



WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE AGENCY ADMINISTRATIVE HEARING GUIDE

Pursuant to West Virginia Code §5-16-12 and §5-16-12a, the West Virginia Public Employees Insurance Agency (PEIA) may conduct administrative proceedings to recover funds paid for ineligible members and/or dependents; or paid in violation of the provisions of §5-16-12 of the West Virginia Code.

Please refer to the PEIA Administrative Process Workflow document for additional reference.

The timeline and guidance for the PEIA administrative proceedings process will be as follows:

1. From time to time, PEIA staff, auditors, participating employers, members, and/or the general public may bring issues, matters, or concerns to the attention of the PEIA Legal department relating to real or potential violations of PEIA Plan rule(s) and/or law(s).
2. The PEIA Legal department may conduct inquiries or investigations into these concerns. PEIA reserves the right to seek additional information on these voiced concerns and/or to verify and/or otherwise corroborate the information presented.
3. PEIA will at all times be represented by its General Counsel and/or a contracted attorney.
4. If the PEIA Legal department makes a determination that there has been a real or potential violation of the PEIA Plan rule(s) and/or law(s), or related rule(s) and/or law(s), it reserves the right to pursue the following:
 - a. Make notice to the provider, employer, and/or member of the alleged violation and/or;

- b. Send a formal notice to the employer and/or member of the amount(s) owed to PEIA resulting from the alleged violation of Plan rule(s) and/or law, and/or;
 - c. Make a referral to the appropriate State and/or federal law enforcement agency and/or;
 - d. Administrative term any ineligible member(s) and/or dependent(s), and/or;
 - e. In the vent of the provider, employer, and/or member's refusal to repay PEIA amount(s) due, PEIA may initiate the administrative hearing process.
5. Members, employers, providers, or other parties subject to administrative proceedings are entitled to representation by counsel at PEIA administrative proceedings. Such representation is at their own expense.
6. PEIA will provide written notification to providers, employers, and/or members of its intent to pursue the administrative hearing process.
7. The member, employer, provider, or other party shall be provided notice by PEIA of a prehearing conference no less than thirty (30) days prior to the scheduling of said conference. Said notice may be sent via certified mail; e-mail or other electronic correspondence; or other mutually agreed upon format(s). Notice may be sent to the address of record for the member, employer, provider, or other party, or it may be alternately sent to the member's employer, or counsel of record.
8. Providers, employers, or members may request that PEIA issue subpoenas for persons and/or records for use in the administrative hearing process. By law, PEIA can and may issue subpoenas for persons and/or documents who/which can provide pertinent facts to the matter(s) at issue in the administrative process.
9. The member, employer, provider, or other party may be granted up to one (1) ten (10) day continuance for the prehearing conference. PEIA may be granted up to one (1) ten (10) day continuance of the prehearing conference.
10. The purpose of the prehearing conference will be the following:
 - Agree on undisputed facts;
 - Identify the nature and scope of the disputed issues;
 - Clarify misunderstandings;
 - Set a timetable for the hearing.

11. Many cases may be settled without a hearing. Settlements may be negotiated outside a hearing and outside the presence of the Administrative Law Judge. Any agreed upon settlements will be memorialized in an Order from the Administrative Law Judge.
12. If no resolution is made at or before the pre-hearing conference, the Administrative Law Judge may set the date(s) for an Administrative hearing.
13. The member, employer, provider, or other party may be granted up to one (1) ten (10) day continuance for the administrative hearing. PEIA may be granted up to one (1) ten (10) day continuance of the administrative hearing.
14. Administrative hearings shall be conducted under the provisions of the PEIA Plan Document.
15. Administrative hearings will be recorded by electronic means.

For Reference:

WEST VIRGINIA CODE §5-16-12. Misrepresentation by employer, employee or provider; penalty.

(a) It shall be a violation of this article for any person to:

- (1) Knowingly secure or attempt to secure benefits payable under this article to which they are not entitled;
- (2) Knowingly secure or attempt to secure greater benefits than those to which the person is entitled;
- (3) Willfully misrepresent the presence or extent of benefits to which the person is entitled under a collateral insurance source;
- (4) Willfully misrepresent any material fact relating to any other information requested by the director;
- (5) Willfully overcharge for services provided; or
- (6) Willfully misrepresent a diagnosis or nature of the service provided.

