

Beyond 
the Basics

Marketplace Appeals Process

Presented in partnership
with the National Health
Law Program

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- NHeLP is a national, non-profit organization that protects and advances the health rights of low-income and underserved individuals and families
- NHeLP advocates, educates and litigates at the federal and state levels
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Today's presentation provides a general policy overview and does not provide direct legal advice.

Agenda

- What Determinations Can Be Appealed
- How to Request an Appeal
- Role of Assisters in the Appeals Process
- Appeals Process and Implementing Eligibility Decision
- No Surprises Act Appeals

What Determinations Can Be Appealed



Marketplace Eligibility Appeals

- Consumers who disagree with certain eligibility determinations made by the marketplace have a right to appeal
- Consumers in the federal marketplace submit appeals to the **HHS Appeals Entity (Federal Appeals Entity, or FAE)**
 - Part of HHS separate from marketplace
 - Also handles Medicare appeals
 - May handle Medicaid/CHIP appeals if the state delegates authority to FAE
- Consumers in state-based marketplaces first appeal to their state's appeals entity but can then appeal state determinations to the federal entity

When Can a Consumer Appeal to the FAE?

- The eligibility determination must be final before it can be appealed
- In the FFM, an eligibility determination is not considered final if it includes a data matching issue – meaning the consumer must provide proof of an eligibility factor such as citizenship or income to finalize the determination of eligibility
 - These are cases that are usually referred to as having “inconsistencies” or “DMIs”
 - The determination cannot be appealed even if some parts of it are final
 - **Exception:** Denial of an SEP even if other eligibility is not finalized if the SEP denial is on an eligibility notice with an unresolved inconsistency and the issue on appeal is strictly about the SEP denial.
 - **Exception:** Denial of a periodic data matching inconsistency if other inconsistencies remain.

Not All Issues Can Be Appealed to the FAE

- A determination must be **final** and of **appropriate subject matter**
- Other types of issues that are not appealable to the Federal Appeals Entity (FAE) can be addressed in other ways:
 - Casework, after escalation by the Call Center
 - Appeal with the insurer
 - File a complaint with the state Department of Insurance
 - File a complaint under the No Surprises Act

CMS Casework

When is casework appropriate?

- Complex eligibility or coverage issue and neither the Call Center nor the insurer can help
- Might qualify for an [exceptional circumstances special enrollment period](#) if the Call Center cannot help
- Information on 1095-A tax form is incorrect and the Call Center cannot help



Ask the Marketplace Call Center to submit a case to CMS Casework

If a case is complex or there is a problem with a Form 1095-A and case cannot be resolved through the Call Center or other resources

- In casework, a person with policy knowledge takes a fresh look at a situation. Casework is available by request when the call center cannot answer an eligibility question or when it appears the call center has given an incorrect answer.
- For more information, see [July 2015 CMS Assister Webinar: CMS Casework Overview](#)

Insurer Appeals

What are some types of issues that can be resolved through the insurer?

- **NEW:** Provider was listed as in-network, but when attempting to use coverage, the provider doesn't accept the consumer's insurance
- **NEW:** Went to the emergency room and the consumer's bill says the provider was out-of-network and payment is owed
- Insurer denied a claim for a covered service or procedure
- Insurer would not cover a prescription that the enrollee believes is covered per the plan details
- Insurer cancelled coverage



Appeal to the Insurer

If consumer has a problem with coverage of a health care service or other benefits decision made by the insurer

- **Internal Appeal:** Within 180 days of receiving claim denial or adverse decision, ask insurer to conduct a full and fair review of its decision
- **External Appeal:** Appeal to an independent 3rd party after completion of an internal appeal
- For more information, see [HealthCare.gov](https://www.healthcare.gov)

State Department of Insurance (DOI)

What are some types of issues that can be resolved by DOI?

