



Administrative/Fair Hearings Legal Standards

With the institution of Managed-Care also comes the client's access to the grievance process which can include a "Fair Hearing". In many counties the patients' rights advocate has been given the additional responsibility of representing or providing assistance to the client/patient. Although a great many of the skills you have acquired over time in Certification Review and Capacity hearings will help you be ahead of the learning curve, the legal standards for Administrative/fair hearings are different than either of these. Another important difference is that you will have substantially more time to prepare, interview witnesses, gather evidence, research your position and even write up your position ahead of the hearing.

Although Fair hearings are held before an Administrative Law Judge and are fairly informal, there are important timelines, standards and rights that you need to be familiar with. They require a different level of advocacy.



Chapter 1 – Legal Standards – Probable Cause Hearings

Chapter 2 – Legal Standards – Administrative/Fair Hearings

Chapter 3 – Hearing Techniques – Probable Cause Hearings

Chapter 4 – Hearing Techniques – Fair Hearings

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All legal citations are included in the attachment section of this manual. The Hearing Manual of Policy and Procedure (MPP) can be accessed from the internet – www.dss.cahwnet.gov/getinfo/pdf/4cfcman.pdf.

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The Basics

Clients have the right to challenge actions the county Mental Health Plan (MHP). The challenge can be through the grievance process, a fair hearing or both at the same time.

C.C.R., Title 9, §§ 1795, 1796: MHP (attachment B)

C.C.R., Title 9, §1850.205: Specialty Mental Health Services (Attachment C)

Some Examples of What Can Be Challenged

- Denying eligibility for MHP services
- Not deciding eligibility within a reasonable time
- Not giving a written notice about eligibility
- Termination from a program before the client feels they are ready
- Being placed on a wait list for a service needed now;
- Disagreement about a treatment plan;
- Refusing to develop a treatment plan;
- Denying a service or evaluation the patient believes they need;
- Refusing to provide a case manager;
- Disagreement about what a case manager should provide;
- Not providing a notice of action.

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Specialty Mental Health Services:

- (1) Rehabilitative Services, which includes mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential services, and psychiatric health facility services.
- (2) Psychiatric Inpatient Hospital Services;
- (3) Targeted Case Management;
- (4) Psychiatrist Services;
- (5) Psychologist Services;
- (6) EPSDT Supplemental Specialty Mental Health Services; and
- (7) Psychiatric Nursing Facility Services. C.C.R., Title 9, § 1810.247

Notice of Action (NOA)

The MHP is required to send a "notice of action" (NOA) if there is a reduction, termination, or a denial of services. (There are some exceptions, see attachments G & I) C.C.R., Title 9, § 1850.210(d), C.C.R., Title 22, § 51014.1

Request for initial services

If the response is to a request for initial services, the notice must be "deposited with the United States postal services in time for pick-up, no later than the third working day after the action." C.C.R., Title 9, § 1850.210(d), C.C.R., Title 22, § 51014.1

To be considered adequate the NOA must be in writing and contain:

- (1) The proposed action;
- (2) The reasons for the proposed action;
- (3) The regulations upon which the action is based;
- (4) Beneficiary's right to a fair hearing, including:

The method to obtain a hearing

That the Beneficiary may be either;

1. Self-represented;
2. Represented by an authorized 3rd party, such as gal counsel, relative, friend or any other person;
- (5) How to obtain continued services pending the hearing;
- (6) Time limits for requesting a hearing

C.C.R., Title 9, § 1850.210(d), C.C.R., Title 22, § 51014.1

Request for continuation of services

If the response is to a request for a continuation of mental health services, the notice must be mailed at least 10 days before the proposed date of reduction or termination, not counting the day of mailing. If your participation in a day program is to end February 15, for instance, the notice must be mailed by February 4.

The notice shall include:

- (1) The reason for the intended action;
- (2) A citation of the specific regulations or Medi-Cal managed care plan authorization procedures supporting the intended action;
- (3) An explanation of the beneficiary's right to request a fair hearing for the purpose of appealing the Department's or Medi-Cal managed care plan's decision;
- (4) An explanation of the procedure to request a hearing; and

- (5) An explanation of the circumstances under which a medical service shall be continued if a hearing is requested. C.C.R., Title 22, § 51014.1

The Department or Medi-Cal managed care plan may dispense with the 10 day mailing requirement, but shall mail the notice of action before the date of action and shall meet all other requirements, when any of the following circumstances occur:

- (1) The Department or Medi-Cal managed care plan receives a clear written statement signed by the beneficiary stating that the beneficiary no longer wishes to receive continuous medical service.
- (2) The beneficiary has been admitted or committed to an institution and is no longer eligible for Medi-Cal benefits or, for a Medi-Cal managed care plan member, is no longer enrolled in the Medi-Cal managed care plan.
- (3) The beneficiary has been accepted for medical assistance in another state or a new jurisdiction and that fact has been established by the jurisdiction presently providing assistance.

MPP § 22-001a; Title 22, CCR §51014.1 (See § 51014.1, 51014.2 for exceptions) (Attachment I) (MPP refers to the Manual of Policy and Procedure for state hearings.)

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If the disagreement is about whether or not a specialty mental health service (See Attachment E & F) – such as crisis residential services are medically necessary – ask for a second opinion. You may want to do this through a grievance.

If the disagreement is about whether or not a specialty mental health services is available through your county MHP, (you do not reach the question of whether or not the service is medically necessary) you may want to pursue both a grievance and a fair hearing. In the fair hearing you would be asking the Administrative Law Judge (ALJ) to find your client eligible to receive, for instance, crisis residential services if medically necessary, to order the MHP to make a medical necessity determination, and if the service is found to be medically necessary, to arrange for your client to receive the services through a neighboring county's MHP.

Holidays. Saturdays and Sundays if there is a postal holiday or county offices would be closed are not included in the 10-days. MPP § 22-002.1 and 22.001(1)(h)

If the NOA is not adequate the ALJ at the hearing may order reinstatement or continuation of services until an adequate notice is issued. Welf. & Inst. Code § 10967.

Aid Paid Pending

If the dispute is about whether or not your client is still eligible for Medi-Cal, then if you appeal before the termination or within 10 days of the date on the notice, whichever is later, their Medi-Cal eligibility will continue during the fair hearing appeal. C.C.R., Title 9, § 1850.215, C.C.R., Title 22, § 51014.2, MPP § 22-072.5

If the dispute is about whether current services will stop, such as continuing to participate in a day program, then if you appeal before the current services are supposed to stop or within 10 days of the date on the notice, whichever is later, their services will continue during the fair hearing appeal. C.C.R., Title 9, § 1850.215, C.C.R., Title 22, § 51014.2, MPP § 22-072.5

You do not have that protection if you only use the grievance procedure. Current services will not continue during a grievance. The grievance procedure may be a good way to resolve the dispute. If you want current services to continue, you should also ask for a Medi-Cal fair hearing.

This only applies to discontinuation or change in service, not for new requests for service. The hearing request must be post-marked before the effective date of action. If the effective date of the action is a holiday or weekend, the deadline is extended to the next working day. C.C.R., Title 22, § 51014.2

Aid paid pending continues until there is a hearing decision, the hearing is

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A notice of action concerning a denial is issued only when the request for authorization of services is from a provider requesting payment for the requested services. If, for instance, the psychiatrist who provides your client with medication management recommends that he/she also receive case management services, he/she will get no notice of action if the recommendation is denied when MHP staff would be providing case management services. To help decide whether or not to appeal or to determine the reason for the denial, you can ask for a letter explaining why the request is denied.

withdrawn or conditionally withdrawn, the recipient doesn't show up at the hearing, the recipient waives the aid or the hearing is postponed without good cause.

Hearing Scheduling

A request for fair hearing must be made within 90 days of the "order or action complained of." Calif. Welf. & I Code § 10951

Hearings can be requested by calling (800) 952-5253 or mailing a written request to the county. MPP § 22-004.1.

The DSS State Hearing Division shall set the hearing to commence within 30 working days after the request is filed, and, at least 10 days prior to the hearing, shall give all parties concerned written notice of the time and place of the hearing. Cal. Welf. & I Code §10952.

Advocacy Guide –

Negotiating with the MHP may avoid the need for a fair hearing. However negotiations should not continue without also protecting the client's right to aid paid pending. If this happens a "conditional withdrawal" of the hearing can be made to give you additional time to resolve the dispute. If the dispute is not resolved, you can put the hearing back on calendar.

If notice is not adequate you may request that the ALJ postpone the hearing while the county issues a new notice with "aid-paid-pending" until the new hearing. Cal. Welf. & I. Code § 10967

You may be able to file for a hearing after the 90-day deadline if notice is inadequate or you did not get a notice concerning the MHP's actions.

The Hearing

Advocate Involvement

At what stage you become involved will depend on how your county grievance process has been set up. If you don't have a copy of the policy & procedure – get it. The timeliness of your involvement is important, so you can assure your client's rights are protected and deadlines are not missed.

