



# OFFICE OF LONG-TERM LIVING BULLETIN

**ISSUE DATE**  
02-11-2019

**EFFECTIVE DATE**  
02-11-2019

**NUMBER**  
59-19-03

**SUBJECT:**  
Hearings and Appeals

  
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Deputy Secretary, Office of Long-Term Living

**PURPOSE:**

The purpose of this bulletin is to articulate the responsibilities of Service Coordination Entities (SCEs) with respect to the notice and fair hearing requirements.

**SCOPE:**

This bulletin applies to SCEs serving individuals in the following Office of Long-Term Living (OLTL) Home and Community-Based Services (HCBS) Programs: The Aging, Attendant Care, Independence, and OBRA waivers and the Act 150 program.

**BACKGROUND/DISCUSSION:**

This bulletin is updated to reflect expedited appeals requirements. These requirements were established by the Medicaid Eligibility Final Rule and can be found in 42 CFR Part 431.224.

Individuals who apply for or receive HCBS have certain rights with respect to service plan approval and service plan revision. The first of these rights is to receive notice of the approved plan and notice of revisions regarding the approved plan. Once the individual receives this notice, they may appeal the denial, reduction, termination, or suspension of a service. The individual also has the right to request an expedited fair hearing if the standard time for review of an appeal would jeopardize the individual’s life, health, or ability to attain, maintain or regain maximum mental or physical function. The Bureau of Hearings and Appeals (BHA) will determine if an expedited appeal is necessary based on the information provided. The procedures for submitting an expedited appeal are outlined in more detail in the procedures section of this bulletin. These rights are more fully described in State regulations at 55 Pa. Code Chapter 275, Federal regulations at 42 CFR Part 431, Subpart E, and in other applicable regulations, which supersede the content in this bulletin.

55 Pa. Code § 52.14(i) requires providers to comply with the applicable approved waiver, including approved waiver amendments. The SCE is responsible to fully understand the rights and procedures set forth in State and Federal regulations.

The following is a link to State regulations:

<http://www.pacode.com/secure/data/055/chapter275/chap275toc.html>.

The following is a link to the Federal regulations:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=306c836cb874217604cea7ca280b9b6a&mc=true&node=sp42.4.431.e&rqn=div6>

## **PROCEDURES:**

Although the SCE is responsible to fully understand those regulatory provisions, we highlight the following requirements:

- The SCE must provide notice of the approved plan and notice of revisions to the individual's plan involving the denial, reduction, termination, or suspension of a service.
- The SCE must clearly explain the basis for decisions or actions and any Departmental policy and/or regulation to support the decision.
- The SCE must provide notice of the fair hearing procedures to the individual.
- The SCE must provide the necessary appeal forms and explain to the individual how to file an appeal and, if necessary, help to fill out the forms.
- The SCE must inform the individual of their right to request an expedited fair hearing if the standard time for review of an appeal would jeopardize the individual's life, health, or ability to attain, maintain or regain maximum mental or physical function.
- If the participant requests an expedited fair hearing, the SCE should complete the Expedited Information Sheet (OHA 147) to send with the appeal forms completed by the participant or their representative. The OHA 147 is necessary to assist BHA in scheduling and conducting a hearing: (1) to determine if an expedited hearing is necessary, and (2) the merits of the appeal if an expedited hearing is necessary. Please fill out the form as completely as possible and include any medical documentation provided by the participant or their representative to support the need for an expedited fair hearing.
- When the SCE receives a request for a hearing, it must date stamp it on the day of receipt and review the complaint of the individual to assure itself that the decision in question is in accordance with Departmental regulations and policies and to determine what additional step, if any, should be taken to resolve the issue without a hearing.
- The SCE should complete the BHA Agency Cover Sheet and must forward the request for a hearing to BHA within 3 working days from the date that the appeal was received and date stamped. If the request is expedited, the SCE must forward the request for a hearing within 1 working day with the BHA Agency Cover Sheet and OHA 147. The attached BHA Regions Chart and Form Instructions for Service Coordinators document provide instructions on how to forward the request to the correct BHA regional office.
- The SCE must offer the individual the opportunity for an optional agency conference to resolve, if possible, the appeal. If the agency conference results in resolution of the dispute, the SCE must notify BHA Appeals by providing the participant's signed Decision to Withdraw an Appeal Request MA 562 Form.
- When the SCE receives an oral request for a fair hearing, the SCE must immediately make a written notation of the request that includes the date of the request, and must obtain the signature of the individual on the MA 561 within 3 working days of the oral request as per

55 Pa. Code § 275.4(a)(2)(iii)-(iv). If the oral appeal is not written and signed by the client within three working days after the oral appeal is made, the Bureau of Hearings and Appeals may dismiss the appeal.

**While SCEs assist appellants as stated above, applicants or participants should be referred to a local community legal services agency or long-term care ombudsmen for further assistance, representation and legal advice.**

In addition to the points above, the SCE must prepare for the hearing so that evidence supporting that decision or action at issue will be introduced at the hearing in an orderly and concise manner. This information should include, but is not limited to, the following:

- Names, relationships and ages of the persons affected, and the type of assistance involved.
- The decision or action which prompted the request for the hearing.
- Description of the relevant facts and events leading to the decision or action plus evidence to support the decision or action, including identification of the pertinent regulations applied in making the decision.
- Any other information that the SCE deems relevant to the decision.

The attached Notice of Service Determination and the Right to Appeal MA 561 Form is to be provided to and used by applicants and participants of OLTL programs. Corresponding form instructions and the Decision to Withdraw an Appeal Request MA 562 Form are also attached. Additionally, the BHA Agency Appeal Cover Sheet and instructions are included, along with its regional chart. Upon this bulletin's effective date, OLTL rescinds Bulletin [#51-13-12](#), [55-13-12](#), [59-13-12](#) issued December 23, 2013 and any other OLTL policy documents or parts of policy documents that are inconsistent with this bulletin's contents.

**ATTACHMENTS:**

- \* MA 561 – Notice of Service Determination and the Right to Appeal
- \* MA 562 – Decision to Withdraw an Appeal Request
- \* MA 561 Form Instructions for Service Coordinators
- \* Bureau of Hearings and Appeals Agency Appeal Cover Sheet
- \* Bureau of Hearings and Appeals Agency Appeal Cover Sheet Instructions
- \* OHA 147 - Bureau of Hearings and Appeals Agency Expedited Information Sheet
- \* BHA Regions Chart

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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