- Appealed the denial of a service with insurer which denied the appeal because:
 - Not medically necessary (including appropriateness, health care setting, level of care or effectiveness);
 - Experimental/Investigational; or
 - Due to a pre-existing condition
- Insurer incorrectly terminated coverage
- Provider was originally included in the provider directory for a health plan, but consumer is being told that was a mistake
- Insurer is denying a claim because it is for substance use or mental health care in violation of mental health parity laws
- Consumer was fraudulently sold health insurance



Contact State DOI

If the issue is due to discrimination by the insurer, fraudulent selling of health insurance or the consumer wants to appeal an external appeal decision received from an insurer

- Look at the Explanation of Benefits (EOB) or the insurer's final denial of the appeal for the DOI's contact information, or
- For more information, see [National Association of Insurance Commissioners](#)

Marketplace Appeals

What types of decisions can be appealed to the FFM or SBM?

- Denial of APTCs (or CSRs)
- Amount of APTCs (or CSRs)
- Adjustment in APTCs (or CSRs) at end of 90-day inconsistency period
- Denial of eligibility to enroll in marketplace coverage
- Denial of a special enrollment period (SEP)
- Termination of marketplace coverage due to inconsistency
- Denial of coverage exemption
- Denial of eligibility for Medicaid/CHIP (if FFM determines eligibility)
- Failure to receive a timely eligibility determination



Appeal to the FFM or SBM

If consumer disagrees with a final marketplace eligibility determination

- Can file an appeal within 90 days of a final eligibility determination
- For more information, see www.healthcare.gov/marketplace-appeals/what-you-can-appeal

Appealing SBM Eligibility Determination to FAE

- Consumers in State-Based Marketplace (SBM) states can appeal the same issues to their SBMs
- Once they receive a decision from the SBM, consumers may appeal to the Federal Appeals Entity (FAE) if they disagree with:
 - ✓ The decision of the SBM eligibility appeals entity, or
 - ✓ The SBM appeals entity's refusal to reopen an appeal after it was dismissed
 - ✗ State Medicaid agency decisions by an SBM (or after an FFM assessment) are **not** appealable to the FAE

States that use a State-Based Marketplace:

CA, CO, CT, DC, ID, KY, MA, MD, ME, MN, NV,
NJ, NM, NY, PA, RI, VT, WA

Example: What Can Be Appealed?



Susan applies for coverage:

- She is determined eligible for marketplace coverage with subsidies
- Her daughter, Ilana, is assessed eligible for Medicaid
- Ilana's application will be sent to Medicaid for a final determination

What can Susan appeal?

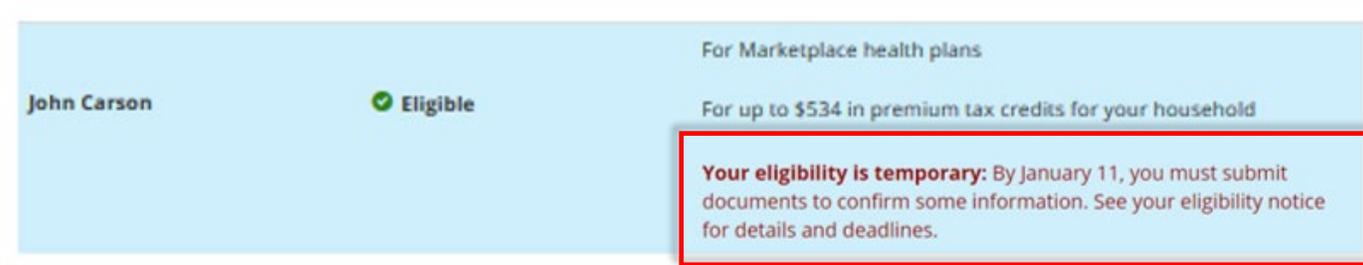
- ✓ Susan's (effective) denial of Medicaid coverage (in a determination state)
- ✓ The amount of tax credits Susan is eligible for
- ✗ Susan cannot appeal the assessment that Ilana is eligible for Medicaid because that decision is not final
 - Susan can appeal to the state appeals entity if she disagrees with the final Medicaid determination

Example: "Temporary" Eligibility Determination



John applies for coverage on the FFM:

- He is determined eligible for premium tax credits but not cost-sharing reductions
- The eligibility determination notice also says the decision is temporary and he must provide proof of his citizenship status due to a data matching issue



Can he appeal the decision that he isn't eligible for cost-sharing reductions?