Preparation

Review

Your client (or you as the representative) has the right to review (during regular business hours) the county case file and all documents that will be used at the hearing, prior to the hearing. However the county may remove any privileged information prior to review, unless the recipient is the holder of the privilege.

Cal. Welf & I Code §§ 10850.2, 11206, 14100.2; MPP 19-005.1

County's Position Paper

You can access the MHP's position paper two working days before the hearing. Usually the MHP will fax it to you. This will give you the MHP position, including an explanation of the MHP's action and the regulations they are relying on. If the statement is not available, the hearing can be postponed for cause and aid paid pending continued. Cal. Welf & I Code §§ 10952.5

Advocacy Guide –

Prior Hearing Decisions - If there has been a prior decision on a subject or situation similar to your current case, it is an important part of your preparation. The best resource for these decisions is the Western Center on Law & Poverty (WCLP). You can find many of the decisions in their Task Force mailings, and also often the advocate's position statement is also available.

www.wclp.org/advocates/health/taskforce.html.

WCLP Staff member, Denise Williams is a good resource if you cannot locate a decision related to your issue. She can be reached by email, dwilliams@wclp.org.

Advocacy Guide –

Public Records Act Request/Field Instruction Notices (FIN) and Policy Statements explain how the Medi-Cal program defines medical necessity when approving or denying services you request. These are not regulations, but guidelines. They are not binding on you or on the Administrative Law Judge; however, they can show how to fit within the Medi-Cal guidelines. The way to get a copy of any relevant guidelines is through a public records act request (See attachment J, for a sample request)

If you cannot obtain the records you need through this request, then you can request that a subpoena duces tecum be issued.

Subpoenas

You can subpoena records and witnesses if they are needed to testify. You may need to do this even if your witness is willing to attend, in order for them to be given time off work. You should request that the hearing office issue a subpoena for the witness or a subpoena duces tecum (do-ses-tee-come) for the production of records. MPP §§ 22-051.4, 22-051.5

You are responsible for serving it. MPP § 22-051.6

Any subpoenaed witness is entitled to witness and mileage fee at the same rate as allowed under state law. MPP § 22-052 If they are county witnesses, the county is responsible to pay mileage and witness fees. If they are your witness, request for payment is made on a form that is provided by DSS at the hearing. DSS is responsible for paying these fees. MPP § 22-052.1

Be prepared to write a short memo to justify why you need a subpoena.

- make your request as soon as you receive your Hearing Notice (with the date, time, and location of your hearing)
- call the telephone number of the Regional Office closest to you (see chart below)
- talk to support staff who handles subpoena requests
- provide information about the witnesses (name and address) and records (name, type, location) you want subpoenaed
- explain why these witnesses and records are important to your hearing

Your subpoena request will be reviewed by the Presiding Judge of the appropriate Regional Office. If your request is denied, you will be notified by a letter or a telephone call.

If your request is approved, you will receive the subpoena documents in the mail, along with a cover letter. Please look at the instructions in the cover letter. It is your responsibility to serve each subpoena on the person or organization named in the subpoena.

State Hearings Division Regional Offices

Bay Area Regional
Office
(510) 662-4000

Fresno Regional
Office
(559) 445-5775

Los Angeles Regional
Office
(213) 833-2200

Sacramento Regional
Office
(916) 229-4187

San Diego Regional
Office
(619) 735-5070

Disability Hearings
Bureau
(916) 229-4174

CDHS Hearing Authority

The Director of the California Department of Social Services (CDSS) has been appointed the authority to hear and decide cases pursuant to Welfare and Institutions Code §10950 for the California Department of Health Services (CDHS) and delegates to CDHS the authority and power to:

- adopt decisions in all cases except as specified;
- grant or deny rehearing requests on cases dismissed due to nonappearance; and
- delegate authority to subordinates in writing

All CDSS Administrative Law Judges IIs (Presiding Judges and ALJ Specialists) have the authority/power to act on proposed decisions pursuant to W&IC §10959, including adopting proposed decisions, issuing Director's alternate decisions, and ordering further hearings. Calif. Welf. & I Code §§ 10953, 10953.5, 10954

Administrative Law Judges Authority

The State Hearing Division (SHD) of the California Department of Social Services (CDSS) has been delegated specific authority/power(s) important to the administration of these hearings (fair hearings.)

Disqualification/Recusal

Either party may request that a judge disqualify her/himself. The ruling shall be made on the record. If the judge determines that she/he cannot conduct a fair and impartial hearing then they should disqualify themselves. If there is a disqualification, there should be a postponement in the case; or, if there is another judge available to hear the case at the hearing site, the case should be reassigned.

The judge must inform the party requesting the disqualification that either party has the right to request a rehearing. MPP §22-055; California Government Code §11425.040

If after the hearing has begun, but before a decision has been reached, it is determined that the judge should be disqualified or recused, the client should be given the option of having the new judge prepare a decision from the established record or to have new oral arguments with the new judge.

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"A judge should only disqualify herself if she has a very good reason for doing so. For example, if a judge is a personal friend of a county witness who will testify...However, it is not proper for a judge to recuse herself simply because she has already conducted a hearing with a claimant or because a claimant has a reputation for filing many hearing requests." Administrative Law Judge Manual, 3/99

Impartiality

The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. All testimony shall be submitted under oath or affirmation. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings. At the hearing the applicant or recipient may appear in person with counsel of his own choosing, or in person and without such counsel. Calif. Welf. & I. Code § 10955.

Authorized Representatives (ARs)

A client can choose another person to represent him/her at the hearing. There is a form that should be filed with the judge – DP 19. The judge can decide to proceed without this form if the client is present.

If the client is considered “incompetent, comatose, suffering from amnesia or other mental impairment, then a relative of the client, an individual with knowledge of the client’s circumstances who has completed and signed the Statement of Facts for the client, or an attorney may be recognized at an AR without the signed AR form. MPP §22-085.23

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All necessary forms, for witness fees, subpoenas etc. can be found on the Administrative Law Judge website - www.oah.dgs.ca.gov/Forms+and+Publications

Postponement/Rescheduling

A state hearing is considered abandoned if the client fails to appear within 30 minutes of the scheduled time. But, if the judge and county/MHP rep. are still available when the client appears late for a hearing, the hearing should be held, if possible to avoid the inconvenience of having to reschedule the hearing. If witnesses were present and have left or the interpreter has departed, then the matter must be considered abandoned or postponed. MPP § 22-054.22

The notice sent to the client explains that failure to appear will result in a written dismissal of the claim unless a reopening request is submitted within 10 days of the scheduled hearing. These requests are only granted for good cause.

Good cause for postponing a hearing –

- (1) No county position paper available two working days before the hearing
- (2) Illness or death in the family
- (3) Traffic accident on the day of the hearing
- (4) Lack of transportation
- (5) Conflicting court appearance

MPP § 022-053.16

Without good cause the hearing can only be postponed if the recipient waives the 90- day decision deadline. MPP §§ 22-060, 22-53.3

Dismissal

A hearing can be dismissed after the hearing has been scheduled for these reasons:

- (1) It is unconditionally withdrawn by the recipient;
- (2) The recipient fails to appear or establish good cause for not appearing;
- (3) The hearing request was untimely;
- (4) A hearing has already been held on the exact same issue;
- (5) The only issue concerns a change in state or federal law requiring an automatic grant adjustment for classes of recipients.
- (6) The recipient abandons the claim; or
- (7) The issue is one of compliance with a previous state hearing decision.

A hearing can also be dismissed without a hearing if the jurisdiction or standing is lacking. A written notice is sent and the recipient has 15 days to respond with reasons why the hearing should not be dismissed. MPP § 22.054.3

Withdrawal by client

A verbal withdrawal by the recipient if unconditional, requires DSS to send a letter that acts as a written withdrawal. MPP § 22-054.211(a)

If the client changes her/his mind they can request a new hearing on the same issue. The new hearing request must be within 90 days of the original notice of appeal. MPP § 22-009, 22-054.211(b)(3)(C)

Conditional Withdrawal

These are very common because with good negotiations the MHP and the recipient can come to a settlement prior to the hearing. Setting the conditions of withdrawal has a lot of latitude. The conditions agreed to are binding on both the MHP and the recipient. There is a 30 day limit on fulfillment of the conditions. The MHP is to send a new NOA after fulfilling the agreed-upon conditions. The recipient can appeal this new notice. If no new notice is sent, or the MHP fails to take action the request for a hearing should be reopened. MPP §§,22-054.21(b)(3)(C), 22-099,22-054.21(b)(3), 22-099,22-054.21(b)(3)(B)

Advocacy Guide –

When negotiating conditional withdrawals try to resolve as many issues as possible, and be specific. Sometimes this can get your client a faster resolution than going to hearing.

