

## Managed Care Organization (MCO) Fair Hearing Process

The ***MCO fair hearing process*** is for KanCare members who are currently **receiving services**. KanCare members must complete the appeal process with their managed care organization (MCO) and be denied in order to submit a request for a state fair hearing.

### What is a State Fair Hearing?

- The state fair hearing is defined as an administrative hearing involving the presentation of evidence and argument before a presiding officer from the Kansas Office of Administrative Hearings (OAH) concerning an adverse determination. (Note: also referred to as a fair hearing.)
- A **Notice of Adverse Benefit Determination** letter is mailed to tell a KanCare member that there has been an adverse decision made regarding their KanCare services. A Notice of Adverse Determination is issued for all: terminations, suspensions, reductions, denials, etc.-The letter will tell the member that there is an option to appeal the action through your MCO. If that appeal resolution is not in your favor (MCO did not change their original decision), the member may then

- submit a request for a fair hearing within 120 calendar days from the date on the Notice of Appeal Resolution (plus three calendar days if the notice was mailed).
- The fair hearing process is done through the Office of Administrative Hearings (OAH) with the State of Kansas. It is an opportunity for the member to:
    - speak about his/her issue
    - present documentation that supports their case.
  - The member and the Medicaid state agency (representing the MCO) meet before a Presiding Officer that is an administrative law judge, who is an impartial individual. The Presiding Officer will enter an order based upon what is presented by you and by the agency at the hearing.
  - Most fair hearings are done on the phone as a conference call, but a member can request to have the hearing in person.
  - There is no fee required for a fair hearing, either on the phone or in person.

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## What is an expedited (fast) fair hearing and how does it work?

- You can ask for an expedited (fast) hearing if you have an urgent medical need.
- An MCO member/representative may submit a request for an expedited hearing within the 120 calendar days from the date of the notice of adverse benefit determination, plus three (3) calendar days to allow for mailing/sending.
- An MCO member must first qualify for an expedited appeal resolution in order to qualify for an expedited hearing.
- If there is a change in health situation after a fair hearing has been requested, it is acceptable to, at a later time, send in medical documents and a request to make the hearing case expedited.
- The Office of Administrative Hearings will review these requests as quickly as possible. They will approve or deny the request based on the documents submitted at the time of the request. If they approve the request, your hearing will be scheduled as quickly as possible. If they deny the request, your hearing will be scheduled in the usual amount of time.

- An expedited (fast) fair hearing cannot be done verbally. It must be in writing and documentation included to prove the need for a faster fair hearing process.

### **What adverse actions qualify for a fair hearing?**

- Denial or limited authorization of a requested service, including the type or level of service
- Reduction, suspension or termination of previously authorized services
- Failure to resolve grievances and appeals in a timely manner

## When do I file for a fair hearing?

- The member must complete the MCO's appeal process **before** making a request for a fair hearing.
- An MCO member/representative may submit a written request for a hearing within 120 calendar days from the date of the notice of adverse benefit determination/notice of action, plus 3 calendar days to allow for mailing/sending.
- If the MCO extends the timeframe for issuing an authorization decision, the Member can file a grievance with the MCO. Note: MCO are required to report on grievances to the Center for Medicare and Medicaid Services (CMS).
- If the fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the fair hearing was pending, the Contractor must authorize or provide the disputed services promptly.
- **DO NOT WAIT. Request the fair hearing right away.** You can always withdraw the request if you decide not to go forward with the fair hearing. They do not make exceptions for missed deadlines.

## How do I File a Fair Hearing?

- You can use the MCO Fair Hearing form below to fill out and send to the Office of Administrative Hearings.
- Call the MCO to request a fair hearing.
- Ask a representative of your choice to call or write a letter or send a copy of the MCO Fair Hearing form below to fill out and send to the Office of Administrative Hearings.

## What documentation do I need?

- Send a letter or the MCO Fair Hearing form to the Office of Administrative Hearings along with the Notice of Adverse Benefit Determination letter. Your letter should state that your MCO has denied your appeal and you want to file for a fair hearing.
- In your letter or on the form, explain why you are not satisfied with the decision and note the specific issue(s) for this hearing:
  - the change that has been determined by the managed care organization
  - why this should not be done and the problems it will cause
  - the effect it will have short and long-term on

the physical, mental and emotional well-being of the member.

