

**Policy:** University of Utah Health Plans (U of U Health Plans) Denial, Termination and Fair Hearing Plan Policy

**Purpose:** Under State and Federal Law, certain rights shall be granted to a provider in the event that peer review recommendations and actions require a report be made to the State Medicaid Agency, the State Licensing Board and the National Practitioner Databank (NPDB).

**Description:** U of U Health Plans will maintain and communicate the process of providing procedural rights to providers when a decision to deny, terminate or take other action by the plan will result in a report to the NPDB, the State Medicaid Agency or the State licensing board where a provider is licensed. This policy applies to all lines of business and all practitioners.

Panel participation involves a contract between U of U Health Plans and the practitioner. Nothing in this policy is intended to limit U of U Health Plans contractual authority to terminate a contract without cause.

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## **Initial Credentialing Process**

Denials at the time of initial credentialing based upon information in the public sector or through primary source verification are not required by law to be reported to the NPDB and therefore U of U Health Plans will not offer a fair hearing. Instead, it will follow these steps:

Denials at the time of initial credentialing that are the result of not meeting criteria for panel participation will follow these steps:

1. The practitioner will be notified within 30 business days of the decision and the letter will include the reason for not meeting criteria.
2. The practitioner will have the ability to request an exception or waiver within 30 days of receiving the notification. The individual requesting a waiver bears the burden of demonstrating that his or her qualifications are equivalent to, or exceed the criteria in question.
3. The credentials committee may grant waivers after considering the specific qualifications of the individual in question, and the best interests of the community the provider serves.
4. The granting of a waiver in a particular case is not intended to set a precedent for any other individual or group of individuals. No individual/organizational provider is entitled to a waiver or a fair hearing if U of U Health Plans determines not to grant a waiver.
5. If a waiver is granted, the decision to deny will be reversed and an approval letter will be sent to the provider.
6. If the determination is that the individual is not entitled to a waiver and is denied again, the practitioner will be notified within 30 business days of the decision.
7. A provider, who is denied a waiver, must wait for a period of at least 1 year from the date of the denial and all issues associated with requesting a waiver to meet criteria must be resolved.

In the event that Medicare sanctions the provider or Medicaid the provider will be reported to the State Medicaid Agency, otherwise will not need to be reported to the State Medicaid Agency.

Initial appointment denials will not be reported to the State Licensing Board.

## **Existing Paneled Participating Providers (Including Reappointments)**

The Credentials Committee review reappointments every 36 months and existing paneled providers on an ongoing basis. In the event concerns about a provider's clinical competence, professional conduct, judgment, medical malpractice history, disciplinary action, member satisfaction data or any other non-compliance issues with U of U Health Plans policies, procedures billing or otherwise arise, the committee is empowered to discuss changing a providers participation status, including but not limited to termination.

After reviewing data associated with an issue, the committee can take any of the following steps:

1. Decide and document that no adverse action is necessary.
2. Require the practitioner to provide an explanation or additional information so they can make a recommendation for action.
3. Supply the provider a specific plan to remediate the issue and monitor.
4. Terminate the provider.

Steps 2-3 require practitioner notification within 30 days of the decision. Steps 3-4 maybe reportable to the NPDB, state Medicaid Agency and/or the State Licensing Board.

### **Notification to Authorities and Practitioner Appeal Rights**

Upon contracting with a Practitioner Group, U of U Health Plans sends a Welcome Packet directing applicants to our Provider Manual on the U of U Health Plans website. More specific Credentialing information and policies are found in the U of U Health Plans Credentialing Policies, available to applicants by e-mailing [provider.credentialing@hsc.utah.edu](mailto:provider.credentialing@hsc.utah.edu).

In addition, the information outlining the process an applicant would follow to appeal a credentialing or re-credentialing decision in the event that an applicant disagrees with the Credentialing Committee's consensus regarding their participation status with the network is included in the group's Welcome Packet.

In the event that U of U Health Plans has made a reportable NPDB denial decision related to a provider's competence or judgement, and in the event the practitioner requests a fair hearing prior to reporting authorities (State or NPDB) U of U Health Plans will follow the steps below which were separated out from our Credentialing policy effective (insert date committee approval date) and follow a similar process currently documented in University of Utah Hospital Medical Staff Bylaws.