Continuances

If the judge decides there is evidence not available at the hearing that is important to make a proper decision in the case, he/she has the authority to continue the hearing and direct either party to produce additional evidence. Either a follow up letter to each part must be sent or the client must sign a time waiver form (DPA 421) so the record can be left open and provide a copy to all parties that provide notice of the continued hearing date, time and place. MPP §§22-053.2 and 3

If the judge asked the county to provide more information and the county provides it, you will be sent a copy of this information. You may respond to the county's information by sending a letter to the judge. Send your letter to the address given to you by the judge. If you don't have the judge's specific address, send your letter to State Hearings Division, 744 P Street, MS 19-37, Sacramento, CA 95814. Be sure to include the judge's name and the hearing number (look for this number on the county's Position Statement).

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Because a time waiver must be signed by the client, if they choose not to waive time, they should be advised that the judge will then be making a decision based on inadequate information and a continued hearing will not be scheduled. In rare cases the judge can continue without a time waiver, but then they must meet decision due date.

If you cannot send the information by the deadline set by the judge, call to 1-800-952-5253 (TDD 1-800-952-8349) to ask for more time. After the judge has received your message, you will receive a phone call or a letter telling you if your request was granted or not.

Witnesses/Observers

Observers may be present at the hearing if the client agrees or requests their presence and the judge concurs. They will be identified for the record.

The judge on her own or by reasonable request of either party may exclude a witness from the hearing room during the testimony of another witness. In general the county representative or the client may not be excluded, unless the AR requests the client be excluded and the client agrees.

Either party may have an advisor present throughout the hearing. If the advisor is going to testify as a witness, they may only be present as an advisor after they have testified. Once an advisor has testified and become the advisor they may not testify again, unless they providing rebuttal testimony; or subject to the judge's ruling to exclude or admit the advisor's testimony.

MPP §22-049.12 and 13

Disruptive Participants

The judge has wide discretion in dealing with disruptive participants. The can:

- (1) Warn the individual;
- (2) Exclude them if they are not a party or a representative;
- (3) Call for a recess;

If the disruptive individual is the AR, they can be excluded and the client given the option to continue at a later date with a different AR

If the disruptive individual is the client and the judge concludes the hearing cannot continue, the judge can terminate the hearing and inform the client they will receive a written decision by mail. If there has not been enough evidence presented the judge can dismiss the case on the basis that the client is not willing to proceed. MPP §22-054.33

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The hearing can also be considered abandoned if the claimant at the hearing, is unwilling to proceed with the hearing. Behavior of the claimant or of the authorized representative (AR) (with the claimant's concurrence) that is so disruptive, abusive or offensive that the judge is unable to conduct a fair and impartial hearing. Before dismissing a claim, the judge must warn the claimant and/or the AR - Administrative Law Judges Manual, 3/99

If the disruptive individual is the county representative the judge can terminate the hearing and request a new county representative.

Ex Parte Discussions

The merits of a pending state hearing shall not be discussed between the ALJ and a party outside the presence of the other party. MPP §22-049.82; California Government Code § 11430 (See Attachment H)

Hearing Nuts and Bolts

The hearings are informal, with four exceptions:

- (1) Anyone who testifies must swear or affirm to tell the truth.
- (2) The hearing is taped recorded.
- (3) The hearing decision is in writing.
- (4) Neither the county nor the recipient is allowed to discuss the case with the ALJ outside the presence of the other party. Calif. Welf & I Code §§ 10955, 10956

Either the recipient or his or her authorized representative must attend the hearing. MPP § 22-049.11

The hearing will be taped, from the time the parties enter the room. At the very latest is should be turned on after the introduction and statement that it is being turned on. Calif. Welf. & I Code § 10956

If something is discussed before the tape is turned on then the judge will summarize the prior discussion on the record.

Hearing Rights

Your client is entitled to

- (1) Free copies of all documents submitted;
- (2) To bring a friend, relative or legal representative to the hearing;
- (3) To be provided with an interpreter at no cost(see next page);
- (4) Present additional evidence and testimony at the hearing;
- (5) Bring witnesses to the hearing to testify;
- (6) Cross examine the MHP/county rep. and any county witness;
- (7) To make oral or written arguments; and
- (8) To examine all documents prior to and during the hearing.

45 CFR PART §§ 205.10(a) (3)(iii), 205.10(a)(13); MPP §§ 22-049.811, 22-049.75, 22-049.7

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You can submit all kinds of evidence, including testimony of others, written documents, pictures and statements taken from people who can't come to the hearing.

Evidence that might be excluded in a court of law, hearsay for example, can be admitted; it will not have as much creditability as other evidence.

If you are preparing a brief, you will want to submit it as part of the record. It is best practice to come with the brief, although some judges will allow you to submit it during the 10 days the record is open.

A brief is a document used to submit a legal contention or argument to a court. A brief typically sets out the facts of the case and a party's argument as to why he/she should prevail. These arguments must be supported by legal authority and precedent, such as statutes, regulations and previous court decisions.

Both the county and the recipient have a right to have someone present throughout the hearing as stated above, but it is important to note that one court has held that this includes the District Attorney. MPP §22-049.13. Rauber v. Herman, 229 Cal. App.3d 942 (1991)

If the ALJ feels the evidence presented is inconclusive he/she can continue the hearing, or hold the record open for submission of additional evidence.

MPP § 22-053.21

Interpreters at the Hearing

For Recipients who are not fluent in spoken or written English, they have a right to a state interpreter at the hearing. They are provided at no cost to the client. It is the standard practice to use a DSS certified interpreter. If your client would prefer another interpreter, the ALJ must determine that they are competent and unbiased. MPP §§ 22-049.6, 22-004.212,

The Decision

Receiving Your Decision

The judge will prepare a decision granting and/or denying the claim. In this decision, the judge will decide the facts, refer to the applicable law, apply the law to the facts, state his or her conclusions and rulings, and issue an order.

Calif. Welf. & I. Code § 10958

Copies of the printed decision will be mailed to your client, the county, and you as the authorized representative.

Sometimes, the judge's decision is reviewed by DSS staff on behalf of the Director of the California Department of Health Services. If the Director disagrees with the judge's decision, the Director may issue a different decision. If that happens, you will receive the Director's Alternate decision, which is legally valid, and a copy of the judge's original proposed decision, which is void.

The Order at or near the end of the decision, will state if your claim was granted, denied, or dismissed (or any combination of these three).

If the Order says:

- The claim is granted -- this means the judge ruled in your favor.
- The claim is denied -- this means the judge reviewed your claim and decided the county's or other agency's actions were correct.
- The claim is dismissed -- this means the judge dismissed your request for a hearing and did not rule on the merits of your claim. A hearing request will be dismissed if it was not filed timely, if it concerns aid programs we do not handle (such as General Assistance), or if other jurisdictional problems exist

If the Decision is in Your Favor

The county must comply with the decision. This means the county must take the specific action(s) described in the Order. For example, the county may need to approve an application, issue benefits, or re-compute an overpayment, as described in the Order. The county must complete the described action(s) within 30 calendar days of the date the county received a copy of the decision. The county must also send a compliance report to the State Hearings Division.

The county must continue to comply with the decision even if a rehearing is requested and even if the rehearing request is granted.

If the decision is not favorable to you (your claim was denied or dismissed), the county may stop any aid pending you are receiving.

Decision Enforcement

The county MHP shall comply with and execute every decision of the director rendered pursuant to this chapter. Calif. Welf. & I Code § 10963

Re-Hearings or Appealing a Decision

Rehearing – MPP §22-065. Welfare & Institutions Code § 10960

After receiving an adopted final or proposed decision or a Director's alternative decision in the mail, a client or AR can request a rehearing within 30 days after receiving the decision.

When ordering a rehearing, a Director may order a rehearing on the record or an oral rehearing on one, several, or all the issues presented at the initial hearing. MPP §22-065.4

When the Director orders a rehearing on the record or limits the issues, either party may request and obtain an oral rehearing on all issue if such request is received before the date for the scheduled rehearing. MPP §22-065.5

Once the rehearing has been granted only the party that requested the hearing may withdraw the request. It is up to the judge whether to allow it to be withdrawn.

To request a rehearing, mail a written request (a letter) to the Rehearing Unit, 744 P Street, MS 19-37, Sacramento, CA 95814 within 30 days after you receive the decision. In the request, state the date you received the decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision.

"When assigned rehearing on the record with limited issues, a judge should review the matter before the scheduled rehearing date to determine if the issues need to be expanded. If the judge determines it is necessary to expand the issues, he should advise the Presiding Judge and notify the parties that the issues were expanded. If the judge also determines an oral rehearing must be scheduled or a party requests an oral rehearing on to be heard by the judge assigned the rehearing or by another judge." Administrative Law Judge Manual 3/99

If either party does not attend the rehearing:

- It still must be recorded.
- The judge will accept testimony and relevant evidence from the party or parties, or state for the record that no one is present and no documentation was submitted.
- If no explanation is provided the judge shall wait ten days from the date of the hearing before adopting the decision. This allows the party who did not appear to present good cause reason for failure to appear.
- If the initial decision dismissed the claim due to nonappearance, the rehearing decision shall uphold the dismissal on the basis of the clients' unwillingness to present his case.
- If good cause reason is presented during the 10 days, a rehearing shall be rescheduled. The record of the rehearing shall not be considered by the judge, he shall conduct a de novo (new) rehearing to ensure due process for all parties. The judge shall inform the parties that the evidence obtained in a previously scheduled rehearing or continued hearing will not be considered.

