



State of New Mexico Human Services Department Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT

PROVIDER HEARINGS

III. PROGRAM AFFECTED

(TITLE XIX) MEDICAID

IV. ACTION

PROPOSED RULES CHANGES

V. BACKGROUND SUMMARY

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to revise 8.353.2 NMAC *Provider Hearings*. The Department is revising this rule to address specific concerns that have arisen since it was last published. Specific changes to this proposed rule are:

- Additional language stating if the New Mexico Office of the Attorney General-Medicaid Fraud Control Unit has directed MAD to withhold payments from a provider, then that provider is not eligible to request an administrative hearing from the Department's Fair Hearings Bureau;
- Additional language clarifying the Department's usage of "good cause" when denying an administrative hearing;
- Language clarifying that administrative hearings will be denied to providers when the sole issue concerns the substance of the rule rather than the application of the rule to the provider;
- Language amending the Department's internal work flow to ensure reasonable timeframes for delivery and receipt of administrative hearing requests are met;
- Language clarifying the rules of summary of evidence, hearing standards, and hearing conduct.

VI. RULES

These proposed rule changes refer to 8.353.2 NMAC, *Provider Hearings*, of the Medical Assistance Program Policy Manual. The proposed changes are attached to this register which has been posted on our web site at www.hsd.state.nm.us/mad/register/2011. If you do not have

Internet access, a copy of the rules may be requested by contacting the Medical Assistance Division at 505-827-3157.

VII. EFFECTIVE DATE

The Department proposes to implement these rules effective December 1, 2011.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held at 9:30 am on October, 19, 2011 in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-3156. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written or recorded comments to:

Sidonie Squier, Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

These comments must be received no later than 5:00 p.m. on October 19, 2011. Written and recorded comments will be given the same consideration as oral comments made at the public hearing. Interested persons may also address comments via electronic mail to: Barbara.watkins@state.nm.us.

X. PUBLICATIONS

Publication of these rules approved by:

SIDONIE SQUIER, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 353 PROVIDER HEARINGS
PART 2 PROVIDER HEARINGS

8.353.2.3 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, 27-2-12 et seq. [(Repl. Pamph. 1991)].
 [1-1-95; 8.353.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7-1-01; A, 5-1-10; A, 12-1-11]

8.353.2.5 EFFECTIVE DATE: November 1, 1996, unless a later date is cited at the end of a section.
 [11-1-96; 8.353.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7-1-01; A, 12-1-11]

8.353.2.9 PROVIDER HEARINGS: HSD has established a hearing process for medicaid fee-for-service (FFS) providers who disagree with HSD decisions concerning their participation in the New Mexico medicaid program, recoupment of overpayments due to provider billing error, and imposition of sanctions. For the hearing process concerning decisions on noncompliance with nursing facility (NF) or intermediate care facility (ICF-MR) provider certification requirements[;] also see hearing regulations promulgated by the department of health (DOH) and specific MAD rules applicable to the provider. This section describes the hearing process for MAD FFS providers. See 8.311.3 NMAC, *Methods and Standards for Establishing Payment Rates Inpatient Hospital Services*, 8.312.2 NMAC, *Cost Related Reimbursement for Nursing Facilities*, and 8.313.3 NMAC, *Cost Related Reimbursement for Intermediate Care Facilities for the Mentally Retarded* for a description of the appeals process for audit settlements. See 8.305.12 NMAC *Managed Care Policies*, 8.306.12 NMAC, *State Coverage Insurance Policy* and 8.307.12 NMAC, *Coordinated Long-term Services Policies* a description of the grievance process for resolving provider disputes between a New Mexico medicaid managed care organizations (MCO) and their contractors or subcontractors. For applicable rules for services and items provided through a coordinated service contractor, refer to 8.349.2 NMAC, *Appeals and Grievance Process.*

A. **Hearing rights:** The right to a hearing includes the right to:

- (1) be advised of the nature and availability of a hearing;
- (2) be represented by counsel or its representative of the provider's choice;
- (3) have a hearing which safeguards the provider's opportunity to present a case;
- (4) have prompt notice and implementation of the 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, MAD providers receive written notice of hearing rights along with any HSD action notice concerning provider agreement termination, recoupment of overpayment due to provider billing error, or notice of sanction. This information includes a description of the method by which a hearing may be requested and a statement that the provider's presentation may be made by the provider or by its representative.