- ✗ **No.** Not until the citizenship data-matching issue is resolved. Until then, HHS considers his eligibility "temporary"
 - However, he can go back and check the income information he entered on his application and make any changes
 - If he makes changes in his application, a new eligibility determination notice will be generated and, based on the new information, his eligibility for and the amount of his APTCs may change (and may be appealable if it is not temporary)

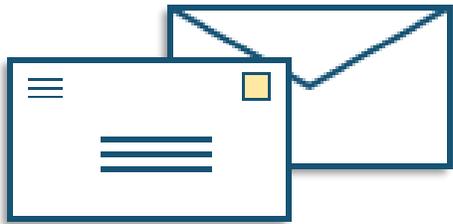
How to Request an Appeal



Requesting a Marketplace Eligibility Appeal

Ways to request a marketplace eligibility appeal:

- Complete [online appeal form](#)
- Complete a [written appeal request form](#) and mail it to the marketplace
- Write a letter explaining the reason for the appeal



Mail to:

Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd
London KY 40750-0061



Fax to:

1-877-369-0130

Timeframes for Requesting Appeals

In FFM states, appeals to the Federal Appeals Entity (FAE) must be submitted within:

- **90 days** of the contested eligibility determination; or
- **30 days** of a notice declining to reopen the appeal after it was dismissed
 - Appeal must be requested by consumer or by designated authorized representative

In SBM states, appeals to the FAE must be submitted within:

- **30 days** of the SBM appeals decision; or
- **30 days** of notice from the SBM declining to reopen the appeal after it was dismissed by the SBM

Note: If 90 days has passed since the eligibility decision, consumers may be able to get an extension of time to file for a “good cause” exception if mitigating circumstances exist for why they did not file during the 90-day period.

Request to Continue APTC During Appeal

In FFM states, consumers can request to have APTCs continue during their appeal

- It is important to request the continuation of tax credits when filing an appeal!
- If a consumer wins the appeal, the decision is generally **prospective** but if the consumer requests retroactive application, the appeal decision will replace the APTCs continued during the appeal

Tax credits **can** continue during some types of appeals:

- ✓ "Failure to Reconcile" (if federal income tax form has been filed)
- ✓ Eligibility determination when consumer loses APTCs
- ✓ Periodic data matching issue

Tax credits **can't** be continued during other types of appeals:

- ✗ Any non-final determination (e.g., an inconsistency)
- ✗ At the end of an inconsistency period if the inconsistency is not resolved

When Marketplace Eligibility Appeal is Received

The FAE receives the appeal and determines the validity of the request

- ✓ If determined valid, the appeal is acknowledged in writing and the appeals process begins
- ✗ If determined invalid, a notice is mailed describing how to fix the problem and resubmit the appeal request

Why might an appeal be invalid?

- Filed more than 90 days after the eligibility determination notice and no good cause to request extension
- Filed to contest a “temporary” eligibility determination rather than a final eligibility determination
- Filed to resolve an issue outside the authority of the FAE to resolve (e.g., whether an insurer covers a particular service)

Role of Assisters in the Appeals Process



Who Can Assist in an Appeal?

