



ISSUE DATE
December 23, 2013

EFFECTIVE DATE
January 23, 2014

NUMBER
51-13-12, 55-13-12, 59-13-12

SUBJECT:
Hearings and Appeals

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SCOPE:

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

PURPOSE:

The purpose of this bulletin is to articulate the responsibilities of the SCEs with respect to the notice and fair hearing requirements.

BACKGROUND/DISCUSSION:

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. These rights are more fully described in State regulations at 55 Pa. Code Chapter 275, Federal regulations at 42 C.F.R. 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. In addition, 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 provisions:

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

The following is a link to the Federal provisions:

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title42-vol4/pdf/CFR-2012-title42-vol4-part431-subpartE.pdf>.

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.
- 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 must forward the request for a hearing to the Bureau of Hearings and Appeals within 3 working days from the date that the appeal was received and date stamped.
- 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 the Bureau of Hearings and 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 proper form within 3 working days of the oral request as per 55 Pa. Code § 275.4(a)(2)(iii)-(iv).

While SCEs assist appellants as state above, applicants or participants should be referred to a local community legal services agency 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 Bureau of Hearings and Appeals Agency Appeal Cover Sheet and instructions are included, along with its regional chart. Upon this bulletin's effective date, OLTL rescinds Bulletin # 2004-AC-006, (issued on November 1, 2004), PA 1299, PA 689, 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
- * Form Instructions for Service Coordinators - Notice of Service Determination and the Right to Appeal
- * Bureau of Hearings and Appeals Agency Appeal Cover Sheet
- * Bureau of Hearings and Appeals Agency Appeal Cover Sheet Instructions
- * BHA Regions Chart

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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