[11-1-96; 8.353.2.9 NMAC - Rn, 8 NMAC 4.MAD.980 & A, 7-1-01; A, 5-1-10; A, 12-1-11]

8.353.2.10 INITIATION OF HEARING PROCESS:

A. **Notice:** The hearing process is initiated by a provider's request for hearing made in response to an HSD action notice. See Section 8.351.2 NMAC, *Sanctions and Remedies*, for information concerning notice requirements.

B. **Time limits:** A MAD FFS provider has 30 calendar days from the date of the HSD action notice to request a hearing. To be considered timely, the request must be received by HSD no later than the close of business of the specified day. Hearings are conducted and a written decision is issued to the provider within 120 calendar days from the date HSD receives the hearing request, unless the parties otherwise agree to an extension. [~~HSD seeks to impose a sanction or remedy or take another action against a provider, the provider may submit a written request for a stay of the effective date of imposition of the sanction, remedy, or action to MAD. Granting of a stay is at the discretion of the MAD director.~~]

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

- (1) A hearing is available to all MAD FFS providers who submit a request in accordance with this section in a timely manner. A provider can request a hearing if:
 - (a) a provider application or renewal of an application is denied;

(b) the provider's 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 medicaid payments by MAD when the action is directed by the state's medicaid fraud control unit.

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

(2) **Denial or dismissal of request for hearing:** HSD may deny or dismiss a request for a provider hearing when:

(a) the request is not received in a timely manner or within the time period stated in the notice;
 (b) the request is withdrawn or canceled in writing by the provider or the provider's authorized representative;

(c) the sole issue presented concerns a federal or state law which requires an adjustment of compensation for all or certain classes of providers or services unless the reason for the hearing request involves an alleged error in the computation of provider compensation;

(d) the provider fails to appear at a scheduled hearing without good cause; ~~or~~ a request for a hearing may be considered abandoned and therefore dismissed if neither the provider nor the representative appear at the time and place of the hearing, unless, within 10 calendar days after the date of the scheduled 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 hearing officer, 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 hearing is outside the scope of issues which are subject to the provider hearing process; see Subsection C of 8.353.2.10 NMAC, *scope and limits on provider hearings*; ~~and~~

(g) the sole issue presented concerns MAD MCO utilization management decisions, such as a decision to terminate, suspend, reduce, or deny services to members, untimely utilization reviews, and provider payment issues, raised by a contracted or subcontracted MCO provider; or

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

~~[(3) A request for a hearing may be considered abandoned and therefore dismissed if neither the provider nor representative appears at the time and place of the hearing, unless, within 10 calendar days after the date of the scheduled hearing, the provider presents good cause for failure to appear. "Good cause" includes death in the family, disabling personal illness, or other significant emergencies.~~

~~—(4) At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.]~~

D. **Method:** A request for hearing must be made in writing and must identify the provider and the underlying action.

E. **Acknowledgment of request:** The HSD hearing bureau sends acknowledgment of its receipt of a hearing request to the provider.

[11-1-96; 8.353.2.10 NMAC – Rn, 8 NMAC 4.MAD.981 & A, 7-1-01; A, 5-1-10; A, 12-1-11]

8.353.2.11 PRE-HEARING PROCEDURE:

A. **Notice of hearing:** Not less than 30 calendar days before the 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 hearing officer at least 10 calendar days prior to the hearing. The provider is also given an explanation of the hearing process and procedures and informed that HSD does not pay fees or costs incurred by the provider as a result of the hearing or appeal of the hearing decision.

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

C. **Expedited hearing:** The parties may request an expedited hearing in cases involving eligible recipient health, safety, or service availability issues. 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 hearing officer.

D. **Group hearing:** A hearing officer may respond to a series of individual requests for hearings by conducting a single group hearing. Group hearing procedures apply only to cases where individual issues of fact are not disputed and where related issues of federal and state law, rules and policies or any combination of these are the sole issues being raised. In all group hearings, the regulations governing individual hearings are followed. Each provider is permitted to present his own case or to be represented by his own attorney or other person. If a group hearing is arranged, any provider has the right to withdraw from the group hearing in favor of an individual hearing.

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

F. **Pre-hearing conference:** Upon receipt of a request for hearing, the hearing officer assigned to a case schedules a pre-hearing conference to be held within 30 calendar days of the receipt of the request. 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, due date for exhibits, and sets the date for the hearing. The order shall issue as soon as practicable but in any event within 30 days of the request for hearing.

