

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

**TITLE 8 SOCIAL SERVICES
CHAPTER 352 ADMINISTRATIVE HEARINGS
PART 3 PROVIDER HEARINGS**

8.352.3.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.352.3.1 NMAC - N, 1-1-14]

8.352.3.2 SCOPE: The rule applies to the general public.
[8.352.3.2 NMAC - N, 1-1-14]

8.352.3.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-2-12 et seq.
[8.352.3.3 NMAC - N, 1-1-14]

8.352.3.4 DURATION: Permanent.
[8.352.3.4 NMAC - N, 1-1-14]

8.352.3.5 EFFECTIVE DATE: January 1, 2014, unless a later date is cited at the end of a section.
[8.352.3.5 NMAC - N, 1-1-14]

8.352.3.6 OBJECTIVE: The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs (MAP).
[8.352.3.6 NMAC - N, 1-1-14]

8.352.3.7 DEFINITIONS: [RESERVED]

8.352.3.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.352.3.8 NMAC - N, 1-1-14]

8.352.3.9 PROVIDER ADMINISTRATIVE HEARINGS: With the exception of referrals for credible allegations of fraud, HSD has established a hearing process for MAD fee-for-service (FFS) providers who disagree with its decision concerning his or her participation as a MAD provider, recoupment of overpayments due to a provider billing error, and the imposition of MAD sanctions. For the provider administrative hearing process concerning decisions on noncompliance with nursing facility (NF) or intermediate care facility for individuals with intellectual disabilities (ICF-IID) provider certification requirements also see hearing regulations promulgated by the department of health (DOH) and specific MAD New Mexico administrative code (NMAC) rules applicable to the provider. See 8.311.3 NMAC, 8.312.2 NMAC, and 8.313.3 NMAC for a detailed description of the appeals process for audit settlements. See 8.308.14 NMAC for a detailed description of the grievance and appeal process for resolving provider disputes between a HSD contracted managed care organization (MCO) and its contractor or subcontractor. For applicable rules for services and items provided through a MAD coordinated service contractor, see 8.349.2 NMAC.

A. **Provider administrative hearing rights:** The right to a provider administrative hearing includes the right to:

- (1) be advised of the nature and availability of a provider administrative hearing;
- (2) be represented by his or her authorized representative or legal counsel;
- (3) have a provider administrative hearing which safeguards the provider's opportunity to present a case;
- (4) have prompt notice and implementation of the final provider administrative hearing decision; and
- (5) be advised that judicial review may be invoked to the extent such review is available under state law.

B. **Notice of rights:** Upon enrollment, a MAD provider receives written notice of provider administrative hearing rights along with any MAD action notice concerning provider participation agreement (PPA)

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

termination, recoupment of overpayment due to provider billing error, or notice of sanction. This information includes a description of the method by which a provider administrative hearing may be requested and a statement that the provider's presentation may be made by the provider or by his or her authorized representative or legal counsel.

[8.352.3.9 NMAC - N, 1-1-14]

8.352.3.10 INITIATION OF FFS PROVIDER ADMINISTRATIVE HEARING PROCESS:

A. **Notice:** ~~[The]~~ When applicable, the provider administrative hearing process is initiated by a provider's request for hearing made in response to a MAD action notice. See Section 8.351.2 NMAC-for a detailed description of notice requirements when the action is a MAD sanction.

B. **Time limits:** A MAD FFS provider has 30 calendar days from the date of the MAD action notice to request a provider administrative hearing. To be considered timely, the request must be received by the HSD fair hearings bureau (FHB) no later than the close of business of the 30th day. Provider administrative hearings are conducted and a written decision is issued by the MAD director or designee to the provider within 120 calendar days from the date the FHB receives the provider administrative hearing request, unless the parties otherwise agree to an extension. See 8.351.2 NMAC for information concerning time limits when the action is a MAD sanction. The right to request a stay is cited in 8.351.2.15 NMAC.

