations.[3] Accordingly, the DHHS Secretary promulgated proposed procedures on January 22, 2013, which addressed Medicaid fair hearings, as well as Exchange appeals.[4] On August 30, 2013, the Secretary promulgated final procedures for Exchange appeals.[5]

The appeals procedures separate three types of appeals for Exchanges: (1) individuals may appeal Exchange determinations regarding the subsidies and coverage for which they are eligible; (2) employers may appeal Exchange determinations that their employees are eligible for federal subsidies, which could trigger employer penalties; and (3) employers and employees may appeal eligibility determinations made by a SHOP Exchange.[6] Under the federal regulations, only the first type of appeals requires a hearing; employer and SHOP appeals require only a desk review.[7]

The federal regulations allow state-based Exchanges, like Minnesota, to choose to administer appeal operations, so long as they are compliant with federal regulations and so long as an individual may appeal to DHHS once it has exhausted the state-based Exchange appeals process.[8] For all types of appeals, an individual has 90 days from the date of the eligibility determination to file an appeal; and the appeal decision must be issued within 90 days of the date upon which the appeal was filed.[9]

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[3] 42 U.S.C. § 18081(f).

[4] "Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing," CMS-2334-P, *78 Fed Reg 4594*. Accessible at: https://federalregister.gov/a/2013-00659.

[5] "Patient Protection and Affordable Care Act; Program Integrity: Exchange,

SHOP, and Eligibility Appeals; Final Rule," CMS-9957-F, *78 Fed Reg 54070;* 45 C.F.R. §§ 155.500-155.555, 155.740. Accessible at: https://www.federalregister.gov/articles/2013/08/30/2013-21338/patient-protection-and-affordable-care-act-program-integrity-exchange-shop-and-eligibility-appeals

[6] 45 C.F.R. §§ 155.500-155.555, 155.740.

7 45 C.F.R. §§ 155.555 and 155.740.

[8] 45 C.F.R. § 155.505(c)(1).

[9] C.F.R. §§ 155.520(b)(1), 155.545(b)(1), 155.555(c)(1), 155.555(k), 155.740 (f)(1), 155.740(m).

In administering state based appeals operations, Exchanges have the option to use informal resolution processes to potentially resolve the need for a formal appeal.[10] Individuals must have the opportunity to preserve their right to a hearing in case they disagree with the outcome of the informal process and they must not be required to submit duplicate information if their appeal proceeds to hearing. [11]

The proposed rules address coordination of appeals across the Income Assistance Programs, which include Advance Payment of Premium Tax Credits ("APTC"), cost Sharing Reductions ("CSR"), and Medicaid.[12] The proposed rules for Medicaid fair hearings require that an appeal of APTC or CSR eligibility automatically trigger a hearing for a Medicaid denial.[13] In these cases, the Medicaid hearing may be sequenced so as to occur within 45 days of the exchange decision, or the Medicaid appeal may occur simultaneously.[14] Yet, the Medicaid agency cannot request duplicate information from the appellant.[15]

State

Under Minnesota Statutes, section 62V. 05, subdivision 6, the Mnsure board may conduct hearings, appoint hearing officers, and recommend final orders related to appeals of any MNsure determinations, except for those determinations where a state agency hearing is available under section 256.045. Under this statutory authority, the board was ordered to establish hearing processes which provide for a reasonable opportunity to be heard and timely resolution of the appeal and which are consistent with the requirements of federal law and guidance.[16] Additionally, MNsure is empowered to establish service-level agreements with state agencies to conduct hearings for appeals.[17]

Program Description

Program summary

In consultation with stakeholders, OAH, and DHS, MNsure partnered with DHS to provide a simple, unified system for MNsure's eligibility appeals. DHS' long experience with appeals in the health care arena made it a great asset for MNsure to build on going

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10 45 C.F.R. § 155.535(a).

[11] *Id.*

[12] Minnesota's Medicaid program is called, "medical assistance."

[13] 78 Fed. Reg. 4683 (proposed Jan. 22, 2013) (to be codified at 42 C.F.R. § 431.221(e)).

[14] 78 Fed. Reg. 4684 (proposed Jan. 22, 2013) (to be codified at 42 C.F.R. § 431.224(f)(2)).

[15] 45 C.F.R. § 155.345(g)(3).

