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| <b>SUBJECT: DENIAL OF APPLICATIONS OF PHYSICIANS<br/>AND DENTISTS</b><br><br><b>SECTION: CREDENTIALING</b><br><br><b>POLICY NUMBER: CR-28</b> | <b>EFFECTIVE DATE: 01/02</b> |
| <i>Applies to all products administered by the Plan except when changed by contract</i>                                                       |                              |

**Policy Statement:** Where the Plan proposes to deny a new application for reasons relating to the applicant's professional conduct or competence that may adversely affect the health or welfare of a patient (as defined in the Federal Health Care Quality Improvement Act, 42 USC 11101 et seq.), the Plan shall afford the applicant the hearing procedures set forth below. In all other circumstances and for all other practitioners (e.g., administrative denials), this policy does not apply.

**Process:**

Any hearing afforded an applicant pursuant to this policy shall be conducted in accordance with the following:

**A. Notice of Proposed Denial of Application**

The Plan will provide the applicant with written notification of the proposed denial of his/her credentialing application. The written notice shall be personally delivered or mailed by US mail or other verifiable delivery service to the applicant. The notice shall include the following information:

1. The proposed action.
2. The reason(s) for the proposed action.
3. If appropriate, a statement that the applicant has the right to request a Hearing or review, at the applicant's discretion, before a panel appointed by the Plan.
4. The time limit, not less than thirty (30) calendar days, for requesting a Hearing in writing.
5. A statement that the Hearing will be held within thirty (30) calendar days after the date the Hearing request is received (unless the parties mutually agree that an extension is necessary).
6. A summary of the applicant's Hearing rights and obligations.

**B. Hearing Requests**

If the applicant does not request a Hearing within thirty (30) calendar days of the date of the notice, the proposed action will be final and the applicant will have no additional appeal rights.

If the applicant or the applicant's attorney request a Hearing, the Plan will schedule a Hearing. Hearing dates and times are determined by the Plan, with the Hearing occurring within thirty days of the applicant's request.

An extension of this 30 day time frame may be agreed upon by the parties based upon availability of the panel members or other administrative logistics.

The Practitioner is entitled to only one Hearing.

**C. Notice of Hearing**

The notice of Hearing shall contain the following information:

1. A list of witnesses, if any, expected to testify on behalf of the Plan at the Hearing against the applicant.
2. The right to call witnesses who can provide relevant testimony on behalf of the applicant. A list on any such witnesses shall be provided to the Plan at least five business days prior to the Hearing.
3. The applicant will forfeit the right to a Hearing if the applicant fails to appear at the Hearing without good cause.
4. Any materials the applicant intends to use as evidence during the Hearing (e.g. relevant medical records, articles from peer-reviewed literature, statements of support from other physicians or providers), must be provided to the Plan at least five business days prior to the Hearing.
5. Applicant's failure to provide the list of proposed witnesses and/or evidence to be presented at the Hearing may result in exclusion of the witnesses and/or evidence from the Hearing. In the alternative and in its sole discretion, the Plan may delay the Hearing by a reasonable amount of time if the witness list and/or evidence is not received within the time frame required; such delay will be communicated to the applicant in writing.

#### **D. Composition of the Panel**

1. The Hearing panel will be composed of impartial individuals not in direct economic competition with the applicant.
2. The Hearing panel shall be comprised of at least three (3) persons appointed by the Plan, at the Plan's sole discretion.
3. At least one member of the panel will be a Clinical Peer Reviewer.
4. The Hearing panel may consist of more than three (3) persons, provided however, that the number of clinical peers on such panel shall constitute **at least** one-third or more of the total membership of the panel.
5. The Medical Director **nor** the officer **nor** employee members of the panel shall have acted as an accuser, investigator, fact finder or initial decision-maker in the matter coming before the panel.
6. If relevant, and such an individual is available, the Plan officer or employee shall possess expertise in the issue which prompted the denial of the applicant's credentialing application (i.e. billing, fraud, etc.).
7. If the applicant participates in the Plan's Medicare Advantage program, the Hearing panel shall be comprised of a majority of individuals who are clinical peers in the same discipline and/or the same or similar specialty as the applicant under review.
8. The panel shall always consist of an odd number of individuals.

In its sole discretion, the Plan may appoint a Hearing Officer to facilitate the Hearing. The Hearing Officer **may** be a Plan employee, and is not voting member of the panel. The Hearing Officer ensures the Hearing is conducted in accordance with this policy.

#### **E. Role of the Hearing Panel**

1. The Hearing panel's role is neither rehabilitation nor protection of the applicant but only to decide whether the proposed revocation or limitation of credentials should be upheld.
2. Hearing panel members will avoid all ex parte communication before and after the Hearing.

3. The Hearing panel's charge is to determine if the adverse action was based upon evidence, consistent with policy, followed due process, and was appropriate.
4. The Hearing panel will review all of the admitted evidence and make appropriate findings of fact, conclusions, and determine proposed penalties, actions, or orders.
5. The Hearing panel will make a recommendation to the Plan regarding the proposed actions.

#### **F. Pre-Hearing Meetings and Conferences**

1. The formal Hearing process does not preclude non-prejudicial pre-Hearing meetings to occur between the applicant and the Plan. Appropriate uses of this forum include:
  - a. Simplification of the issues,
  - b. Considering the necessity or desirability of amendments to the proposed actions,
  - c. Agreement on stipulations, admissions of fact and admissions of the genuineness of documents,
  - d. Discussion of the number and examination of witnesses, and to explain procedural matters,
  - e. Resolution of the proposed action through provision of necessary documentation or other evidence (i.e. if an applicant's credentials are proposed to be revoked due to lack of CME credits, the applicant may produce evidence of completed CMEs at a pre-Hearing conference).
2. Pre-Hearing conferences may be held by telephone or at a time and place specified by the Medical Director for the purpose of reaching an agreement before the Hearing.
3. Any such contact is non-prejudicial, even if no agreement is reached. The attempt to resolve outstanding issues will not be disclosed to the Hearing panel.