Final Appeal

Within one year after receiving notice of the director's (ALJ's) final decision, the client may file a petition with the superior court (writ of mandate – see attachment I) requesting a review of the entire proceedings. Calif. Welf. & I. Code § 10962

Enforcement of the Decision

The county director shall comply with and execute every decision of the director rendered pursuant to this chapter. Calif. Welf. & I. Code § 10963

Advocacy Guide –

There is a good list of common terms related to hearings on the California Department of Social Services Website: www.dss.cahwnet.gov/shd/terms.html

Medi-Cal Field Offices follow Field Instructions Notices (FIN) and Policy Statements. FINS and Policy Memos are important because they may explain how the Medi-Cal program defines medical necessity when they approve or deny devices or services. To get a copy of any relevant guidelines, send a public records act request with a copy of the fair hearing request. See Attachment H.

Attachments

ATTACHMENT A

Welfare and Institutions Code Section 10950-10967

Fair Hearings

10950. If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefore, and is dissatisfied with that refusal, he or she shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a state hearing.

Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

The State Director of Health Services may contract with the State Department of Social Services for the provisions of state hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Article 1 (commencing with Section

12000) to Article 6 (commencing with Section 12250), inclusive, of Chapter 3 of Part 3, and under Article 8 (commencing with Section 12350) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6, and shall include any individual who is an approved adoptive parent, as described in subdivision (C) of Section 8708 of the Family Code, and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.

10951. No person shall be entitled to a hearing pursuant to this chapter unless he files his request for the same within 90 days after the order or action complained of.

10952. The department shall set the hearing to commence within 30 working days after the request is filed, and, at least 10 days prior to the hearing, shall give all parties concerned written notice of the time and place of the hearing.

10952.5. If regulations require a public or private agency to write a position statement concerning the issues in question in a fair hearing, or if the public or private agency chooses to develop such a statement, not less than two working days prior to the date of a hearing provided for pursuant to this chapter, the public or private agency shall make available to the applicant for, or recipient of, public social services requesting a fair hearing, a copy of the public or private agency's position statement on the forthcoming hearing. The public or private agency shall make the copy available to the applicant or recipient at the county welfare department. A public or private agency shall be required to comply with the provisions of this section only if the public or private agency has received a 10-day prior notice of the date and time of the scheduled hearing.

If the public or private agency does not make the position statement available not less than two working days prior to the hearing or if the public or private agency decides to modify the position statement, the hearing shall be postponed upon the request of the applicant or recipient, provided an applicant or recipient agrees to waive the right to obtain a decision on the hearing within the deadline that would otherwise be applicable under regulations. A postponement for reason of the public or private agency not making the position statement available within not less than two working days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing.

For purposes of this section "public or private agency" shall not include the State Department of Health Services.

10953. A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by himself or herself.

However, the director may contract with the Office of Administrative Hearings to conduct hearings. Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.

10953.5. (a) The director has authority to appoint the department's administrative law judges as provided in Section 10555.

(b) Each administrative law judge shall have been admitted to practice law in this state and shall possess any other qualifications prescribed by the State Personnel Board. All persons in the office of the chief referee employed as hearing officers by the department prior to the effective date of this section shall be deemed to be administrative law judges.

10954. The director or administrative law judge conducting the hearing, shall have all of the powers and authority conferred upon the head of a department in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

10955. The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. All testimony shall be submitted under oath or affirmation. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings.

At the hearing the applicant or recipient may appear in person with counsel of his own choosing, or in person and without such counsel.

10956. The proceedings at the hearing shall be reported by a phonographic reporter or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

10957. The person conducting the hearing, upon good cause shown, may continue the hearing for a period of not to exceed 30 days. When the refusal of a county to accept a signed application for aid or services is an issue, the director may require the county to accept the application, and may continue the case until the results of the investigation have been reported to him or her. In any such case in which aid is awarded by the director or his or her designee, the payments shall commence at the time indicated by the director or his or her designee.

10958. If the hearing is conducted by an administrative law judge, he or she shall prepare a fair, impartial, and independent proposed decision, in writing and in such format that it may be adopted as the director's decision and, after approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director.

10958.1. The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions.

10959. Within 30 days after the department has received a copy of the administrative law judge's proposed decision, the director may adopt the decision in its entirety; decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence; or order a further hearing to be conducted by himself or herself, or another administrative law judge on behalf of the director. Failure of the director to adopt the proposed decision, decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence or order a further hearing within the 30 days shall be deemed an affirmation of the proposed decision. If the director decides the matter, a copy of his or her decision shall be served on the applicant or recipient and on the affected county, and, if his or her decision differs materially from the proposed decision of the administrative law judge, a copy of that proposed decision shall also be served on the applicant or recipient and on the affected county.

If a further hearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.

10960. Within 30 days after receiving the proposed decision of an administrative law judge adopted by the director, a final decision rendered by an administrative law judge or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and such other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no earlier than the fifth nor later than the 15th working day after the receipt of the request. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing. If action is not taken by the director within the time allowed, the request shall be deemed denied.

10961. The decision of the director need not specify the amount of the award to be paid unless the amount of the award is an issue. If the decision is in favor of the applicant or recipient, the county department shall pay to the applicant or recipient, without the necessity of establishing his or her present need, the amount of aid the director finds he or she is entitled to receive pursuant to the director's decision, payment to commence as of the date the person was first entitled thereto, or grant to him or her the services to which he or she is entitled.

The award shall be determined no later than 30 days following the date that the hearing decision is received by the county, or 30 days from the date the additional information needed for compliance with the decision is provided to the county. After the award is made, the county and the claimant shall be notified by the department of its determination regarding the county's compliance with the decision.

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of

Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal there from. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

10963. The county director shall comply with and execute every decision of the director rendered pursuant to this chapter.

10964. The department shall compile and distribute to each county department a current digest of decisions, properly indexed, rendered under this chapter, and each such digest shall be open to public inspection, subject, however, to the confidentiality requirements set forth in federal and state laws and regulations.

10965. Nothing in this chapter shall prevent the filing of the request for a hearing by the legal representative, or, if there is no authorized legal representative, by an

heir of a deceased applicant or recipient, in behalf of the decedent's estate, to the end that rights not determined at the time of death shall accrue to the estate of the applicant or recipient.

10966. (a) In addition to any other delegation powers granted to the director under law, the director may delegate his or her powers to adopt final decisions under this chapter to all administrative law judges within specified ranges in the department, in the types of cases deemed appropriate by the director. The authority to adopt final decisions shall not be contingent upon the outcome of the judge's resolution of the case or issue, nor upon the identity of a particular administrative law judge. The defined areas of delegation shall be published by the department after interested groups such as the Coalition of California Welfare Rights Organizations, legal aid societies, and the County Welfare Directors Association have had a reasonable amount of time to review and comment.

(b) Notwithstanding any other provisions of this chapter, decisions rendered by the administrative law judges under the authority of this section shall be treated, for all purposes, as the decision of the director. The affected county, recipient, or applicant has the right to request a rehearing pursuant to Section 10960, and the right to petition for judicial review pursuant to Section 10962. ...

(c) If the director chooses to exercise the authority to delegate his or her powers to adopt final decisions to administrative law judges, the delegation shall be in writing. Any such delegation instrument shall be a public record available at all times, including the time of hearing, from each administrative law judge to whom that authority has been delegated. The written delegation instrument shall include paragraphs (1) and (2) of the following, and may include paragraph (3) of the following:

(1) It shall specify the administrative law judges that are authorized to render final decisions on his or her behalf, including the effective date of the authorization.

(2) It shall specify the types of cases or issues that are subject to his or her delegation of final authority.

(3) It may include any other implementation instructions which he or she determines are necessary for the effective implementation of this section.

(d) Decisions rendered by administrative law judges pursuant to the provisions of this section shall be fair, impartial, independent, in writing, and in the format prescribed by the Chief Administrative

Law Judge.

10967. At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the administrative law judge determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue or issues or the case shall be dismissed. If the administrative law judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending.

ATTACHMENT B

California Code of Regulations, Title 9, Sections 1792-96

Fair Hearings

1792. "Fair Hearing" means a formal hearing, as required by Federal regulations and State statutes and regulations, which is conducted when requested by a beneficiary within specified timelines, because his/her services or extension of services are denied or terminated.