- For HCBS member, get a copy of the **current** Person-Centered Service Plan (PCSP) (plan of care) and the **new** Person-Centered Service Plan with the changes and compare them by line, stating your case based on the changes (line by line.) For example, decreasing meal preparation from 8 hours/wk. to 4 hours/wk.; decreasing bathing from 6 hours wk. to 3 hours/wk. How will this impact the member short and long term?
- Have the healthcare individuals (doctors, nurses, LPN, physical therapists, home attendants, etc.) write something as well as the member. It will be helpful if the professionals know the specific things that are being denied and why. If it is not the Person-Centered Service Plan (plan of care) *hours* being reduced, note what specific services are being reduced so the professionals can help explain why those services are needed based on your issues/concerns.

## Where do I file a Fair Hearing?

- **Mail:** Office of Administrative Hearings  
1020 S. Kansas Ave.  
Topeka, Kansas 66612
- **Fax: 785-296-4848**
- If you want to request a fair hearing by phone, see the listing on the Medicaid Hearing form (at the bottom of the form on page 5-6).

## What happens to my services while I am filing a fair hearing? (Continuation of Services)

### Non-HCBS Services

For a member receiving continued services, the services will be continued until:

- The member withdraws the appeal or state fair hearing request.
- The member does not request an appeal and continuation of services on time.
- The member does not request a state fair hearing and continuation of services on time.
- A state fair hearing office issues a hearing decision adverse to the member.

- Continued services will end 10 calendar days following the mailing/set date of the notice of appeal resolution unless the member requests a state fair hearing.

### **Home and Community Based Services (HCBS):**

For a member receiving continued Home and Community Based Services (HCBS), the services will be continued until:

The member withdraws the appeal or state fair hearing request.

The member does not request an appeal on time or request a state fair hearing on time.

A state fair hearing officer issues a hearing decision adverse to the member.

Additionally,

- Continued services will be automatically continued for 123 calendar days following the date of the notice of appeal resolution to allow the member/representative time to request a state fair hearing.
- If a member/representative submits a request for a state fair hearing within 123 calendar days of the date of the notice of appeal resolution, the MCO

must continue the services until the date of the decision in the state fair hearing.

- If a member/representative fails to submit a request for a state fair hearing within 123 calendar days, continued services will end.
  - The period covered by the original authorization at the time of the authorization request..

### **What is the timeline for a Fair Hearing?**

- An MCO member/representative may submit a written request for a hearing within 120 calendar days from the date of the notice of adverse benefit determination/notice of action, plus 3 calendar days to allow for mailing/sending.
- The Office of Administrative Hearings will respond with a letter to the member/representative after receiving a request for a fair hearing.
- A fair hearing is typically set within 30-45 days after receiving a request, however this may vary depending on the workload of the Office of Administrative Hearings.
- There are usually requests for information and letters of notification that go to the member/representative, so it is very important to read each letter carefully that

comes from the Office of Administrative Hearings.

### Additional Fair Hearing Information:

- You should not be treated differently by your MCO or MCO Care Coordinator if you file a fair hearing.
- You may have an attorney represent you at the hearing. The attorney will be at your expense. If you hire an attorney, he or she must be licensed in the State of Kansas and enter their appearance on your behalf prior to the hearing. If you work with Kansas Legal Services or Disability Rights Center of Kansas, they do not charge a fee. ***The KanCare Ombudsman's office recommends members consider having a lawyer assist with preparing for the fair hearing and come to the fair hearing with them.***
- **Deadlines for fair hearing information will come by letter from the Office of Administrative Hearing. Be sure to read every letter from them thoroughly.**
- The ***most frequent mistake*** made by individuals during the process of preparing is failing to read the

notices and documents issued as part of the hearing process. Read everything you receive **very carefully**.

## Foster Care Children

- Child Welfare Contractors, not foster parents, submit appeals to the MCOs.
- Issues are usually resolved without a state fair hearing, since both groups are contractors of the state of Kansas.

## MCO Member Disenrollment or Changing an MCO

Normal enrollment timeframes without requiring a request for change are:

- No cause required during the first 90 days of initial enrollment (open enrollment period for new enrollees.)
- No Cause required during 60 days of re-enrollment for member (open enrollment period).
- Cause required for requests to change an MCO outside of member's open enrollment period.) See [Selecting/Changing MCO Fact Sheet](#) for more information.