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

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

(5) **Timeliness:** The pre-hearing conference will not delay or replace the hearing itself. Pre-hearing conferences may include the provider or their personal representative, HSD or other responsible agency representatives, and the selected claims processing contractor. Subsequent to the conference or in the event that any of the parties to the 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 hearing officer sets a hearing date within 30 calendar days of the last conference date, or at a later time agreed to by parties, recognizing the 120 calendar day time constraints.

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

(8) **Pre-hearing order:** The hearing officer may, at his 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 hearing officer 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: A summary of evidence is a document prepared by HSD staff involved in the action or proposed action or HSD counsel that provides preliminary information ~~[to the hearing officer]~~ concerning the basis of an HSD action.

~~(1) [The summary will be completed as soon as practicable but in any event within five working days of the hearing and will be forwarded to the HSD hearing officer and all parties involved.]~~ The summary must be provided within five working days of the hearing officer's request to the HSD hearing officer and all parties involved. The hearing officer is required to fax to the MAD designated staff the request for the relevant evidence for this hearing. The date the fax is confirmed sent by the hearing officer will be considered the start of the five working days timeframe of the due date of the summary of evidence to the hearing officer and all parties involved.

~~[(2)—The summary must be prepared and submitted within the time frame even if the informal resolution conference has not been completed.~~

~~(3)~~ (2) Failure to timely provide the summary of evidence may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer ~~[pursuant to Subsection D of 8.353.2.13 NMAC, conducting the hearing].~~

~~[(4)]~~ (3) MAD staff or other responsible agency representative is responsible for preparation of the summary of evidence and coordination of parties and witnesses ~~[when the MAD selected claims processing contractor is party to the fair hearing].~~

~~[(5)]~~ (4) The summary of evidence ~~[with]~~ shall contain:

(a) ~~[identifying information, including but not limited to]~~ the provider's name, telephone and address and the status of any previous or concurrent grievance through the MAD selected claims processing contractor;

(b) the action, proposed action or inaction being appealed;

~~[(c)—the issue or issues to be decided at the hearing;~~

~~(d)~~ (c) information on which the action or proposed action is based ~~[and facts and findings related to the hearing issues, along]~~ with supporting documentation and correspondence ~~[, some or all of the involved documentation may be provided by the MAD selected claims processing contractor];~~ and

(e) applicable federal and state law, rules and policies or any combination of these.

H. Availability of provider evidence:

(1) The provider or his personal representative shall make any evidence that is planned to be introduced at the hearing available to HSD/hearings bureau at least ~~[three]~~ eight to ten days prior to the hearing. The hearings bureau will forward to MAD copies of any evidence. MAD will then make these available to its selected claims processing, contractor if appropriate.

~~[(2)—All measures should be taken to ensure that this evidence is received with sufficient time to review before the hearing.~~

~~(3)~~ (2) Failure to timely provide the documentary evidence may result in its exclusion or a continuance of the hearing at the discretion of the hearing officer ~~[pursuant to Subsection D of 8.353.2.13 NMAC, conducting the hearing].~~

I. Availability of information: HSD must:

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

(2) allow the provider or his personal representative to examine all documents to be used at the hearing at a reasonable time before the date of the hearing and during the hearing; ~~[confidential information protected from release, and other]~~ documents or records which the provider would not otherwise have an opportunity to challenge or contest, may not be introduced at the hearing or ~~[affect the hearing officer's decision or become part of the hearing record; and]~~ be considered by the hearing officer.

~~[(3)—present the provider with a copy of the summary of evidence.]~~

[11-1-96; 8.353.2.11 NMAC – Rn, 8 NMAC 4.MAD.982 & A, 7-1-01; A, 5-1-10; A, 12-1-11]

8.353.2.12 HEARING STANDARDS:

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

(1) present their case or have it presented by a representative; ~~[bring witnesses to present information relevant to the case; and submit evidence to establish all pertinent facts and circumstances in the case;]~~

- (2) bring witnesses to present information relevant to the case;
(3) submit evidence to establish all pertinent facts and circumstances in the case;

~~[(2)] (4) advance arguments without undue interference; and~~
~~[(3)] (5) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine opposing witnesses.~~

B. **Hearing officer:** Hearings are conducted by an impartial official 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 hearing officer 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, he must disqualify himself as the hearing officer for that case.]~~

- (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 hearing officer 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, he must disqualify himself as the hearing officer for that case.