#### **G. Evidence at the Hearing**

Applicant's rights at the Hearing:

1. Statement of proposed action and reason for proposed action.
2. Representation by an attorney or other representative of the applicant's choice.
3. Applicant may call, examine and cross-examine witnesses.
4. Applicant may present evidence as permitted by the Hearing panel.
5. An objective and impartial hearing panel constituted in accordance with this policy. Applicant who has objections to any of the proposed panel members must voice it prior to beginning of the hearing for resolution.

The Plan will also have the right to call, examine, and cross-examine witnesses and to present evidence determined to be relevant by the Hearing panel.

The Hearing Officer, or panel chair when Hearing Officer is not present, decides all issues regarding admissibility of any and all evidence presented by either side, regardless of its admissibility in a court of law.

Please note that witnesses not identified and evidence not provided to the Plan at least five (5) business days prior to the Hearing will not be offered at the Hearing.

The Plan leads the Hearing with presentation of the following:

1. The timeline of actions, notices, and responses;

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2. The action(s) proposed; and
3. Citations to policies, law, precedent and other rules that justify the action.

The applicant responds with the presentation of the following:

1. Rebuttal of any information presented by the Plan, which may include documents or to the facts which are the basis of the adverse action;
2. All evidence and witnesses deemed relevant by the Hearing panel; and
3. Proposed alternate penalties or conditions.

The Plan will keep a record of the Hearing, which includes the recording, transcript or summary; all admitted exhibits; the written statement (if any); the Hearing panel's decision; and all related notices.

The applicant shall be afforded the right to have a record made of the Hearing, and the applicant may obtain a copy of the record of the Hearing upon payment of any reasonable charges associated with the preparation and copying of the record.

#### **H. Written Statements**

The applicant may submit a written statement at the conclusion of the Hearing before adjournment. The Plan asks that the applicant bring sufficient copies of the written statement for distribution to all Panel members, as well as a copy for the Plan.

If the applicant and/or applicant's representative will be attending the Hearing remotely, the written statement must be provided to the Plan in advance of the Hearing for distribution to the panel at its conclusion.

The panel convenes immediately after the conclusion of the Hearing to consider the evidence, including any written statement submitted by the Practitioner. Any submission made after the panel has rendered a recommendation will not be considered.

#### **I. Timing of Decision**

After the Hearing panel has convened, deliberated, and rendered a decision on the proposed action, the Plan shall issue a final written decision to the applicant. Possible outcomes include: reinstatement of the applicant; provisional reinstatement of the applicant subject to conditions set by The Plan; or termination of the applicant.

The decision will be rendered in a timely manner, not more than fifteen business days after the adjournment of the Hearing. Thereafter, the Plan shall issue a final written decision, including a statement of the basis for the decision. The Plan shall provide a copy of this decision to the applicant by U.S. Mail or other verifiable delivery service with return receipt requested.

#### **J. Effective Date of the Termination**

A decision by the Hearing panel to deny an application for credentials/re-credentials shall be effective not less than thirty (30) calendar days after the applicant's receipt of the decision. In no event will the denial be effective earlier than sixty (60) calendar days from the receipt of the initial notice of proposed denial provided to the applicant. The date of receipt will be presumed to be five (5) calendar days from the date of the initial notice.

New York Public Health Law §4403(6)(e) applies to revocations of credentials, as it addresses Members' rights to continue an ongoing course of care with a terminated Practitioner. For existing patients who are Plan Members, undergoing current treatment, terminated Practitioners should refer to the Transition of Care policy statement in Credentialing Policy CR05 for guidance regarding coverage of any treatment rendered.

#### **K. Finality of Decision**

The decision of the Hearing panel is final. The applicant is entitled to one Hearing; there are no appeals.

#### **L. Reporting to Regulatory Agencies**

To the extent required by all applicable state and federal laws and regulations, the Plan shall report a denial of a credentialing application to the appropriate regulatory agency, including without limitation, the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, the New York State Department of Health's Office of Professional Medical Conduct, and the New York State Department of Education's Office of Professional Discipline as described in Credentialing Policy CR-05.

Pursuant to 42 CFR 455.106 the Plan must require practitioners to disclose any health care related criminal conviction(s) at the time of initial contracting, as well as upon any renewal of an agreement. Once a health care criminal conviction of a Provider or anyone affiliated with Provider's practice has been disclosed to the Plan, the Plan must disclose that information to the New York State Department of Health (DOH) within 20 days.

**Cross-Reference:** This is a new policy for Rochester. This replaces the HMO-CNY Physician and Non-Physician Appointment, Termination & Hearing Procedures Policy. This replaces the HMO Blue policy number CR-VIII, Practitioner Denial Process.

#### **Committee Approvals:**

Corporate Credentialing Committee 12/15/03, 8/31/05, 8/22/07, 08/19/09, 8/17/11, 9/21/11, revised 10/17/2012, rev 6/18/14, rev 11/19/14, renewed 11/16/2016, revised 12/21/2016; renewed 12/19/2018; renewed 1/20/21; rev 2/15/2023; renewed 2/19/2025

Excellus Credentialing Committee: 12/17/01

Original Source: HMO Blue CR-VIII