1793. "Grievance Process" means the MHP's formal process for the purpose of hearing and attempting to resolve beneficiary concerns or complaints regarding psychiatric inpatient hospital services

1794. "Terminated" means that the MHP does not approve a request for continued stay services after an MHP payment authorization for an admission

1795. (a) An MHP shall develop problem resolution processes that enable a beneficiary to resolve a complaint or grievance about any psychiatric inpatient hospital service-related issue.

b) The MHP's beneficiary problem resolution processes shall include both:

(1) A Complaint Resolution Process; and,

(2) A Grievance Process (Two Levels)

(c) An MHP shall ensure that each beneficiary has adequate information about and access to the resolution processes in (b).

(d) The Complaint Resolution Process shall, at a minimum:

(1) Focus upon resolution of a beneficiary's concerns as quickly and simply as possible.

(2) Emphasize simple, informal and easily understood procedures.

(3) Inform a beneficiary of his or her right to use the Grievance Process at any time before, during or after the Complaint Resolution Process has begun.

(4) Identify a procedure by which issues identified as a result of the Complaint Resolution Process are transmitted to the MHP's Quality Improvement Committee, to the MHP's administration or to another appropriate body within the MHP to implement needed action.

(5) Identify the roles and responsibilities of the MHP, the provider and the beneficiary.

(e) The Grievance Process shall, at a minimum

(1) Be a formal written procedure that provides for two levels of review within the MHP.

(2) Allow for the resolution of each level of a grievance within thirty (30) calendar days of receipt of the grievance by that level of the MHP.

(2) Allow for the resolution of each level of a grievance within thirty (30) calendar days of receipt of the grievance by that level of the MHP.

(4) Identify the roles and responsibilities of the MHP, the provider and the beneficiary.

(5) Provide for

(A) Recording the grievance in a Grievance Log(s) within one (1) working day of the date of receipt of the grievance.

(B) The Log entry shall include but not be limited to:

1. The name of the beneficiary.
2. The date of receipt of the grievance.
3. The nature of the problem.
4. The time period allowed for resolution.
5. The party responsible for addressing the grievance.

(C) Recording the resolution of a grievance within the required time period or document the reason(s) the problem has not been resolved.

(D) Documenting the notification of a beneficiary of the resolution of the grievance or documenting efforts to notify the beneficiary if he or she could not be contacted.

(E) If a provider was included in the grievance, notifying any provider involved with the resolution of the beneficiary grievance.

(F) Notifying the beneficiary of his or her right to appeal the grievance decision to a second level of review within the MHP.

(f) The MHP shall ensure that for the Complaint Resolution Process or the Grievance Process:

(1) A beneficiary may authorize another person to act on his or her behalf.

- (2) Specific MHP staff are identified as having responsibility for assisting a beneficiary with these processes at the beneficiary's request.
- (3) A beneficiary shall not be subject to discrimination or any other penalty for filing a complaint or grievance.
- (4) Procedures used shall maintain the confidentiality of a beneficiary.
- (g) An MHP's Grievance Log(s) shall be open to review by the Department, the Department of Health Services and the Federal oversight agency.
- (h) A provider may have its own complaint resolution and grievance processes. A beneficiary shall have access to the provider's processes as well as those provided by the MHP.
- (i) No provision of an MHP Beneficiary Problem Resolution Process shall be construed to replace or conflict with the duties of county patients' rights advocates designated in Welfare and Institutions Code Section 5500.
- (j) Each MHP shall report to the Department by October 1 of each year, a summary of beneficiary grievances, as well as their status and resolution.

1796. (a) Each Friday is designated as the publication date of the California Regulatory Notice Register.

(b) At least ten calendar days before the desired publication date of any notice, an agency shall submit the following to OAL:

- (1) four copies of the notice with a Form 400 (see Appendix A to this Article), or copy thereof, with Part A completed, attached to the front of two of the copies of the notice, and,
- (2) if the notice is a notice of proposed regulatory action submitted pursuant to Government Code section 11346.4(a)(5), the submission shall also include a copy of each document required by Government Code section 11346.2(a).

(c) The Form 400 attached to the notice as provided in subsection (b), above, shall contain:

- (1) a description of the subject matter of the notice and, if the notice is a notice of proposed regulatory action, the title(s) of the California Code of Regulations affected, with the first affected regulation section number listed;
- (2) the requested publication date;
- (3) the type of notice;

(4) the name of the submitting agency and the agency file number, if any, as well as the name and telephone number of an agency contact person for the notice submission;

(5) if the notice is a notice of proposed regulatory action submitted after an emergency filing, the agency shall enter the number assigned by OAL to the emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B); and

(6) if the notice is a notice of proposed regulatory action submitted after the readoption of an emergency filing, the agency shall enter the number assigned by OAL to the readoption of the emergency filing and the number assigned by OAL to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

(d) Except for the types of notices described below in this subsection, the agency shall pay a notice printing fee to OAL in the amount of \$40.00 per page, or any portion thereof, as printed in the California Regulatory Notice Register:

(1) a notice of proposed regulatory action submitted pursuant to Government Code section 11346.4(a)(5);

(2) a notice otherwise required by statute to be published in the California Regulatory Notice Register; or,

(3) a notice modifying information contained in a notice described in subsections (d)(1) or (d)(2) above.

(e) If a notice of proposed regulatory action fails to comply with the requirements of this Article or sections 11346.3, 11346.4(a)(5), and 11346.5 of the Government Code, OAL shall contact the agency within three business days to correct any deficiencies. If the deficiencies are not corrected by agreement between OAL and the agency within the three-day period, OAL shall promptly return the notice to the agency with a letter explaining the reasons for disapproval.

ATTACHMENT C

California Code of Regulations, Title 9, Section 1850.205

Specialty Mental Health Beneficiary Problem Resolution Processes

(a) An MHP shall develop problem resolution processes that enable a beneficiary to resolve a concern or complaint about any specialty mental health service-related issue

(b) The MHP's beneficiary problem resolution processes shall include:

(1) A complaint resolution process.

(2) A grievance process.

(c) For both the complaint resolution process and the grievance process, the MHP shall ensure:

(1) That each beneficiary has adequate information about the MHP's processes by taking at least the following actions:

A) Including information describing the complaint resolution process and the grievance process in the MHP's beneficiary brochure and providing the beneficiary brochure to beneficiaries as described in http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=139922&infobase=ccr&jump=9%3a1810.360&softpage=Document42 - JUMPDEST_9:1810.360Section 1810.360.

B) Posting notices explaining complaint resolution and grievance process procedures in locations at all MHP provider sites sufficient to ensure that the information is readily available to both beneficiaries and provider staff. For the purposes of this section, an MHP provider site means any office or facility owned or operated by the MHP or a provider contracting with the MHP at which beneficiaries may obtain specialty mental health services.

C) Making grievance forms and self addressed envelopes available for beneficiaries to pick up at all MHP provider sites without having to make a verbal or written request to anyone.

(2) That a beneficiary may authorize another person to act on the beneficiary's behalf.

3) That a beneficiary's legal representative may use the complaint resolution process or the grievance process on the beneficiary's behalf.

(5) That a beneficiary is not subject to discrimination or any other penalty for filing a complaint or grievance.

(6) That procedures for the processes maintain the confidentiality of beneficiaries.

(7) That a procedure is included by which issues identified as a result of the complaint resolution or grievance process are transmitted to the MHP's Quality Improvement Committee, the MHP's administration or another appropriate body within the MHP for review and, if applicable, implementation of needed system changes.

(d) In addition to meeting the requirements of subsection (c), the complaint resolution process shall, at a minimum:

(1) Provide for resolution of a beneficiary's concerns or complaints as quickly and simply as possible.

(2) Involve simple, informal and easily understood procedures that do not require beneficiaries to present their concerns or complaints in writing.

(3) Inform a beneficiary of his or her right to use the grievance process or request a fair hearing at any time before, during or after the complaint resolution process has begun.

(4) Identify the roles and responsibilities of the MHP, the provider and the beneficiary

(e) In addition to meeting the requirements of subsection (c), the grievance process shall, at a minimum:

(1) Require that beneficiaries provide their concerns or complaints to the MHP as a written grievance.

(2) Provide for two levels of review within the MHP.

(3) Provide for a decision on the grievance at each level of review within 30 calendar days of receipt of the grievance by that level of review within the MHP.

(4) Provide for an expedited review of grievances where the beneficiary is grieving a decision by a provider or the MHP to discontinue adult residential or crisis residential services. When the written grievance is received by the MHP prior to the beneficiary's discharge from the services, the beneficiary shall continue to receive the adult residential or crisis stabilization services and the MHP shall continue

payment for the services until the MHP responds to the grievance at the first level of review, at which point action may be taken by the provider or the MHP as appropriate based on the grievance decision. Services shall not be continued if the provider or the MHP determines that ongoing placement of the beneficiary in that facility poses a danger to the beneficiary or others.

(5) Identify the roles and responsibilities of the MHP, the provider and the beneficiary.