~~[(1)] (3) Authority and duties of the hearing officer:~~ The hearing officer must:

(a) explain how the 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 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) ~~provide~~ produce the hearing report and recommendation for review and final decision.

~~[(2)] (4) Appointment of hearing officer:~~ The hearing officer is appointed by the HSD hearings bureau chief upon receipt of the request for hearing. All communications are to be addressed to the assigned officer.

C. **Evidence:** Formal rules of evidence and civil procedure do not apply. A free, orderly exchange of relevant information is necessary for the decision-making process. ~~[The hearing officer may question any witness in order to clarify testimony. All relevant evidence is admissible subject to the hearing officer's authority to limit repetitive or unduly cumulative evidence and his ability to conduct an orderly hearing. The hearing officer must admit evidence: 1) relevant to those allegations against the provider included in the notice of recovery of overpayment, sanction or other remedy, application denial, or application termination; and 2) which pertains to contested issues set forth in the pre-hearing order.]~~

(1) Admissibility: All evidence is admissible subject to the hearing officer's authority to limit irrelevant, repetitive or unduly cumulative evidence and his ability to conduct an orderly hearing. The hearing officer 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.

~~[(4)] (2) Confidentiality:~~ The confidentiality of records is to be maintained. Information which is not presented during the hearing in the presence of the provider or provider's representative and HSD representative may not be used by the hearing officer in making the hearing recommendation except as allowed by Subsection E of 8.353.2.13 NMAC, *conducting the hearing*.

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

(3) **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.

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

D. **Burden of proof:** HSD has the burden of proving the basis to support its proposed action by a preponderance of the evidence. HSD must prove allegations of fraud by clear and convincing evidence. In cases involving the imposition of civil money penalties against a nursing facility provider, HSD's conclusion about the nursing facility's level of noncompliance must be upheld unless clearly erroneous.

E. **Record of the hearing:** A hearing is electronically recorded. The recording is placed on file at the hearings bureau and is available to the parties for 60 calendar days following the decision. In addition to the recorded proceedings, the record of the hearing includes any pleadings, documents, or other exhibits admitted into evidence. ~~[If a hearing decision is appealed, a written transcript of the hearing is prepared by HSD and a copy of the transcript is supplied to the provider.]~~ Either party may request copies of the ~~[recording in addition to the transcript] recordings.~~

[11-1-96; 8.353.2.12 NMAC - Rn, 8 NMAC 4.MAD.983 & A, 7-1-01; A, 5-1-10; A, 12-1-11]

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

A. **Opening the hearing:** The hearing is opened by the hearing officer. Individuals present must identify themselves for the record. The hearing officer explains his 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 hearing officer'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 hearing is as follows:

- (1) opening statements of parties or representatives;
- (2) presentation of HSD's case; if witnesses are called, the order of examination of each witness is:
 - (a) examination by HSD representative;
 - (b) cross examination by the provider or representative; and
 - (c) ~~[further questions or clarification by the hearing officer or, if requested, the HSD representative or the provider or provider representative]~~ 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 or representative;
- (b) cross examination by HSD or its representative; and
- (c) ~~[further questions or clarification by the hearing officer or, if requested, the HSD representative or the provider or provider representative]~~ opportunity to redirect the witness;
- (4) presentation of rebuttal evidence by HSD and provider, respectively;
- (5) the hearing officer may direct further questions to the HSD representative, the provider, or any witnesses to clarify inconsistencies or obtain an adequate evidentiary record; and
- (6) the hearing officer may ask both parties to summarize and present closing arguments.

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

D. **Continuance:** The hearing officer may continue the hearing upon the request of either party or on his own motion, for admission of additional testimony or evidence. The granting of a continuance is at the discretion of the hearing officer 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 hearing officer 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 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 hearing officer, at his discretion, may re-open a hearing when the evidentiary record fails to address an issue that is relevant to resolution of a 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 time frames. Written notice of the date, time and place of the re-opened hearing is sent to the parties not less than 10 calendar days before the re-opened hearing.

[11-1-96; 8.353.2.13 NMAC - Rn, 8 NMAC 4.MAD.984 & A, 7-1-01; A, 5-1-10; A, 12-1-11]