An **authorized representative (AR)** can represent a consumer in an appeal

Third party representative for the Call Center:

- Can communicate with the Call Center on the consumer's behalf
- Does **not** make decisions on behalf of the consumer (e.g., selecting a plan or filing an appeal)

Authorized representative for the application:

- Can act on behalf of the consumer on all aspects of the application
- For example, a parent who enrolls their child or a guardian of an incapacitated adult

Authorized representative for an appeal:

- Acts as a **legal** representative for the consumer
- Can present information and witnesses during a hearing on behalf of the consumer
- Effectively can "stand in" for the consumer



The term "authorized representative" means different things at different stages of the eligibility process

Role of Assisters in the Appeals Process

In the majority of appeals, the applicant represents themselves, without legal assistance. A Navigator or other assister may be particularly helpful to appellants who don't have legal assistance.

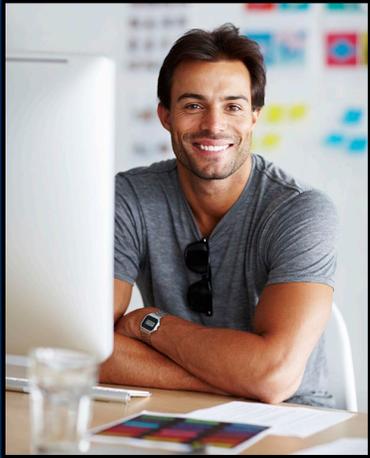
- Assisters can help consumers:
 - Understand whether they have a right to an appeal
 - Understand the process of filing an appeal and what steps to take to complete an appeal
 - Access relevant marketplace resources, such as appeal request forms and mailing addresses and marketplace guidance on appeals
 - Identify and meet the deadline for appealing
 - Get information about free or low-cost legal help in their area

Role of Assisters in the Appeals Process (cont.)

- Assisters should **not**:
 - Provide legal advice, such as by recommending consumers take specific action with respect to the right to appeal
 - Example: Assisters can help consumers understand the difference between an appeal and an expedited appeal but should not help them decide whether to request an expedited appeal
- Assisters do not have a duty to:
 - Represent a consumer in an appeal
 - Sign an appeal request
 - File an appeal on the consumer's behalf

Note: FFM Navigators are not prohibited from being a consumer's AR, but activities as an AR must be separate from Navigator duties and can't use Navigator grant funds to act as an AR

Example: Authorized Representative



- Ashley was unable to resolve an application issue through casework and now needs to appeal
- David helped Ashley file her appeal and followed up with the Federal Appeals Entity to make sure her appeal request was received
- The informal phone hearing is scheduled in a few weeks

Can David participate in the hearing on Ashley's behalf?

- **In a limited way**
 - He can participate as a witness on Ashley's behalf during the hearing, but if he is not a lawyer, he should not act as her authorized representative
 - Note: Since Ashley's legal rights are at stake, she may want to have an attorney represent her
 - She can contact her local [legal aid organization](#) to see if she may qualify for free legal assistance

Questions?