### **Grounds for Hearing**

An applicant or member is entitled to request a hearing whenever one of the following recommendations has been made by the U of U Health Plans Credentials Review Committee:

1. Denial of initial request for network participation
2. Denial of application for continued network participation
3. Revocation of network participation
4. Imposition of mandatory concurring consultation requirement (i.e., the consultant must approve the course of treatment in advance)
5. Denial of reinstatement from a leave of absence

No other recommendations shall entitle the individual to request a hearing and hearings shall be conducted in as informal a manner as possible, subject to the provisions of this Policy.

### **Actions Not Grounds for Hearing**

None of the following actions shall constitute grounds for a hearing, and shall take effect without hearing or appeal, provided that the individual shall be entitled to submit a written explanation to be placed into his or her file:

1. The issue of a letter of guidance, warning or reprimand
2. The imposition of conditions, monitoring, or a general consultation requirement (i.e., the individual must obtain a consult but need not get prior approval for the treatment)

### **The National Practitioner Data Bank requires reporting of the following actions**

1. Medical malpractice payments - Any reportable medical malpractice payments made on behalf of an individual U of U Health Plans practitioner would require a report to the NPDB
2. Adverse licensure actions - Licensure actions are reported by the licensing body; therefore U of U Health Plans has no requirement to do so
3. Exclusions from Medicare/Medicaid - Exclusions from Medicare/Medicaid are reported by the Federal Health and Human Services Office of Inspector General, therefore the U of U Health Plans has no requirement to do so
4. Other adjudicated actions or decisions – Adverse events that are health care related such as restrictions or removal from panel membership due to concerns about ability to perform >31 days must be reported against physicians and dentists and maybe reported against other health care practitioners types.

### **The State of Utah Division of Occupational and Professional Licensing requires reporting of the following actions:**

1. Terminating employment of an employee for cause related to the employee's practice as a licensed health care practitioner
2. Terminating or restricting privileges for cause to engage in any act or practice related to practice as licensed health care practitioner
3. Terminating, suspending, or restricting membership or privileges associated with membership in a professional association for acts of unprofessional, unlawful, incompetent, or negligent conduct related to practice as a licensed health care practitioner
4. Subjecting a licensed health care practitioner to disciplinary action of more than 30 days
5. A finding that a licensed health care practitioner has violated professional standards or ethics

6. A finding of incompetence in practice of a licensed health care practitioner/organizational provider
7. A finding of acts of moral turpitude by a licensed health care practitioner/organizational provider
8. A finding that a licensed health care practitioner is engaged in abuse of alcohol or drugs

Upon notification of the above actions, the Credentialing Manager, Medical Director and Operations Director work together to report the findings and ensure affected members are contacted and redirected to another paneled practitioner/organizational provider.

## **The Hearing**

### **1. Notice of Recommendation**

- When a recommendation is made which entitles an individual to request a hearing prior to a final decision of the University of Utah Health Plans, the Medical Director shall give special notice to the affected individual within ten (10) days from the date the recommendation was made when an adverse action has been identified. This notice shall contain:
  - a statement of the recommendation and the general reasons for it
  - a statement that the individual has the right to request a hearing on the recommendation within thirty (30) days of receipt of this notice
  - a copy of this Article C-11

### **2. Request for Hearing**

- An individual shall have thirty (30) days following the date of the receipt of the notice within which to request the hearing. The request shall be in writing to the Medical Director, and shall include the name, address and telephone number of the individual's counsel, if any. Failure to request a hearing shall constitute waiver of the right to a hearing and the recommendation shall become effective immediately upon final action by University of Utah Health Plans. An individual may not request a hearing after expiration of this time, absent good cause, if the University of Utah Health Plans has made reasonable efforts to notify the individual.

### **3. Notice of Hearing and Statement of Reasons**

- The Medical Director shall schedule the hearing and shall give special notice to the individual who requested the hearing. The notice shall include:

- The time, place, and date of the hearing
  - A proposed list of witnesses, as known at that time, who will give testimony at the hearing regarding the recommendation and a brief summary of the nature of the anticipated testimony
  - The names of the Hearing Panel members and Presiding Officer (or Hearing Officer) if known
  - A statement of the specific reasons for the recommendation, including a list of patient records (if applicable), and information supporting the recommendation. This statement may be revised or amended at any time, even during the hearing, so long as the additional material is relevant to the recommendation or the individual's qualifications. The individual shall have, at the discretion of the presiding officer, time to study this additional information
4. The hearing shall begin as soon as feasible, but no sooner than thirty (30) days after the notice of the hearing unless an earlier hearing date has been specifically agreed to in writing by the individual and the University of Utah Health Plans.