[16] Minn. Stat. § 62V.05, subd. 6(a).

[17] Minn. Stat. § 62V.05, subd. 6(b).

into the future. Under this foundation, individuals seeking to appeal MNsure eligibility determinations are presented a single, MNsure-branded ''front door,'' which leads to the existing DHS appeals infrastructure. Additionally, because the DHS appeals unit already administers medical assistance appeals, such a structure allows one hearing for appellants who are appealing both Exchange and medical assistance eligibility issues, which is consistent with the cooperation necessitated by the federal regulations, less burdensome to the appellant, and produces cost savings to the State.

Program governance and oversight

MNsure is governed by a board of directors with seven members.[18] Membership of the MNsure board consists of the following: three members appointed by the governor with the advice and consent of both the senate and the house of representatives, with one member representing the interests of individual consumers eligible for individual market coverage, one member representing individual consumers eligible for public health care program coverage, and one member representing small employers; three members appointed by the governor with the advice and consent of both the senate and the house of representatives, who have demonstrated expertise, leadership, and innovation in the following areas: one member representing the areas of health administration, health care finance, health plan purchasing, and health care delivery systems; one member representing the areas of public health, health disparities, public health care programs, and the uninsured; and one member representing health policy issues related to the small group and individual markets; and the commissioner of human services or a designee.[19]

The MNsure board has the authority to employ personnel and delegate administrative, operational, and other responsibilities to the director and other personnel as deemed appropriate by the board.[20] Currently, the MNsure executive director manages the MNsure general counsel. The MNsure general counsel supervises the MNsure appeals manager.

Additionally, the Minnesota Legislative Oversight Committee ("LOC") provides oversight of all MNsure operations.[21] Annually, MNsure must present to the LOC a report on the appeals process.[22] Moreover, prior to January 1, 2015, the MNsure board must submit

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[18] Minn. Stat. § 62V.04, subd. 1.

[19] Minn. Stat. § 62V.04, subd. 2(a).

[20] Minn. Stat. § 62V.05, subd. 1(b)(1).

[21] Minn. Stat. § 62V.11, subd. 1(a). The LOC consists of five members of the senate, three members appointed by the majority leader of the senate, and two members appointed by the minority leader of the senate; and five members of the house of representatives, three members appointed by the speaker of the house, and two members appointed by the minority leader of the house of representatives. Minn. Stat. § 62V.11, subd. 2(a).

[22] Minn. Stat. § 62V.11, subd. 1(c).

proposed rules to the committee at the same time the proposed rules are published in the State Register.[23]

Service level agreements

MNsure may establish service-level agreements with state agencies to conduct hearings for appeals.[24] On May 23, 2013, MNsure, OAH, and DHS entered into an interagency agreement, under which OAH would provide consultation services necessary to quickly develop an innovative and robust appeals structure; and DHS would implement said appeals process and adjudicate MNsure's Exchange appeals. The interagency agreement was first amended on September 27, 2013, and expires on June 30, 2014.[25]

Applicability of MNsure appeals process for eligibility determinations

The MNsure appeals process for eligibility determinations is only available for determinations made by MNsure. Accordingly, it does not apply to appeals for medical assistance or MinnesotaCare, for which determinations are made by DHS. Similarly, it does not apply to determinations regarding coverage benefits, which are made by health plans. Finally, where MNsure delegates to DHHS determinations of individual mandate exemptions, appeals of the same determinations are administered by DHHS, not MNsure.[26]

Business process

MNsure accepts appeals online, by phone, by mail, and in-person. As appeals arrive at MNsure, they are promptly delivered to the DHS appeals unit. The DHS appeals unit then dockets the appeal request and processes to the appellant, via United States postal mail, an acknowledgement of appeal. If the appellant requests an expedited appeal due to a medical emergency, the emergency is quickly assessed and the need for an expedited hearing is decided upon and communicated to the appellant without delay.

The DHS appeals unit then assigns the appeal to an examiner, or "judge," who schedules a hearing and mails to the appellant a scheduling notice, if a hearing is warranted. If no hearing is required (i.e., a documentary review of evidence is legally appropriate), the judge alerts the parties of their rights, including their right to submit additional documentation for review. Prior to the hearing, both parties may submit evidence. After the hearing, which is presumed to be a telephone hearing, except in certain circumstances, the examiner issues a recommended written decision.