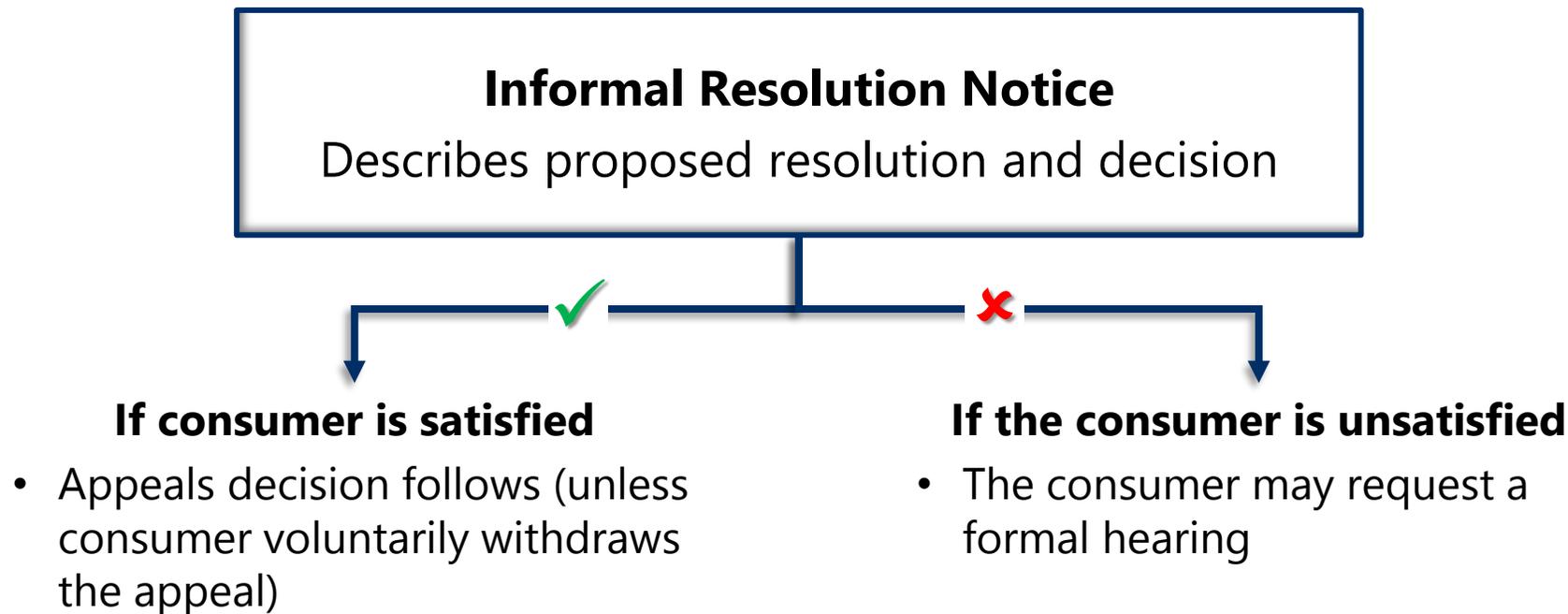
Appeals Process & Implementing Eligibility Decision



First Stage: Informal Resolution

The FAE works with appellants to resolve eligibility appeals informally:

- Reviews facts and evidence
- Phone conversation with consumer (and authorized representative)



Second Stage: Formal Resolution/Hearing

If the consumer is dissatisfied with the outcome of the informal resolution, the appeal proceeds to a formal hearing:

- Written notice will be provided by the FAE at least 15 days prior to the hearing date (unless appeal is expedited or the appellant requests an earlier hearing date)
- Conducted by telephone
- Federal hearing officer presides over the hearing

The Federal Appeals Entity conducts a “de novo review,” which means a fresh start for the consumer that doesn’t defer to the marketplace’s determinations

- Consumers can present witnesses and evidence
 - Have right to review the appeals record before and during the hearing (must request record in writing)
 - Consumer and witnesses provide testimony under oath

Expedited Appeals

- Appeals can be expedited when the standard timeframe “could jeopardize the appellant’s life, health or ability to attain, maintain or regain maximum function”*
- **Request for an expedited appeal needs to be noted on appeal request**
 - If a consumer’s circumstances change, the consumer can request expedited appeal after submitting an appeal request
- If a request to expedite is denied, the FAE must:
 - Provide written notice of the reason for the denial
 - Consider the appeal under the standard timelines

* Source: [45 C.F.R. 155.540\(a\)](#)

Example: Expedited Appeal



- Diane had her APTCs terminated due to an income data matching issue that wasn't resolved
- She wants to file an appeal but while the appeal is pending, she will have to pay 100% of the premiums to maintain her coverage
- **Paying 100% of the premiums would be a financial hardship for Diane**

Can she request an expedited appeal?

✘ **No**. Financial hardship alone is insufficient to request an expedited appeal

Can she continue to receive APTCs during her appeal?