Any person who has violated any of the foregoing provisions shall be civilly liable for the amount of benefits, overpayment or other sums improperly received in addition to any other relief available in a court of competent jurisdiction.

(b) If, after notice and an administrative proceeding, it is determined the person has violated the article, the person is liable for any overpayment received. The director shall withhold and set off

any payment of any benefits or other payment due to that person until any overpayment is recovered.

(c) In addition to any civil liability for a violation pursuant to subsection (a) of this section, any person who knowingly secures or attempts to secure benefits payable under this article, or knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully misrepresenting or aiding in the misrepresentation of any material fact relating to employment, diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not more than \$1,000, imprisoned for not less than one nor more than five years, or both. Errors in coding for billing purposes shall not be considered a violation of this subsection absent other evidence of willful wrongdoing.

(d) Any person who violates any provision of this article which results in a loss to, or overpayment from, the plan, or to the State of West Virginia of less than \$1,000, and for which no other penalty is specifically provided, is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine of not less than \$100 but not more than \$500, or imprisonment for a period of not less than twenty-four hours but not more than fifteen days, or both. Any person who violates any provision of this article which results in a loss to, or overpayment from, the plan or the State of West Virginia of \$1,000 or more, and for which no other penalty is specifically provided, is guilty of a felony and, upon conviction thereof, is subject to a fine of not less than \$1,000 but not more than \$5,000, or imprisonment for a period of not less than one nor more than five years, or both.

WEST VIRGINIA CODE §5-16-12a. Inspections; violations and penalties.

(a) Employers and employees participating in any of the Public Employees Insurance Agency plans shall provide, to the director, upon request, all documentation reasonably required for the director to discharge the responsibilities under this article. This documentation includes, but is not limited to, employment or eligibility records sufficient to verify actual full-time employment and eligibility of employees who participate in the Public Employees Insurance Agency plans.

(b) Upon a determination of the director or his or her designated representative that there is probable cause to believe that fraud, abuse or other illegal activities involving transactions with the agency has occurred, the director or his or her designated representative is authorized to refer the alleged violations to the Insurance Commissioner for investigation and, if appropriate, prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this section, "transactions with the agency" includes, but is not limited to, application by any insured or dependent, any employer or any type of health care provider for payment to be made to that person or any third party by the agency.

(c) The Public Employees Insurance Agency is authorized through administrative proceeding to recover any benefits or claims paid to or for any employee, or their dependents, who obtained or received benefits through fraud. The Public Employees Insurance Agency is also authorized

through administrative proceeding to recover any funds due from an employer that knowingly allowed or provided benefits or claims to be fraudulently paid to an employee or dependents.

(d) For the purpose of any investigation or proceeding under this article, the director or any officer designated by him or her may administer oaths and affirmations, issue administrative subpoenas, take evidence, and require the production of any books, papers, correspondences, memoranda, agreements or other documents or records which may be relevant or material to the inquiry.

(1) Administrative subpoenas shall be served by personal service by a person over the age of eighteen, or by registered or certified mail addressed to the entity or person to be served at his or her residence, principal office or place of business. Proof of service, when necessary, shall be made by a return completed by the person making service, or in the case of registered or certified mail, such return shall be accompanied by the post office receipt of delivery of the subpoena. A party requesting the administrative subpoena is responsible for service and payment of any fees for service. Any person who serves the administrative subpoena pursuant to this section is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

(2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for witnesses before the circuit courts of this state. All such fees related to any administrative subpoena issued at the request of a party to an administrative proceeding shall be paid by the requesting party. All requests by parties for administrative subpoenas shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(3) In case of disobedience or neglect of any administrative subpoena served, or the refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or to produce documents subpoenaed, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the director, may compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.

(e) Only authorized employees or agents shall have access to confidential data or systems and applications containing confidential data within the Public Employees Insurance Agency.