C. **Scope and limits on provider administrative hearings:**

(1) A provider administrative hearing is available to all MAD FFS providers, including providers applying for electronic health record incentive payments, who submit a request in accordance with all sections of this rule. A provider can request a hearing if:

- (a) his or her PPA or renewal of his or her PPA is denied;
- (b) the provider's MAD participation is suspended or terminated; or
- (c) the provider disagrees with a decision of MAD or its designee with respect to recovery of

overpayments due to provider billing error including incorrect billing, or lack of documentation to support the medical necessity of a service, or that the service was provided, or imposition of a sanction or other remedy, with the exception of ~~[the withholding of payments by MAD when the action is directed by the state's medicaid fraud control unit]~~ a temporary payment suspension for credible allegations of fraud; or

(d) the provider believes the requirements for timely filing of a claim as stated in 8.302.2 NMAC were met but a decision by MAD has been made that the timely filing requirements were not met.

(2) **Denial or dismissal of request for provider administrative hearing:** The assigned fair hearing FHB's administrative law judge (ALJ) may recommend to the MAD director in writing to deny or dismiss a provider's request for an administrative hearing when:

(a) the request is not received within the time period stated in the notice;

(b) the request is withdrawn or canceled in writing by the provider, the provider's authorized representative or legal counsel;

(c) the sole issue presented concerns a federal or state ~~[law]~~ statute, regulation or rule which requires an adjustment of compensation for all or certain classes of FFS providers or services unless the reason for the provider administrative hearing request involves an alleged error in the computation of a provider's compensation;

(d) the provider fails to appear at a scheduled provider administrative hearing without good cause. A request for a provider administrative hearing may be considered abandoned and therefore dismissed if the provider, his or her authorized representative or legal counsel fails to appear at the time and place of the hearing, unless, within 10 calendar days after the date of the scheduled provider administrative hearing, the provider presents good cause for failure to appear. Good cause includes death in the family, disabling personal illness, or other significant emergencies. At the discretion of the ALJ, other exceptional circumstances may be considered good cause;

(e) the same issue has already been appealed or decided upon as to this provider and fact situation;

(f) the matter presented for the provider administrative hearing is outside the scope of issues which are subject to the HSD provider administrative hearing process;

(g) the sole issue presented concerns a HSD contracted MCO or its subcontractor's utilization management decision, such as a decision to terminate, suspend, reduce, or deny services to its member, untimely utilization review, and provider payment issues raised by the MCO or its subcontractor; or

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

(h) the sole issue presented is regarding a MAD New Mexico administrative code (NMAC) rule rather than the application of the MAD NMAC rule to that provider.

D. **Method:** A request for a provider administrative hearing must be made in writing and must identify the provider and the one or more of the actions stated in Subsection C of this Section and rule.

E. **Acknowledgment of request:** The FHB sends acknowledgment of its receipt of a provider administrative hearing request to the provider in writing, as well as sends an electronic copy via email to the MAD designated administrative hearing staff.

[8.352.3.10 NMAC - N, 1-1-14]

8.352.3.11 PRE-HEARING PROCEDURE:

A. **Notice of hearing:** Not less than 30 calendar days before the provider administrative hearing, written notice is given to all parties involved of the time, date, and place of the hearing. If an accommodation is necessary, the party must notify the assigned ALJ at least 10 calendar days prior to the hearing. The FHB includes in its written notice to the provider an explanation of the HSD provider administrative hearing process and procedures, and informs the provider HSD does not pay fees or costs incurred by the provider as a result of the provider administrative hearing or district court appeals of the final HSD provider administrative hearing decision.

B. **Postponement:** A provider may request, and is entitled to receive, one postponement of the scheduled provider administrative hearing, as long as it does not interfere with the 120 calendar day timeframe. Requests for more than one postponement are considered on a case-by-case basis at the ALJ's discretion.

C. **Expedited hearing:** The parties may request an expedited hearing in cases involving a medical assistance program (MAP) eligible recipient's health, safety, or service availability concerns. The request must be made in writing and state in detail the reasons why an expedited hearing is necessary. Granting an expedited hearing is at the discretion of the ALJ.

D. **Group hearing:** The ALJ may respond to a series of individual requests for hearings by conducting a single group hearing. In all group hearings, the HSD administrative hearing process governing an individual hearing is followed. Each provider, his or her authorized representative or legal counsel may present his or her case individually. If a group hearing is arranged, each affected provider has the right to withdraw from the group hearing in favor of an individual HSD provider administrative hearing.