(6) Provide for:

A) Recording the grievance in a grievance log within one working day of the date of receipt of the grievance. The log entry shall include but not be limited to:

1. The name of the beneficiary.
2. The date of receipt of the grievance.
3. The nature of the problem.

(B) Recording the final disposition of a grievance, including the date the decision is sent to the beneficiary, or documenting the reason(s) that there has not been final disposition of the grievance.

(C) An MHP staff person or other individual with responsibility to provide information on request by the beneficiary or an appropriate representative regarding the status of the beneficiary's grievance.

(D) Notifying the beneficiary or the appropriate representative in writing of the grievance decision and documenting the notification or efforts to notify the beneficiary, if he or she could not be contacted. When the notice contains the decision of the MHP's first level of review, the notice shall include the beneficiary's right to appeal to the second level of review and to request a fair hearing if the beneficiary disagrees with the decision instead of, before, during or after filing the grievance at the second level of review. When the notice contains the decision of the MHP's second level of review, the notice shall include the beneficiary's right to request a fair hearing if the beneficiary disagrees with the decision.

(E) If any providers were cited by the beneficiary or otherwise involved in the grievance, notifying those providers of the final disposition of the beneficiary's grievance.

(f) An MHP's grievance log and any other grievance process files, and any complaint resolution process files shall be open to review by the department, the State Department of Health Services, and any appropriate oversight agency.

(g) Nothing in this section precludes a provider other than the MHP from establishing complaint or grievance processes for beneficiaries receiving services from that provider. When such processes exist, beneficiaries shall not be required by the MHP to use or exhaust the provider's processes prior to using the MHP's beneficiary problem resolution process, unless the following conditions have been met:

(1) The MHP delegated the responsibility for the beneficiary problem resolution process to the provider in writing, specifically outlining the provider's responsibility under the delegation.

(2) The provider's beneficiary problem resolution process fully complies with this section.

(3) No beneficiary is prevented from accessing the grievance process solely on the grounds that the grievance was incorrectly filed with either the MHP or the provider.

h) No provision of an MHP's beneficiary problem resolution processes shall be construed to replace or conflict with the duties of county patients' rights advocates as described in Welfare and Institutions Code, Section 5520.

ATTACHMENT D

California Code of Regulations, Title 9, § 1810.247 Specialty Mental Health Services

Specialty Mental Health Services” means

Rehabilitative Services, which includes mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential services, and psychiatric health facility services.

Psychiatric Inpatient Hospital Services;

Targeted Case Management;

Psychiatrist Services

Psychologist Services

EPSDT Supplemental Specialty Mental Health Services; and

Psychiatric Nursing Facility Services

ATTACHMENT E

California Code of Regulations, Title 22, Section 1830.205

Medical Necessity Criteria for MHP Reimbursement of Specialty Mental Health Services

The following mental necessity criteria determine Medi-Cal reimbursement for specialty mental health services that are the responsibility of the MHP under this subchapter, except as specially provided.

(a) The beneficiary must meet criteria outlined in (1),(2), and (3) below to be eligible for services:

(b) Be diagnosed by the MHP with one of the following diagnoses in the Diagnostic and Statistical Manual, Fourth Edition, published by the American Psychiatric Association:

- (1) Pervasive Developmental Disorders, except Autistic Disorders
 - (A) Disruptive Behavior and Attention Deficit Disorder
 - (B) Feeding and Eating Disorders of Infancy and Early Childhood
 - (C) Elimination Disorders
 - (D) Other Disorders of Infancy, Childhood, or Adolescence
 - (E) Schizophrenia and other Psychotic Disorders
 - (F) Mood Disorders
 - (G) Anxiety Disorders
 - (H) Somatoform Disorders
 - (I) Factitious Disorders
 - (J) Dissociative Disorders
 - (K) Paraphilias
 - (L) Gender Identity Disorder
 - (M) Eating Disorders
 - (N) Impulse Control Disorders Not Elsewhere Classified

(O) Adjustment Disorders

(P) Personality Disorders, excluding Antisocial Personality Disorder

(R) Medication-Induced Movement Disorders related to other included diagnoses.

(2) Must have a least one of the following impairments as a result of the mental disorder(s) listed in /subdivision (1) above:

(A) A significant impairment in an important area of life functioning.

(B) A probability of significant deterioration in an important area of life functioning.

(C) Except as provided in Section 1830.210, a probability a child will not progress developmentally as individually appropriate. For the purpose of this section, a child is a person under age of 21 years.

(3) Must meet each of the intervention criteria listed below:

(A) The focus of the proposed intervention is to address the condition identified in (2) above.

(B) The expectation is that the proposed intervention will:

1. Significantly diminish the impairment, or

2. Prevent significant deterioration in an important are of life functioning, or

3. Except as provided in Section 1830.210, allow the child to progress developmentally as individually appropriate.

(C) The condition would not be responsive to physical health care based treatment.

(c)When the requirements of this section are met, beneficiaries shall receive specialty mental health service for a diagnosis included in subsection (b)(1) even if a diagnosis that is not included in subsection (b)(1) is also present.

ATTACHMENT F

California Code of Regulations, Title 22, Section 1830.210

Medical Necessity Criteria for MHP Reimbursement of Specialty Mental Health Services for Eligible Beneficiaries Under 21 Year of Age

For beneficiaries under 21 years of age who do not meet the medical necessity requirements of Section 1830.205(b)(2) and (3), medical necessity criteria for specialty mental health services covered by this subchapter shall be met when all of the following exist:

The beneficiary meets the diagnosis criteria in Section 1830.205(b)(1).

The beneficiary has a condition that would not be responsive to physical health care based treatment, and

The requirements of Title 22, Section 51340(e)(3) are met; or, for targeted case management services, the service to which access is to be gained through case management is medically necessary for the beneficiary under Section 1830.205 or under Title 22, Section 51240(f) are met.

The MHP shall not approve a request for an EPSDT Supplemental Specialty Mental Health Service under this section if the MHP determines that the service to be provided is accessible and available in an appropriate and timely manner as another specialty mental health service covered by this subchapter.

The MHP shall not approve a request for specialty mental health services under this section in home and community based settings if the MHP determines that the total cost incurred by the Medi-Cal program in providing medically equivalent services at the beneficiary's otherwise appropriate institutional level of care, where medically equivalent services at the appropriate level are available in a timely manner.

ATTACHMENT G

California Code of Regulations, Title 22, Sections 51014.1, 51014.2

51014.1. Fair Hearing Related to Denial, Termination or Reduction in Medical Services.

- (a) In addition to any notice mailed pursuant Sections 50179, [http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=137086&infobase=ccr&jump=22%3a53261&softpage=Document42 - JUMPDEST_22:5326153261, 53452, 56261, or 56452](http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=137086&infobase=ccr&jump=22%3a53261&softpage=Document42-JUMPDEST_22:5326153261,53452,56261,or56452), each beneficiary shall be informed in writing, at the time of application to the program and by the Department on a quarterly basis thereafter, of the right to a fair hearing upon receipt of notice of:
- (1) Any action, other than approval, including but not limited to deferral or denial, taken by the Department or a Medi-Cal managed care plan on a request by a provider for any medical service.
 - (2) Any intended action by the Department or a Medi-Cal managed care plan to terminate or reduce any medical service.
- (b) The written notice of the right to a fair hearing shall specify:
- (1) The method by which a hearing may be obtained.
 - (2) That the beneficiary may be either:
 - (A) Self represented
 - (B) Represented by an authorized third party such as legal counsel, relative, friend or any other person.
 - (3) The circumstances under which the medical service shall be continued pending decision on the fair hearing.
 - (4) The time limit for requesting fair hearing
- (c) Except as provided in (d), notice of intended action to reduce or terminate authorization for a medical service prior to expiration of the period covered by the authorization shall be mailed by the Department or by the Medi-Cal managed care plan to the beneficiary at least 10 days before the effective date of action. The notice shall include:

- (1) A statement of the action the Department or Medi-Cal managed care plan intends to take.
 - (2) The reason for the intended action
 - (3) A citation of the specific regulations or Medi-Cal managed care plan authorization procedures supporting the intended action.
 - (4) An explanation of the beneficiary's right to request a fair hearing for the purpose of appealing the Department's or Medi-Cal managed care plan's decision.
 - (5) An explanation of the procedure to request a hearing
 - (6) An explanation of the circumstances under which a medical service shall be continued if a hearing is requested.
- (d) The Department or Medi-Cal managed care plan may dispense with the 10 day mailing requirement in (c), but shall mail the notice of action before the date of action and shall meet all other requirements, when any of the following circumstances occur:
- (1) The Department or Medi-Cal managed care plan receives a clear written statement signed by the beneficiary stating that the beneficiary no longer wishes to receive continuous medical service.
 - (2) The beneficiary has been admitted or committed to an institution and is no longer eligible for Medi-Cal benefits or, for a Medi-Cal managed care plan member, is no longer enrolled in the Medi-Cal managed care plan.
 - (3) The beneficiary has been accepted for medical assistance in another state or a new jurisdiction and that fact has been established by the jurisdiction presently providing assistance.
 - (4) A change in level of medical care is prescribed by the beneficiary's physician.
 - (5) The Department, or Medi-Cal managed care plan with the concurrence of the Department, obtains facts indicating the medical service should be terminated because of the probable fraud of the beneficiary. In this case notice shall be mailed at least 5 days before the action becomes effective.
- (e) Except as provided in (g), notice of a reduction or termination as defined in (e)(1) and (2) shall be mailed by the Department or Medi-Cal managed care plan to the beneficiary or to the person identified as the beneficiary's authorized representative in records submitted by the health care provider requesting the services. The notice shall contain the information required by (c), except that it

shall describe the action the Department or Medi-Cal managed care plan has taken rather than an action it intends to take. It shall be deposited with the United States postal service in time for pick-up no later than the third working day after the reduction or termination.