5. Witness List

- At least ten (10) days before the pre-hearing conference, the individual requesting the hearing shall provide a written list of the names of the individuals expected to offer testimony on his or her behalf
- The individual's witness list shall include a brief summary of the nature of the anticipated testimony
- The witness list of either party may, thereafter, in the discretion of the Presiding Officer or Hearing Panel Chair, be supplemented or amended at any time during the course of the hearing, provided that notice of the change is given to the other party

6. Hearing Panel, Presiding Officer, and Hearing Officer

- Hearing Panel
  - The Medical Director, acting for the University of Utah Health Plans and after considering the recommendations of the University of Utah Health Plans Credentials Review Committee shall appoint a Hearing Panel which shall be composed of not less than three (3) members, one (1) of whom shall be designated as Chair. The Hearing Panel shall be composed of members of the medical staff of the University of Utah Hospitals and Clinics who did not actively participate in the consideration of the matter involved at any previous level, or of physicians or others not connected with the

University of Utah Hospitals and Clinics. Knowledge of the matter involved shall not preclude any individual from serving as a member of the Hearing Panel.

- Presiding Officer
  - In lieu of a Hearing Panel Chair, the Medical Director may appoint a Presiding Officer who may be an attorney at law. The Presiding Officer must not act as a prosecuting officer, or as an advocate for either side at the hearing. The Presiding Officer may participate in the private deliberations of the Hearing Panel and be a legal advisor to it, but shall not be entitled to vote on its recommendations.
  - If no Presiding Officer has been appointed, the Chair of the Hearing Panel shall serve as the Presiding Officer, and shall be entitled to one (1) vote.
  - The Presiding Officer (or Hearing Panel Chair) shall:
    - Allow the participants in the hearing to have a reasonable opportunity to be heard and to present oral and documentary evidence, subject to reasonable limits on the number of witnesses and duration of direct and cross-examination as may be necessary to avoid cumulative or irrelevant testimony or to prevent abuse of the hearing process
    - Prohibit conduct or presentation of evidence that is cumulative, excessive, irrelevant, abusive, or that causes undue delay
    - Maintain decorum throughout the hearing
    - Determine the order of procedure throughout the hearing
    - Have the authority and discretion to make rulings on all questions which pertain to matters of procedure and to the admissibility of evidence
    - See that all information relevant to the appointment or clinical privileges of the individual requesting the hearing is presented to the Hearing Panel
    - Conduct argument by counsel on procedural points outside the presence of the Hearing Panel unless the Panel wishes to be present
  - The Presiding Officer may be advised by legal counsel to the Hospital with regard to the hearing procedure.
- Hearing Officer
  - As an alternative to a Hearing Panel, the Medical Director may appoint a Hearing Officer to perform the functions that would

otherwise be carried out by a Hearing Panel. The Hearing Officer shall preferably be an attorney at law.

- The Hearing Officer shall not be in direct economic competition with the individual requesting the hearing, and shall not act as a prosecuting officer or as an advocate to either side at the hearing. If the Hearing Officer is an attorney, he or she must not represent clients in direct economic competition with the affected individual. In the event a Hearing Officer is appointed instead of a Hearing Panel, all references in this Article to the “Hearing Panel” or “Presiding Officer” shall be deemed to refer instead to the Hearing Officer, unless the context would clearly otherwise require.