E. **Informal resolution conference:** The parties are encouraged to hold an informal resolution conference before the provider administrative hearing to discuss the issues involved in the hearing. The informal resolution conference is optional and does not delay or replace the provider administrative hearing process. Conference participants may include the provider, his or her authorized representative or legal counsel, MAD or other responsible agency representatives, and the MAD selected claims and provider enrollment processing contractor. The purpose of the informal resolution conference is to informally review MAD's action and to determine whether the issues can be resolved by mutual agreement. The issues to be decided at the provider administrative hearing may also be clarified or further defined. Regardless of the outcome of the informal resolution conference, a provider administrative hearing is still held, unless the provider submits a written withdrawal of the request of the provider administrative hearing.

F. **Pre-hearing conference:** The assigned ALJ schedules a pre-hearing conference within 30 calendar days of the receipt of the provider's request for a HSD provider administrative hearing. A pre-hearing conference is an informal proceeding and may occur telephonically.

(1) **Purpose of conference:** The purposes of the pre-hearing conference include, but are not limited to:

- (a) expediting the disposition of the action;
- (b) identification, clarification, formulation and simplification of issues;
- (c) resolution of some or all issues;
- (d) exchange of documents and information;
- (e) preparing stipulations of fact to avoid unnecessary introduction of evidence at the hearing;
- (f) review of audit findings;
- (g) reconsideration of a suspension or withholding of payments;
- (h) identifying the number of witnesses; and
- (i) facilitating the settlement of the case.

(2) **Scheduling:** A scheduling order shall be entered into, which shall set the due date for the summary of evidence (SOE), due date for exhibits, and sets the date for the provider administrative hearing. The

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

order shall be issued as soon as practicable, but in any event within 30 calendar days of the request for provider administrative hearing.

(3) **Continuations and rescheduling:** A pre-hearing conference may be continued or rescheduled with the consent of all parties after the 30 calendar day time limit.

(4) **Settlements, stipulations and admissions:** No offer of settlement made in a pre-hearing conference is admissible as evidence at the later provider administrative hearing. Stipulations and admissions are binding and may be used as evidence at the provider administrative hearing. Any stipulation, settlement or consent order reached between the parties is written and signed by the ALJ and all parties to the provider administrative hearing.

(5) **Timeliness:** The pre-hearing conference will not delay or replace the provider administrative hearing itself. Pre-hearing conferences may include the provider, his or her authorized representative or legal counsel, MAD or other responsible agency representatives, and the MAD selected claims and provider enrollment processing contractor. Subsequent to the conference or in the event that any of the parties to the provider administrative hearing fail to participate, the scheduled hearing is still held, unless the provider submits a written request for withdrawal.

(6) **Unresolved issues:** If all matters in controversy are not resolved at the pre-hearing conference, the ALJ sets a provider administrative hearing date within 30 calendar days of the last conference date, or at a later time agreed to by all parties, recognizing the 120 calendar day timeframes.

(7) **Written summaries:** The ALJ may request the parties to submit a written summary of all issues resolved at the pre-hearing conference.

(8) **Pre-hearing order:** The may, at his or her sole discretion, prepare or ask the parties to prepare a pre-hearing order. The pre-hearing order may contain:

- (a) statements of any contested facts and issues;
- (b) stipulation of matters not in dispute;
- (c) list of witnesses to be called and the subject of their testimony;
- (d) list of exhibits;
- (e) discovery directives; or
- (f) other matters relevant to the issues.

(9) **Points of law:** The ALJ may direct the parties to submit memoranda on points of law to inform the final decision, and may dictate the length and scope of the submissions.

G. **Summary of evidence (SOE):** A summary of evidence (SOE) is a document submitted by MAD that provides preliminary information concerning the basis of its or its selected claims and provider enrollment processing contractor's action. The SOE may be amended by MAD at any point prior to the pre-hearing if the ALJ and the provider, his or her authorized representative or legal counsel receives copies of the amended SOE at least two working days of the pre-hearing conference.

(1) The SOE must be provided at least 10 working days prior to the pre-hearing conference or if the pre-hearing conference is not held, within 10 working days prior to the scheduled provider administrative hearing date.

(2) The failure of MAD to timely provide the SOE may, at the ALJ's discretion, result in its exclusion or a continuance of the hearing.

(3) MAD staff or its designee is responsible for the preparation of the SOE and coordination of parties and witnesses. MAD is responsible for the submission of the SOE to all parties.