(1) "Termination" as used in this subdivision means denial by the Department or Medi-Cal managed care plan of a request for non-acute continuing services, as defined in Section 51003(c)(1).

(2) "Reduction" as used in this subdivision means approval by the Department or Medi-Cal managed care plan of a request for non-acute continuing services as defined in Section 51003(c)(1), at less than the amount or frequency requested and less than the amount or frequency approved on the immediately preceding authorization. There is no reduction if a shorter time period of services than requested is approved, as long as the amount or frequency of services during that period has not been reduced from the previously approved level.

(f) Except as provided in (g), notice of a termination as defined in (f)(1), shall be personally delivered or mailed as provided below. Notice shall be personally delivered to the beneficiary in his or her hospital room unless the beneficiary's treating physician has certified in writing that such personal delivery may result in serious harm to the beneficiary. If the treating physician has so certified, notice shall be mailed to the mailing address of the beneficiary or the person, if any, identified as the beneficiary's authorized representative in hospital medical records or documents submitted by the hospital to the Department or Medi-Cal managed care plan. Notice required by this subdivision shall contain the information required by (c) except that it shall describe the action the Department or Medi-Cal managed care plan has taken rather than an action it intends to take. It shall be personally delivered or be mailed no later than the first working day after termination.

(1) "Termination" as used in this subdivision means denial by the Department or Medi-Cal managed care plan of a request by a provider for acute continuing services, as defined in section 51003(c)(2). There is no termination when the field office consultant or Medi-Cal managed care plan approves less than the full number of acute care days requested.

(g) Notice of termination or reduction as provided for in (e) and (f) is not required in any of the following circumstances:

(1) By the date that notice would otherwise be personally delivered or mailed;

- (A) Non-acute services requested for a limited time period are provided in full or
 - (B) In the case of acute care services, the beneficiary is discharged from the hospital.
- (2) The only days of acute care denied have already been provided to the beneficiary.
 - (3) The Department or Medi-Cal managed care plan authorized acute care days subject to specific services being performed during a specified time, and the Department or Medi-Cal managed care plan retroactively denies these previously authorized days because such services were delayed or not performed.
- (h) Notice of action taken, or intended action other than approval for either a written or verbal request by a provider for medical service, other than those specified under subdivisions (c), (e) and (f) or [http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=137086&infobase=ccr&jump=22%3a53261&softpage=Document42 - JUMPDEST_22:53261sections 53261 or 56261](http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=137086&infobase=ccr&jump=22%3a53261&softpage=Document42-JUMPDEST_22:53261sections53261or56261), shall be transmitted by the Department or Medi-Cal managed care plan to the provider of service. The method of transmittal of the notice of action taken or intended action may be either written or verbal. Should the beneficiary not receive notification from the provider of the Department's or Medi-Cal managed care plan's decision, the beneficiary may contact the provider to obtain such notification.
- (i) For the purposes of this section, "medical service" means those services that are subject to prior authorization pursuant to Section 51003 or the Medi-Cal managed care plan's authorization procedures.
- (j) For the purposes of this section, "Medi-Cal managed care plan" means a prepaid health plan as defined in Section 50071.5 or a primary care case management plan as defined in Section 50071.8.
- (k) The provisions of this section apply to Medi-Cal managed care plans only for beneficiaries who are enrolled in the Medi-Cal managed care plan and for medical services that are covered in the contract between the Department and the Medi-Cal managed care plan. The provisions of this section do not apply to the decisions of providers serving beneficiaries enrolled in Medi-Cal managed care plans when prior authorization of the service by the Medi-Cal managed care plan's authorization procedures is not a condition of payment for the medical service.

NOTE

Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 10950, 14088, 14088.4, 14124.5 and 14311, Welfare and Institutions Code.

1. New section filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
2. Certificate of Compliance filed 6-28-79 (Register 79, No. 26).
3. Amendment of subsection (c) and new subsections (e)-(g) filed 10-26-90 as an emergency; operative 10-26-90 (Register 90, No. 50). A Certificate of Compliance must be transmitted to OAL by 2-25-91 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-26-90 order transmitted to OAL 2-22-91 and filed 3-25-91 (Register 91, No. 15).
5. Amendment of section and Note filed 10-17-95; operative 11-16-95 (Register 95, No. 42)

§51014.2. Medical Assistance Pending Fair Hearing Decision

(a) Continued medical assistance as set forth in (b), (c), and (d) below, pending a hearing decision shall be provided only if the beneficiary appeals in writing to the Department for a hearing within 10 days of the mailing or personal delivery of the notice of action pursuant to section 51014.1(c), (e) or (f), or before the effective date of action.

(b) In the case of a termination or reduction pursuant to Section 51014.1(c), authorization shall be maintained until the period covered by the existing authorization expires, the date a hearing decision is rendered, or the date on which the hearing is otherwise withdrawn or closed, whichever is earliest.

(c) In the case of a termination of acute care services pursuant to

[1014.1&softpage=Document42 - JUMPDEST_22:51014.1Section 51014.1\(f\), acute care authorization pending a hearing shall begin:](http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=162130&hitsperheading=on&infobase=ccr&jump=22%3a51014.1&softpage=Document42 - JUMPDEST_22:51014.1Section 51014.1(f), acute care authorization pending a hearing shall begin:</p></div><div data-bbox=)

(1) The first day after the previously approved length of stay for continuing acute care if the request for extension by a provider was submitted to the on-site Medi-Cal

reviewer during the first on-site visit after the previously approved length of stay expired.

(2) The sixth day of hospitalization if a request for extension pursuant to Section 51003(c)(2)(B)5. was submitted to the on-site Medi-Cal reviewer during the first on-site visit after the first five days of hospitalization.

(3) The day the request for extension was submitted to the Department or to the Medi-Cal managed care plan if neither (1) nor (2) apply.

(4) The date of the termination decision if a decision on the request for extension was initially deferred pending the receipt of additional information.

Authorization pending a hearing pursuant to this subdivision shall end on the date a hearing decision is rendered, the date on which the hearing appeal is withdrawn or closed, the date the treating physician documents that the beneficiary is ready for lower level of care, or the date of discharge, whichever is earliest.

(d) In the case of a termination or reduction of non-acute care services pursuant to Section 51014.1

(e), authorization shall begin:

(1) Upon expiration of the previous authorization if the request by a provider for reauthorization is submitted prior to such expiration, or

(2) The day of receipt of a completed request for reauthorization not requiring additional information from the provider, or

(3) The date of deferral of a decision on a request for reauthorization, when such deferral was necessary because of an incomplete request or because additional medical information is needed.

Authorization pending a hearing pursuant to this subdivision ends on the date through which services were requested by the treating physician, the date a hearing decision is rendered, or the date on which the hearing appeal is withdrawn or closed, whichever is earliest.

(e) Notwithstanding (a), (c), and (d), continued medical assistance pursuant to (c) or (d):

(1) is not required at a greater amount or frequency of services than approved for the immediately preceding period of authorization,

(2) is not required in the case of acute care services if the beneficiary has been discharged from the hospital at the time that continued authorization would otherwise be put into effect,

(3) is not required in the case of non-acute care services requested for a limited time period, if they have been provided in full at the time that continued authorization would otherwise be put into effect.

(f) For the purposes of this section, "Medi-Cal managed care plan" means a prepaid health plan as defined in Section 50071.5 or a primary care case management plan as defined in Section 50071.8.

(g) The provisions of this section apply to Medi-Cal managed care plans only for beneficiaries who are enrolled in the Medi-Cal managed care plan and for medical services that are covered in the contract between the Department and the Medi-Cal managed care plan.

ATTACHMENT H

California Government Code Section 11430.10 et. seq.

Ex Parte Communications

11430.10 a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

11430.20. A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance that is not in controversy.

11430.30. A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its pre adjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is non prosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

11430.40. If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

11430.50. (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

11430.60. Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

11430.70. (a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

11430.80. (a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.

ATTACHMENT I

Code of Civil Procedure Section 1084-1097

Writ of Mandate

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken.

However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing

the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 or 19576.5 of the Government Code.