✘ **No**. Expired inconsistencies are not considered to be redeterminations and thus continued APTCs during her appeal are not available

Example: Expedited Appeal



- Diane had her APTCs terminated due to an income data matching issue that wasn't resolved
- She wants to file an appeal but while the appeal is pending, she will have to pay 100% of the premiums to maintain her coverage
- **What if Diane has a chronic condition and needs monthly medication to maintain her current health status?**

Can she request an expedited appeal?

- ✓ **Yes.** If Diane does not get her medication, her health may be at risk so she can request an expedited appeal

Eligibility Appeals Decisions

- Following the hearing, the Federal Hearing Officer makes a decision based on the testimony, other evidence and the applicable legal rules
- The decision is in writing and must be issued within 90 days of the date the appeals request is received (or as soon as “administratively feasible”)
- **The decision is final and binding but may be subject to judicial review**

Implementing the Eligibility Appeals Decision

If the appeal is successful, the consumer has two options:

- Have the decision implemented on a **prospective** basis
 - At the consumer's choice, the change would be effective either on the first day of the month following the date of the decision, following regular effective date rules (e.g., if plan selected prior to the 15th of the month, coverage effective on the 1st of the following month), or 60 days or more after the appeals decision
- Request **retroactive** implementation
 - Change would be effective back to the coverage effective date the consumer did receive or could have received if the consumer had enrolled in coverage under the initial eligibility determination
 - Note: For retroactive coverage, the consumer must pay their share of the premiums and cannot choose a different retroactive date



Implementation may take additional follow-up with Call Center and/or issuer to ensure effectuation

Example: Retroactive Coverage



- Mei was denied APTCs for coverage that would have started on January 1, 2021
- She appealed the denial and was paying the full premium from January-June 2021 to keep her health coverage
- She won her appeal

Can she get retroactive APTCs back to January?

- **Yes.**
 - Mei can choose to have the APTCs applied retroactive back to January 1, 2021 (or she can claim these on her 2021 tax return)
 - If she receives retroactive APTCs, her insurer can either refund her excess payments from January-June or apply the retroactive APTCs to future months, reducing Mei's payments from June forward.

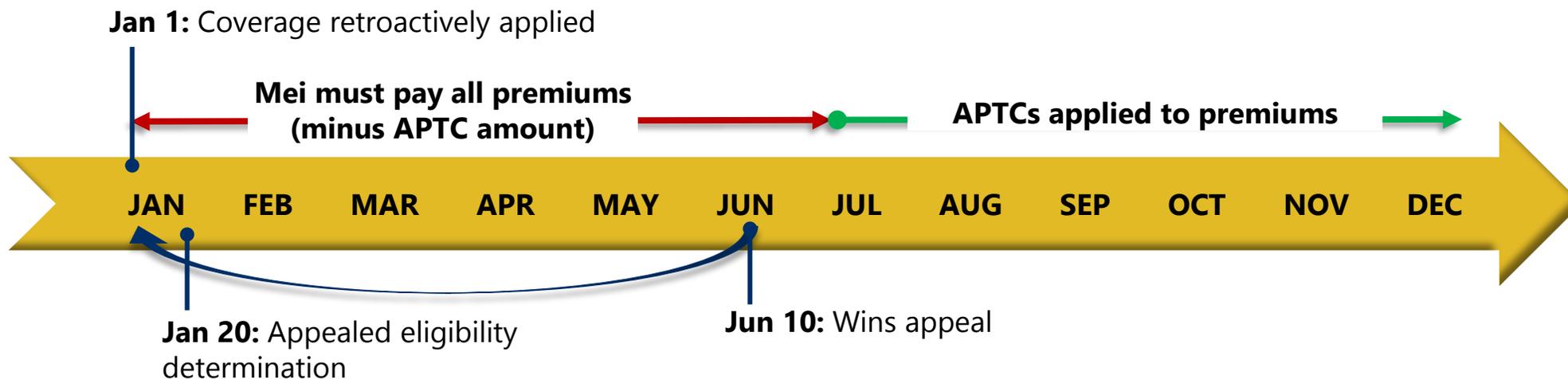
Example: Retroactive Coverage



But what if Mei didn't enroll in coverage during the appeal process?