(4) The summary of evidence shall contain:

- (a) the provider's name, telephone number and address and the status of any previous or concurrent appeal through the MAD or its selected claims and provider enrollment processing contractor;
- (b) the action, proposed action or inaction being appealed;
- (c) information on which the action or proposed action is based with supporting documentation and correspondence; and
- (e) applicable federal and state law, regulations, statutes, rules or any combination of these.

H. **Availability of provider evidence:**

(1) The provider, his or her authorized representative or legal counsel will provide at least ten calendar days prior to the hearing to the FHB assigned ALJ any document to be introduced as evidence at the pre-hearing conference. The SOE may be amended by the provider, his or her authorized representative or legal counsel at any point prior to the pre-hearing if the ALJ and MAD receive copies of the amended SOE at least within two working days of the pre-hearing conference. The FHB will forward to the MAD administrative hearings unit copies

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

of such evidence. MAD will then make these available to its selected claims and provider enrollment processing contractor.

(2) Failure of the provider, his or her authorized representative or legal counsel to timely provide the documentary evidence may result in its exclusion or a continuance of the provider administrative hearing at the discretion of the ALJ.

I. **Availability of information:** MAD must:

(1) provide, on request, in a timely manner and without charge, any documents in its possession concerning the underlying action, that are not already in the provider's possession, and that are necessary for a provider to decide whether to request a hearing or to prepare for a provider administrative hearing; and

(2) allow the provider, his or her authorized representative or legal counsel to examine all documents to be used at the provider administrative hearing at a reasonable time before the date of the provider administrative hearing and during such hearings. Documents or records which the provider would not otherwise have an opportunity to challenge or contest, may not be introduced at the provider administrative hearing or be taken into consideration by the ALJ.

[8.352.3.11 NMAC - N, 1-1-14]

8.353.3.12 HEARING STANDARDS:

A. **Rights at hearing:** The parties are given an opportunity to:

(1) present their case or have it presented by his or her authorized representative or legal counsel;

(2) bring witnesses to present information relevant to the case;

(3) submit evidence to establish all pertinent facts and circumstances in the case;

(4) advance arguments without undue interference; and

(5) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine opposing witnesses.

B. **ALJ:** Hearings are conducted by an impartial official, the ALJ, who:

(1) does not have any personal stake or involvement in the case; and

(2) was not involved in the determination or the action which is being contested; if the ALJ had any involvement with the action in question, including giving advice or consultation on the points at issue, or is personally related in any relevant degree to the parties, the ALJ must disqualify him or herself as the ALJ for that specific case.

(3) **Authority and duties of the ALJ:** The ALJ must:

(a) explain how the provider administrative hearing will be conducted to participants at the start of the hearing, before administering oaths;

(b) administer oaths and affirmations;

(c) request, receive, and make part of the record all evidence considered necessary to decide the issues raised;

(d) regulate the conduct and the course of the provider administrative hearing and any pre-hearing conference to ensure an orderly hearing;

(e) request, if appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the parties; and

(f) produce the provider administrative hearing report and recommendation for review and final decision by the MAD director or designee.

(4) **Appointment of ALJ:** The ALJ is appointed by the HSD FHB chief upon receipt of the request for hearing. All communications are to be addressed to the assigned ALJ.

C. **Evidence and procedure:** Formal rules of evidence and civil procedure do not apply. A free, orderly exchange of relevant information is necessary for the decision-making process.

(1) **Admissibility:** All evidence is admissible subject to the ALJ's authority to limit irrelevant, repetitive or unduly cumulative evidence and his or her ability to conduct an orderly hearing. The ALJ must admit evidence that is relevant to those allegations against the provider included in the notice of recovery of overpayment, sanction or other remedy, application denial, or application termination.

(2) **Confidentiality:** The confidentiality of records is to be maintained. Information which is not presented during the provider administrative hearing in the presence of the provider, his or her authorized representative or legal counsel, and the MAD representative may not be used by the ALJ in making the provider administrative hearing recommendation except as allowed by Section 13 Subsection E of this rule.

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

(3) **Administrative notice:** The ALJ may take administrative notice of any matter in which courts of this state may take judicial notice.

(4) **Privilege:** The rules of privilege apply to the extent that they are required to be recognized in civil actions in the district courts of New Mexico.