## Hearing Procedure

### 1. Discovery

- There is no right to discovery in connection with the hearing. However, the affected individual shall be entitled, upon specific request, to the following, subject to the individual’s written agreement that all documents shall be maintained as confidential and shall not be disclosed or used for any purpose outside of the hearing:
  - Copies of, or reasonable access to, all patient medical records referred to in the Statement of Reasons, at the individual’s expense
  - Reports of experts relied upon by the University of Utah Health Plans
  - Copies of relevant committee or department minutes (such provision is not intended to waive the state peer review protection law) (documents shall be redacted to remove information unrelated to the affected individual)
  - Copies of any other documents relied upon by the University of Utah Health Plans
- There shall be no discovery regarding other practitioners.
- Prior to the hearing, on dates set by the Presiding Officer or agreed upon by counsel for both sides, each party shall provide the other party with its proposed exhibits. All objections to documents or witnesses, to the extent then reasonably known, shall be submitted in writing in advance of the hearing. The Presiding Officer shall not entertain subsequent objections unless the party offering the objection demonstrates good cause.
- Neither the affected individual, nor his or her attorney, nor any other person acting on behalf of the affected individual, shall contact individuals appearing on the University of Utah Health Plans’



witness list concerning the subject matter of the hearing, unless specifically agreed upon by counsel.

## 2. Pre-Hearing Conference

- The Presiding Officer may require a representative (who may be counsel) for the individual and for the University of Utah Health Plans to participate in a pre-hearing conference to deal with all procedural questions in advance of the hearing. The Presiding Officer may specifically require that:
  - All documentary evidence/exhibits to be submitted by the parties be presented to each other prior to this conference and that any objections regarding the documents be made at this conference and resolved by the Presiding Officer
  - Evidence unrelated to the reasons for the recommendation or to the individual's qualifications for appointment or the relevant clinical privileges be excluded
  - Any objections regarding witnesses be made at this conference and resolved by the Presiding Officer
  - The time granted to each witness's testimony and cross-examination be agreed upon, or determined by the Presiding Officer, in advance
  - Witnesses and documentation not provided and agreed upon in advance of the hearing may be excluded from the hearing

## 3. Failure to Appear

- Failure, without good cause, of the individual requesting the hearing to appear and proceed at such a hearing shall result in transmittal of the matter to the University of Utah Health Plans for final action.

## 4. Record of Hearing

- A stenographic reporter shall be present to make a record of the hearing. The cost of the reporter shall be shared by the parties. Copies of the transcript are at the individual's expense. Oral evidence shall be taken only on oath or affirmation administered by any person entitled to notarize documents in this State.

## 5. Rights of Both Sides and the Hearing Panel at the Hearing

- At a hearing, both sides shall have the following rights, subject to reasonable limits determined by the Presiding Officer or Hearing Panel Chair:
  - To consult with and/or be represented by legal counsel

- To call and examine witnesses to the extent they are available and willing to testify
- To introduce exhibits
- To cross-examine any witness on any matter relevant to the issues
- To representation by counsel who may call, examine, and cross-examine witnesses and present the case
- To submit a written statement at the close of the hearing
- Any individual requesting a hearing who does not testify in his or her own behalf may be called and questioned.
- The Hearing Panel may question the witnesses, call additional witnesses, and/or request documentary evidence.

#### 6. Admissibility of Evidence

- The hearing shall not be conducted according to rules of evidence. Hearsay evidence shall not be excluded merely because it is hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law. The guiding principle shall be that U of U Health Plans, which must ultimately decide about the affected individual's appointment and clinical privileges, shall have before it all information relevant to the individual's qualifications.

#### 7. Post-Hearing Statement

- Each party shall have the right to submit a written statement, and the Hearing Panel may request such a statement to be filed, following the close of the hearing.

#### 8. Persons to be Present

- The hearing shall be restricted to those individuals involved in the proceeding. Appropriate administrative personnel may be present as requested by U of U Health Plans and the Medical Director.

#### 9. Postponements and Extensions

- Postponements and extensions of time beyond any time limit set forth in this Policy may be requested by anyone but shall be permitted only by the Presiding Officer or the Medical Director on a showing of good cause.

## Hearing Conclusion, Deliberations and Recommendations

### 1. Order of Presentation

- The University of Utah Health Plans shall first present evidence in support of its proposed decision. Thereafter, the individual who requested the hearing shall present evidence.

### 2. Basis of Decision

- The burden shall be on the University of Utah Health Plans to prove, by a preponderance of the evidence that the recommendation that prompted the hearing was supported by credible evidence and was not arbitrary or capricious.
- The recommendation of the Hearing Panel shall be based on the evidence produced at the hearing. This evidence may consist of the following:
  - Oral testimony of witnesses
  - Written statements presented in connection with the hearing
  - Any information regarding the individual who requested the hearing (and his or her practice or conduct) so long as that information has been admitted into evidence at the hearing and the person who requested the hearing had the opportunity to comment on and, by other evidence, refute it

### 3. Adjournment and Conclusion

- The Presiding Officer may adjourn the hearing and reconvene it at the convenience and with the agreement of the participants. Upon conclusion of the presentation of evidence by the parties and/or questions by the Hearing Panel, the hearing shall be closed.