(k) This section shall not apply to state employees in State Bargaining Unit 11 disciplined or rejected on probation for positive drug test results who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a State Bargaining Unit 11 collective bargaining agreement.

ATTACHMENT J

Sample Public Records Act Request

Via facsimile (555) 555-5555

Diana Bonta, R.N., D.P.H.
Department of Health Services
P.O. Box 999999
Sacramento, CA 99999

Attn: Office of Legal Services

RE: Public Records Act Request – Documents related to (explain what service or equipment is at issue – i.e., “guidelines or standards for evaluating TARs for IHHS services

Dear Ms. Bonta:

(Your agency), pursuant to the California Public Records Act [Government Code §§ 6250 et seq.], hereby request to inspect [§ 6253(a)] and copy [6256] the following records:

Any Field Instruction Notice (FIN), policy memo, provider manual provision, Manual of Criteria provision or any other document setting out or explaining any guideline or standard or directions [relate to the subject matter of the TAR at issue – i.e., “or otherwise relating to the coverage of IHHS services under the Medi-Cal program]

As you know, the CPRA requires you to respond to the request within 10 days. Government Code § 6256. This Public Records Act request is pursuant to our representation of [client’s name], Medi-Cal No. [xxx], with respect to his pending Medi-Cal fair hearing [State Hearing no. if you have it] concerning the denial of TAR No.[xxx] for [subject matter of TAR]. We request that you send us a copy of the requested documents without charge because they are requested in connection with the pending Medi-Cal fair hearing.

Sincerely,

Enclosure: Copy of the Fair Hearing Request

cc: State Hearing Division, DSS, 744 “P” Street M.S. 37-19, Sacramento CA 95814,
via mail & fax (916) 653-8690

Note to the State Hearing Division: Please put a copy of this memo in the Fair Hearing File. If we are unable to secure the requested documents via the enclosed Public Records Act request, we will request the issuance of a subpoena duces tecum for such documents

ATTACHMENT K

California Code of Evidence Section 910-920

Privilege

910. Except as otherwise provided by statute, the provisions of this division apply in all proceedings. The provisions of any statute making rules of evidence inapplicable in particular proceedings, or limiting the applicability of rules of evidence in particular proceedings, do not make this division inapplicable to such proceedings.

911. Except as otherwise provided by statute:

(a) No person has a privilege to refuse to be a witness.

(b) No person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing.

(c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any writing, object, or other thing.

912. (a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergyman), or 1035.8 (sexual assault victim-counselor privilege) is waived with respect to a communication protected by such privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to such disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), or 1035.8 (sexual assault victim-counselor privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

(c) A disclosure that is itself privileged is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), or 1035.8 (sexual assault

victim-counselor privilege), when such disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, physician, psychotherapist, or sexual assault counselor was consulted, is not a waiver of the privilege.

913. (a) If in the instant proceeding or on a prior occasion a privilege is or was exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, neither the presiding officer nor counsel may comment thereon, no presumption shall arise because of the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

(b) The court, at the request of a party who may be adversely affected because an unfavorable inference may be drawn by the jury because a privilege has been exercised, shall instruct the jury that no presumption arises because of the exercise of the privilege and that the jury may not draw any inference there from as to the credibility of the witness or as to any matter at issue in the proceeding.

914. (a) The presiding officer shall determine a claim of privilege in any proceeding in the same manner as a court determines such a claim under Article 2 (commencing with Section 400) of Chapter 4 of Division 3.

(b) No person may be held in contempt for failure to disclose information claimed to be privileged unless he has failed to comply with an order of a court that he disclose such information. This subdivision does not apply to any governmental agency that has constitutional contempt power, nor does it apply to hearings and investigations of the Industrial Accident Commission, nor does it

impliedly repeal Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the Government Code. If no other statutory procedure is applicable, the procedure prescribed by Section 1991 of the Code of Civil Procedure shall be followed in seeking an order of a court that the person disclose the information claimed to be privileged.

915. (a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (c) of Section 2018 of the Code of Civil Procedure in order to rule on the claim of privilege; provided, however, that in any hearing conducted pursuant

to subdivision (c) of Section 1524 of the Penal Code in which a claim of privilege is made and the court determines that there is no other feasible means to rule on the validity of the claim other than to require disclosure, the court shall proceed in accordance with subdivision (b).

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) or under Section 1060 (trade secret) or under subdivision (b) of Section 2018 of the Code of Civil Procedure (attorney work product) and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.

916. (a) The presiding officer, on his own motion or on the motion of any party, shall exclude information that is subject to a claim of privilege under this division if:

(1) The person from whom the information is sought is not a person authorized to claim the privilege; and

(2) There is no party to the proceeding who is a person authorized to claim the privilege.

(b) The presiding officer may not exclude information under this section if:

(1) He is otherwise instructed by a person authorized to permit disclosure; or

(2) The proponent of the evidence establishes that there is no person authorized to claim the privilege in existence.

917. Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergyman-penitent, or husband-wife relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

918. A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege, except that a party may predicate error on a ruling disallowing a claim of privilege by his spouse under Section 970 or 971.

919. (a) Evidence of a statement or other disclosure of privileged information is inadmissible against a holder of the privilege if:

(1) A person authorized to claim the privilege claimed it but nevertheless disclosure erroneously was required to be made; or

(2) The presiding officer did not exclude the privileged information as required by Section 916.

(b) If a person authorized to claim the privilege claimed it, whether in the same or a prior proceeding, but nevertheless disclosure erroneously was required by the presiding officer to be made, neither the failure to refuse to disclose nor the failure to seek review of the order of the presiding officer requiring disclosure indicates consent to the disclosure or constitutes a waiver and, under these circumstances, the disclosure is one made under coercion.

920. Nothing in this division shall be construed to repeal by implication any other statute relating to privileges.

ATTACHMENT L

Judge's Opening Remarks – MPP § 22-003.1, 22-049.7, and 22-065

Judge's name, date of hearing, hearing site

Each participant and observer

Interpreter, qualified and sworn in.

Judge shall indicate that she has been appointed by the Director of the California Department of Health Services to conduct a fair, independent, and impartial hearing, and that he/she is not employed by nor associated with the county or CDHS.

The hearing will be tape recorded as required by state law.

All testimony will be given under oath or affirmation. Witnesses testify under penalty of perjury.

All relevant documents submitted will be marked as exhibits

The judge will ask if the client has read the county position statement or that it has been translated to them.

The judge shall inform the parties that: the decision will not be issued the day of the hearing (except in cases of bench or stipulated decisions); that it will be based on information introduced during the hearing and the period after the hearing if the record is left open; the decision will be in writing and received in the mail; and the proposed decision may be reviewed by the others within the Department and if the Director disagrees with the proposed decision, they may overrule the judge.

Order of testimony shall be explained as well as the party's rights to testify, to ask questions, and to present any additional documents.

In cases where there is a possibility of criminal prosecution the client will be advised that testimony, documents and the hearing file can be used by the prosecutor and the tape recording may be subpoenaed. If they request postponement to obtain legal counsel it should be granted.

The issue(s) should be defined before testimony to establish what will be resolved by the hearing. This should also happen again at the end of the hearing.

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which

they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions. Calif. Welf & I. Code § 10958.1.

Oath

Testimony is given at the hearing under oath or affirmation, under penalty of perjury.

If a party or witness declines to take another or affirmation or to declare to be telling the truth, the judge will advise the person his statement will be given little weight because they are hearsay evidence and not testimony. MPP §22-049.3

The ALJ begins by explaining the hearing procedure, confirming issues to be decided at the hearing and administering oaths to everyone who plans to testify. Calif. Welf & I Code §§ 10958.1; MPP §§ 22-050.11

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions. MPP § 22-049.5; Calif. Welf. & I Code § 10958.1

Evidence

There are no strict rules of evidence and it is admissible if "it is the sort of evidence on which responsible person are accustomed to rely in the conduct of serious affairs." MPP § 22-050.2

Although court rules of evidence do not apply, witness may claim privilege under the Evidence Code. Cal. Evidence Code § 910-920

Orders

There are no orders issued at the hearing, except for aid paid pending. Any orders are within the decision. The decision is mailed to both parties four to six weeks after the hearing. The must be issued within 90 days of the hearing request unless the recipient waives the time restriction. MPP § 22-060.1

ATTACHMENT M

Internet Addresses

Administrative Law Judge's Training Notes at the Department of Social Services State Hearing Division, www.dss.cahwnet.gov/shd/notes.html

Western Center on Law & Poverty's CalWorks Manual,
www.wclp.org/advocates/library/calworks/index.html

Prior Hearing Decisions – Western Center on Law and Poverty
www.wclp.org/advocates/health/taskforce.html.

Forms for witness fees, subpoenas etc.
www.oah.dgs.ca.gov/Forms+and+Publications/Default.htm

Common terms related to hearing – California Dept. of Social Services
www.dss.cahwnet.gov/shd/terms.html