Can she get retroactive coverage dating back to a date of her choosing (and only pay premiums for those months)?

- She cannot choose the month when retroactive coverage will start
- If she wants retroactive coverage, it will start January 1 and she will need to pay all the premiums owed from January to June



Example: Family Glitch



- Benita's husband has affordable insurance through his work but the cost to insure Benita is too expensive
- She falls in the "family glitch"
- When she applies to the Marketplace, she is denied APTCs

Can she appeal the denial of APTCs?

- **Yes, but...**
 - This is an appealable issue because it is a disagreement with a final eligibility determination
 - However, the appeal will be unsuccessful because the determination that Benita is ineligible for APTCs due to the family glitch is based on the law rather than an incorrect application of the current eligibility rules
 - YET there is a proposal to eliminate the family glitch which we expect will take effect in January 2023!

Key Points to Remember

- Consumers can submit an appeal in the following ways:
 - Submit a form online
 - Complete an appeal request form and mail or fax the request to the Federal Appeals Entity
 - Write a letter
- The Marketplace Appeals Center will try to resolve eligibility appeals informally
- Appellants have a right to a hearing if they remain dissatisfied with the informal resolution
- Decisions are mailed within 90 days of receipt of the appeals request or as soon as administratively feasible

No Surprises Act Appeals



No Surprises Act Appeals

- No Surprises Act (new law in 2022) protects people from “surprise medical bills” in two ways:
 - People with private insurance who receive emergency care from an out-of-network provider can’t be billed more than in-network cost-sharing amounts
 - People with private insurance who receive non-emergency care from an out-of-network provider at an in-network facility can’t be billed more than in-network cost-sharing amounts
- Every Explanation of Benefits is required to include instructions for how to file an appeal

Step 1

Contact the insurance company to see if the provider made a mistake. Follow insurer appeals process if needed.

Step 2

Contact the provider and ask them to correct the bill.

Step 3

If provider refuses to correct the bill, file a complaint by calling the No Surprises Help Desk at (800) 985-3059 or online at <https://nsa-idr.cms.gov/consumercomplaints>.



Most of the law’s protections only apply to people with private insurance and not to people who are uninsured or enrolled in Medicaid, CHIP, or Medicare.

For more information, see the [Beyond the Basics FAQ](#)

Resources



Help With Appeals

- Marketplace Call Center can explain how to request an appeal
 - Call 1-800-318-2596 (TTY: 1-855-889-4325)
- Marketplace Appeals Center can answer questions about a specific appeal
 - Call 1-855-231-1751 (TTY: 1-855-739-2231)
- Finding an authorized representative:
 - Low-income consumers may be eligible for [free legal assistance](#)

Resources

- NHeLP Marketplace appeals fact sheet:
www.healthreformbeyondthebasics.org/nhelp-marketplace-appeals-fact-sheet
- How to appeal marketplace eligibility:
www.healthcare.gov/marketplace-appeals/ways-to-appeal
- Marketplace decisions you can appeal:
www.healthcare.gov/marketplace-appeals/what-you-can-appeal
- Marketplace appeal forms:
www.healthcare.gov/marketplace-appeals/appeal-forms

Contact

A special thank you to Mara Youdelman, Managing Attorney (DC Office) at the [National Health Law Program](#)

- Youdelman@healthlaw.org
- (202) 289-7661
- @marayoudelman



-
- Jennifer Sullivan
 - jsullivan@cbpp.org
 - Inna Rubin
 - irubin@cbpp.org
 - General inquiries
 - beyondthebasics@cbpp.org

For more information and resources, please visit www.healthreformbeyondthebasics.org