(5) **Medical issues:** In a case involving medical and behavioral health issues, the parties may submit expert testimony, reports, affidavits or medical and behavioral health records into record as necessary. Admission of this evidence is at the discretion of the ALJ. All parties to the provider administrative hearing have the right to examine any documents which may influence the decision.

D. **Burden of proof:** MAD has the burden of proving the basis to support its proposed action by a preponderance of the evidence. In cases involving the imposition of civil money penalties against a NF provider, MAD's conclusion about the NF's level of noncompliance must be upheld unless clearly erroneous.

E. **Record of the provider administrative hearing:** A hearing is electronically recorded. The recording is placed on file at the FHB and is available to the parties for 60 calendar days following the decision. In addition to the recorded proceedings, the record of the provider administrative hearing includes any pleadings, documents, or other exhibits admitted into evidence. Any of the parties to the provider administrative hearing may request one digital copy of the recordings without charge. Subsequent copies will be charged at a rate HSD sets for any other digital request.

[8.352.3.12 NMAC - N, 1-1-14]

8.352.3.13 CONDUCTING THE HEARING: A provider administrative hearing is conducted in an orderly manner and in an informal atmosphere. The provider administrative hearing is conducted in person or telephonically and is not open to the public. The ALJ has the authority to limit the number of persons in attendance if space or other considerations dictate.

A. **Opening the provider administrative hearing:** The hearing is opened by the ALJ. Individuals present must identify themselves for the record. The ALJ explains his or her role in the proceedings, and that the final decision on the appeal will be made by the MAD director after review of the proceedings and the ALJ's recommendation. The order of testimony is described, and the oath is administered to all who will testify at the hearing.

B. **Order of testimony:** The order of testimony at the provider administrative hearing is as follows:

- (1) opening statements of parties or their representatives;
- (2) presentation of MAD's case; if witnesses are called, the order of examination of each witness is:
 - (a) examination by the MAD representative;
 - (b) cross examination by the provider, his or her authorized representative or legal counsel; and
 - (c) opportunity to redirect the witness;
- (3) presentation of the provider's case; if witnesses are called, the order of examination of each witness is:
 - (a) examination by provider, his or her authorized representative or legal counsel;
 - (b) cross examination by MAD or its selected claims and provider enrollment processing contractor; and
 - (c) opportunity to redirect the witness;
- (4) presentation of rebuttal evidence by MAD and provider, respectively;
- (5) the ALJ may direct further questions to the MAD representative, the provider, or any witnesses to clarify inconsistencies or obtain an adequate evidentiary record; and
- (6) the ALJ may ask parties to summarize and present closing arguments.

C. **Written closing argument:** At the discretion of the ALJ, the parties may be directed to make closing arguments, or submit written memoranda on points of law.

D. **Continuance:** The ALJ may continue the provider administrative hearing upon the request of either party or on his or her own motion, for admission of additional testimony or evidence. The granting of a continuance is at the discretion of the ALJ and can only be allowed when the timeliness of a decision is not jeopardized by the continuance or the parties have agreed to an extension of the decision time frame. The reasons for the continuance must be stated for the record. Written notice of the date, time, and place of the continued hearing is sent to the parties if these are not set at the time of the continuance.

E. **Additional evidence:** If the ALJ needs additional evidence to further clarify documentary evidence presented during the hearing, he may close the hearing but keep the record open and direct the parties to submit such clarifying evidence. Each party receives a copy of the direction for further evidence and the

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

documentary evidence being submitted and is allowed an opportunity to respond to the submission, in writing, within 10 calendar days of its receipt. The additional evidence and responses become part of the hearing record.

F. **Re-opening a hearing:** The ALJ, at his or her discretion, may re-open a hearing when the evidentiary record fails to address an issue that is relevant to resolution of a provider administrative hearing request. The hearing can only be re-opened if the timeliness of the decision is not jeopardized or the parties have agreed to an extension of the decision timeframes. Written notice of the date, time and place of the re-opened hearing is sent by the FHB to the parties not less than 10 calendar days before the date of the re-opened provider administrative hearing.

[8.352.3.13 NMAC - N, 1-1-14]

8.352.3.14 HEARING DECISION: The final HSD provider administrative hearing decision concerning the hearing is made by the MAD director or designee after review of the record and the ALJ's report and recommendation.