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[23] Minn. Stat. § 62V.11, subd. 3(a).

[24] Minn. Stat. § 62v.05, subd. 6(b).

[25] A copy of the service level agreements is included as an attachment.

[26] 45 CFR 155.505(c)(2)(iii).

The recommended written decision is subsequently reviewed by a Co-Chief Judge, or his or her authorized designee, who issues the final order on behalf of the MNsure board. The final order is mailed to all parties.

MNsure Appeal Process

1 File your appeal

You disagree with a MNsure decision about your eligibility and choose to file an appeal. You may file online, by phone or mail. You must file within 90 days of the decision (30 days for Medical Assistance and MinnesotaCare or 90 days with good cause.

2 Hearing scheduled

An appeals examiner will decide if your appeal should be heard. (If you appeal is dismissed, you may appeal the dismissal.)

You will receive scheduling notice if your appeal is scheduled for a hearing

3 Prepare for hearing

Review MNsure Appeals Frequently Asked Questions and all information mailed to you. Follow the instructions mailed to you for submitting documents and evidence to the appeals examiner.

If you need an interpreter or other accommodation, contact the appeals examiner as soon as possible.

4 Attend hearing

Your hearing will be conducted by an appeals examiner by telephone or in person. You may use documents and witnesses to show why you should be granted your appeal.

5 Appeal decided

The appeals examiner makes a written decision and sends it to you.

If you feel the decision is wrong, you can ask for reconsideration or appeal the appropriate agency or court.

Administrative rules

On July 22, 2013, MNsure solicited public comment on its proposed rules governing MNsure appeals. Notice of the proposed rules was published in the Minnesota State Register and the proposed rules were published on the MNsure website. The public comment period was open through Monday, August 13, 2013. During the public comment period, MNsure received many valuable public comments. Subsequently, on August 30, 2013, the United States Department of Health and Human Services published final regulations governing Exchange appeals.

MNsure Appeals thoroughly considered the aforementioned public comments and final federal regulations. Based on its review, the MNsure Legal and Compliance Division recommended modifications to its proposed rules governing MNsure appeals. The MNsure board considered and approved the modifications on September 11, 2013. Notice of the final rules was posted in the Minnesota State Register on September 23, 2013. The rules and the modifications were also posted to the MNsure website; and subsequently, the rules were published as Minnesota Rules Parts 7700.0100 – 7700.0105.

Minnesota Rules Part 7700.0100 describes the applicability of the rules governing MNsure appeals. The rules governing MNsure appeals must be read in conjunction with the federal Affordable Care Act, Public Law 111-148; Code of Federal Regulations, title 45, part 155; and Minnesota Statutes, chapter 62V; and sections 256.045 and 256.0451.[27] Minnesota Rules Parts 7700.0100 to 7700.0105 do not proscribe appeals rights and processes for medical assistance and MinnesotaCare.[28] Additionally, nothing in these rules limits or supersedes the ability of the commissioners of commerce and health to conduct investigations or facilitate appeals as authorized by laws administered by the Departments of Commerce and Health.[29]

Minnesota Rules Part 7700.0101 lists definitions for parts 7700.0100 – 7700.0105. Minnesota Rules Part 7700.0105 details at length the MNsure appeals process. It addresses, among others, justiciability, procedures for filing appeals, legal timeframes, access to and communications with the tribunal, dismissals, scheduling, commencement and conduct of hearings, decisions, and administrative and judicial review.

Public education materials

In its partnership with OAH and DHS, MNsure has created public education materials. Every eligibility determination mailed to a MNsure consumer informs the consumer of his or her appeal rights, and provides important information about those rights. Additionally, consumers can find information about appeals on the www.mnsure.org website under “Get Help.” In addition to general information about filing appeals and the appeals

[27] Minn. R. 7700.0100, subp. 1.

[28] Minn. R. 7700.0100, subp. 2.

[29] Minn. R. 7700.0100, subp. 3.

process, the www.mnsure.org website contains helpful Frequently Asked Questions ("FAQ") about appeals. These webpages are available at: https://www.mnsure.org/help/appeals.jsp; https://www.mnsure.org/faq/appeals-faq.jsp.