### 4. Deliberations and Recommendation of the Hearing Panel

- Within twenty (20) days after final adjournment of the hearing (which may be designated as the time the Hearing Panel receives the hearing transcript or any post-hearing statements, whichever is later), the Hearing Panel shall conduct its deliberations outside the presence of any other person except the Presiding Officer, and shall render a recommendation, accompanied by a report, which shall contain a concise statement of the basis for the Panel's decision.

### 5. Disposition of Hearing Panel Report

- The Hearing Panel shall deliver its report and recommendation to the Medical Director who shall forward it, along with all supporting

documentation, to U of U Health Plans for further action. The Medical Director shall also send a copy of the report, including specific reasons for the decision, and final recommendation by certified mail, return receipt requested, to the individual who requested the hearing.

## **Appeal Procedure**

### **1. Time for Appeal**

- Within ten (10) days after notice of the Hearing Panel's recommendation, either party may request an appeal. The request shall be in writing, delivered to the Medical Director either in person or by certified mail, return receipt requested, and include a statement of the reasons for appeal and the specific facts or circumstances which justify further review. If an appeal is not requested within ten (10) days, an appeal is deemed to be waived, and the Hearing Panel's report and recommendation shall be forwarded to U of U Health Plans for final action.

### **2. Grounds for Appeal**

- The grounds for appeal shall be limited to the following:
  - There was substantial failure to comply with this Policy so as to deny a fair hearing
  - The recommendations of the Hearing Panel were made arbitrarily, capriciously, or with prejudice
  - The recommendations of the Hearing Panel were not supported by substantial evidence

### **3. Time, Place and Notice**

- Whenever an appeal is requested as set forth in the preceding sections, the Director of U of U Health Plans shall schedule and arrange for an appeal. The affected individual shall be given notice of the time, place, and date of the appeal. The appeal shall be held as soon as arrangements can reasonably be made, taking into account the schedules of all the individuals involved.

### **4. Nature of Appellate Review**

- The Director of U of U Health Plans shall appoint a Review Panel composed of not less than three (3) persons.
- The Review Panel may in its discretion accept additional oral or written evidence subject to the same rights of cross-examination provided at the hearing only if the party seeking to admit it can

demonstrate that it is new, relevant evidence not previously available or that a request to admit it at the hearing was improperly denied.

- Each party shall have the right to present a written statement in support of its position on appeal. In its sole discretion, the Review Panel may allow each party or its representative to appear personally and make oral argument not to exceed thirty (30) minutes. The Review Panel shall recommend final action to University of Utah Health Plans.
- U of U Health Plans may affirm, modify, or reverse the recommendation of the Review Panel or, in its discretion, refer the matter for further review and recommendation, or make its own decision based upon its ultimate legal responsibility to extend network participation. If U of U Health Plans determines to modify or reverse the recommendation of the Review Panel in such a manner that would entitle the affected individual to another hearing, it shall so notify the affected individual through the Medical Director, and shall take no final action thereon until the individual has exercised or has waived a hearing.

#### 5. Final Decision

- Within thirty (30) calendar days after receipt of the Review Panel's recommendation, U of U Health Plans shall render a final decision in writing, including specific reasons, and shall send special notice thereof to the affected individual.

#### 6. Further Review

- Except where the matter is referred for further action and recommendation, the final decision of U of U Health Plans following the appeal shall be effective immediately and shall not be subject to further review. If the matter is referred for further action and recommendation, such recommendation shall be promptly made to U of U Health Plans in accordance with the instructions given by U of U Health Plans. This further review process and the report back U of U Health Plans shall in no event exceed thirty (30) days except as the parties may otherwise agree.

#### 7. Right to One Hearing and One Appeal Only

- No applicant or member shall be entitled to more than one (1) hearing and one (1) appellate review on any matter. If network privileges are denied either during the credentialing or re-credentialing process, or if network participation of a current member is revoked, that individual may not apply for network

participation for a period of five (5) years unless U of U Health Plans provides otherwise.