A. **Decision based on the record:** The ALJ's recommendation may be adopted or rejected in a final written decision by the MAD director or designee on issues that were the subject of the hearing. The MAD director or designee specifies the reasons for the decision and identifies the regulatory authority and the evidence supporting the decision, including the record created by the provider administrative hearing, applicable federal and state law, regulations and MAD NMAC rules, policies and instructions or any combination of these. No person who participated in the original action under appeal or in the provider administrative hearing may participate in arriving at a final decision.

B. **ALJ recommendation:** The ALJ reviews the record of the provider administrative hearing and all applicable federal and state law, regulations and MAD NMAC rules, policy and instructions or any combination of these, and evaluates the evidence submitted. The ALJ submits the complete record of the hearing, along with his or her written recommendation to the MAD director.

(1) **Content of recommendation.** The ALJ specifies the reasons for his or her conclusions, identifies the supporting evidence, references the applicable federal and state law, regulations and MAD NMAC rules, policies and instructions or any combination of these, and responds to the arguments of the parties in a written report and recommendation.

(2) The ALJ recommends:

- (a) in favor of the provider if MAD's action or proposed action is not supported by a preponderance of the evidence available as a result of the provider administrative hearing;
- (b) in favor of MAD, if the preponderance of the evidence available supports the action or proposed action; or
- (c) any other result supported by the record.

C. **Review of recommendation:** The provider administrative hearing file and recommendation are reviewed by the MAD director or designee to ensure conformity with applicable federal and state law, regulations and MAD NMAC rules, policies and instructions or any combination of these.

D. **Final decision:** The ALJ's recommendation may be adopted or rejected in a final written decision by the MAD director or designee on issues that were the subject of the hearing. The MAD director specifies the reasons for the decision and identifies the regulatory authority and the evidence supporting the decision, including the record created by the provider administrative hearing, applicable federal and state law, rules and policies or any combination of these. No person who participated in the original action under appeal or in the hearing may participate in arriving at a final decision.

E. **Notice to parties:** The parties receive the written decision, including the effective date of sanctions, terms of sanctions, and amounts of overpayment to be recovered by MAD. When the provider is represented by legal counsel, counsel must receive the decision. The notice of the decision includes an explanation that the parties have exhausted all administrative remedies and may pursue judicial review of the decision. This explanation includes information on time limits, and where and how to pursue judicial review.

[8.352.3.14 NMAC - N, 1-1-14]

8.352.3.15 IMPLEMENTATION OF DECISION: The final HSD provider administrative hearing decision is binding on all issues that were the subject of a hearing, as to the provider, unless stayed by court order pending appeal. The decision is implemented within the time frames specified below.

A. **Decision favorable to HSD:** Decisions favorable to MAD are implemented immediately, unless stayed by court order.

**ADMINISTRATIVE HEARINGS
PROVIDER HEARINGS
Tribal Consultation Version 10.23.13**

B. **Decision favorable to provider:** If the decision is in favor of the provider, MAD must immediately lift any sanctions in place and remit to the provider any funds being held pending the decision. [8.352.3.15 NMAC - N, 1-1-14]

8.352.3.16 JUDICIAL REVIEW:

A. **Right of appeal:** If the final HSD provider administrative hearing decision upholds MAD's original action or proposed action, the provider has the right to pursue judicial review of the decision and is so notified of that right in the decision.

B. **Timeliness:** The provider has 30 calendar days from the date of the provider administrative hearing decision to appeal that decision by filing an appropriate action for judicial review with the clerk of the first judicial district court and sending a copy of the notice of action to HSD and the ALJ.

C. **Jurisdiction and standard:** All appeals to the district court are based on a review of the record made at the hearing. The HSD office of general counsel files one copy of the hearing record with the clerk of the first judicial district court and furnishes one copy to the provider and his or her counsel within 20 calendar days after receipt of the notice of appeal.

D. **Stay pending appeal:** The district court decides, upon motion duly filed, whether the filing of the appeal will operate as a stay of the HSD final provider administrative hearing decision. If a stay is granted, the office of general counsel notifies appropriate staff concerning any necessary action. [8.352.3.16 NMAC - N, 1-1-14]

HISTORY OF 8.352.3 NMAC: [RESERVED]

History of Repealed Material: [RESERVED]