Subject to redaction and compliance with data privacy laws, appeal decisions are made available upon public request. MNsure is working with MN.IT Central to build a searchable online repository for a representative sample of decisions, redacted of personally identifiable information and compliant with data privacy laws. MNsure expects the repository to be available in the spring of 2014.

Summary of appeals representation

An appealing party may be represented by a representative or legal counsel at MNsure appeals hearings, but this is not a requirement.[30] "Representative" means a person who is empowered by the party to support, speak for, or act on behalf of the party.[31] Representative includes legal counsel, relative, friend, or other spokesperson or authorized representative under Code of Federal Regulations, title 45, section 155.227.[32]

A partnership may be represented by any of its members, an attorney, or other representative.[33] A corporation or association may be represented by an officer, an attorney, or other representative.[34]

In a case involving an unrepresented appellant, the appeals examiner shall examine witnesses and receive exhibits for the purpose of identifying and developing in the appeal record relevant facts necessary for making an informed and fair decision.[35] An unrepresented appellant shall be provided an adequate opportunity to respond to testimony or other evidence presented by the agency at the appeal hearing.[36] The appeals examiner shall ensure that an unrepresented appellant has a full and reasonable opportunity at the appeal hearing to establish a record for appeal.[37]

MNsure may be represented by an attorney who is an employee of MNsure.[38] In the course of representation, the MNsure representative may contact the appellant or his/her legal counsel, as appropriate, and attempt to resolve the appeal informally. If a

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[30] Minn. Stat. § 62V.05(a); Minn. R. 7700.0105, subp. 11.
[31] Minn. R. 7700.0101, subp. 16.
[32] *Id.*
[33] Minn. R. 7700.0105, subp. 11.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] Minn. Stat. § 62V.05(c); Minn. R. 7700.0105, subp. 11.

resolution is achieved, the appellant may withdraw the appeal before the hearing and/or final order.

Metrics for October 1, 2013 – December 31, 2013

The following are select metrics for October 1, 2013 until December 31, 2013:

Total cases:	276
Total appeals received in October	37
Total appeals received in November	50
Total appeals received in December	189
Total closed cases:	92
Total expedited medical emergency cases requested:	3
Total expedited medical emergency cases granted:	1
Mean net elapsed time of open cases:	17.6
Median net elapsed time of open cases:	15
Net elapsed time past 90 days of filing date:	0
Mean net elapsed time of closed cases:	25.1
Median net elapsed time of closed cases:	24.5
Total cases closed on dismissal:	4
Total cases closed on appellant withdrawal:	83
Total cases on dismissal for appellant failure to appear:	4
Total cases closed due to duplicate docketing:	1
Total agency actions affirmed:	0
Total agency actions reversed:	0
Total cases remanded:	0

Goals for calendar year 2014

The MNsure appeals process was established in accordance with four cornerstone principles. Accordingly, the chief goal of the appeals process for calendar year 2014 is to continue abiding by the following principles:

1. Accessibility, for all appellants;
2. Integrity, building a reputation for soundness of moral character;
3. Solutions, consistently fostering resolutions and innovation, rather than status quo or stagnation; and
4. Communication, with the public, stakeholders, and agency partners.

In addition to the chief goal, there exist five more goals. First, MNsure intends to release to the public its online searchable decision repository. Second, MNsure intends to support DHS in procuring an electronic case management system. Third, MNsure aims

to have zero cases elapsing beyond 90 days of the appeal filing date, as administratively feasible. Fourth, MNsure hopes to establish notification procedures that include secure email. Fifth, and finally, MNsure intends to perform a comprehensive review of all public education materials, administrative rules, and business process at the close of the open enrollment period to incorporate public and stakeholder feedback, increase effectiveness, and implement lessons learned.

Conclusion

MNsure appreciates the opportunity to submit this report in an effort to provide the legislature with objective data necessary to inform its continuing policy discussions regarding MNsure appeals. As we strive for program integrity and innovation, if any further information would be helpful, please contact the MNsure General Counsel, Michael A. Turpin at (651) 539-1335, Michael.A.Turpin@state.mn.us.

Attachments

- Attachment: Announcement regarding MNsure Appeals
- Attachment: federal regulations
- Attachment: interagency agreement between DHS, OAH, and MNsure
- Attachment: Appeal request form
- Attachment: Administrative Rules