The Medicaid program, not the MCOs, processes all requests for disenrollment (changing MCO) submitted by members. Denials of disenrollment requests may not be appealed to the MCO, but requests for state fair hearings may be submitted.

## Legal Services

### The Disability Rights Center of Kansas

The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency empowered by federal law to advocate for the civil and legal rights of Kansans with disabilities. DRC is the Official Protection and Advocacy System for Kansas and is a part of the national network of federally mandated and funded protection and advocacy systems.

#### Contact Information

214 SW 6<sup>th</sup> St., Suite 100

Topeka, KS 66603

Voice: (785) 273-9661

Toll Free Voice: (877) 776-1541

### Kansas Legal Services

Kansas Legal Services is a statewide non-profit organization dedicated to helping low-income Kansans meet their basic needs through the provision of essential legal, mediation and employment training services. Kansas Legal Services can assist individuals with cases involving health issues, housing, employment, juvenile issues (delinquent, termination of parental rights), income maintenance, Indian

laws, family issues, individual rights and consumer issues.

**Legal Assistance Toll Free Central Intake Line**

Phone: (800) 723-6953

Main Office: (785) 233-2068 (voice)

This document is created in cooperation with the Kansas Department of Health and Environment/Health Care Finance.



**Request for Medicaid Hearing  
Aetna, Sunflower, United Member Hearing  
Kansas Office of Administrative Hearings**

Date: \_\_\_\_\_

**I am requesting a hearing before an impartial hearing officer regarding my Medicaid services or benefits. I understand I may represent myself or use an attorney, relative, friend or other spokesperson.**

**All KanCare Health Plan beneficiaries must complete the appeal process with Aetna, Sunflower or United HealthCare before requesting a hearing if the health plan made the adverse decision.**

Member

\_\_\_\_\_

Date of Birth: \_\_\_\_\_

Phone: \_\_\_\_\_

Address:

\_\_\_\_\_



Representative (if applicable):

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Phone: \_\_\_\_\_

Representative's Address:

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Representatives should include their authorized representative form when submitting this form to the Office of Administrative Hearings.

Representative is (circle one):

a parent or relative, an advocate or friend, an attorney, a health care provider, a guardian, a conservator or other (please Specify): \_\_\_\_\_

I request a hearing to review the decision or action taken by: (circle one) Aetna, Sunflower, United

Date of Action Being Appealed:

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Please attach a copy of the notice about which you are appealing.



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## **Request for Medicaid Hearing Form (continued)**

Explain why you are not satisfied with the decision and send copies of any papers you think may help explain the problem.

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(Continue on attached page if necessary)

If you are enrolled with a health plan (Aetna, Sunflower, United) and you or your doctor wants a fast hearing because your health is at risk, you must complete an expedited (fast) appeal with your health plan first. If your health plan decides your health is not at risk, it will send you a letter telling you it will follow the regular appeal process time to make its decision.

Name of Person Requesting Administrative Hearing

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Name of Person Completing This Form

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Submitted Verbally \_\_\_\_\_ Written \_\_\_\_\_ (choose one)



**You may submit your fair hearing request by mail, fax or by telephone:**

**Mail:** Office of Administrative Hearings  
1020 S Kansas Ave.  
Topeka, KS 66612

**Fax:** Office of Administrative Hearings \_\_\_\_\_  
1-785-296-4848

(Keep a copy of the page that shows your fax was successful.)

**Telephone:** Aetna  
1-855-221-5656

Sunflower \_\_\_\_\_ 1-  
877-644-4623

United \_\_\_\_\_ 1-877-542-  
9238

This hearing request form can be found at  
[www.oah.ks.gov/Home/Forms](http://www.oah.ks.gov/Home/Forms)

## **RULES AND REGULATIONS RELATING TO FAIR HEARINGS**

1. K.S.A. 75-3306, as amended, provides that “The secretary ... shall provide a fair hearing for any person ... who appeals from the decision or final action of any agent or employee of the secretary”. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et. seq.
2. A dissatisfied individual or entity must request an administrative hearing in writing and sign it (except for food assistance where the request may be oral). This form may be used but it is not a requirement. The request for an administrative hearing should be returned to the local agency office or sent to the Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612. The individual or entity requesting the administrative hearing shall then be called an appellant and the party whose decision is appealed shall be called the respondent.
3. Written notice of the time and place of the hearing or prehearing shall be given by the Office of Administrative Hearings to the appellant and to the respondent at least ten days prior to the hearing.
4. The appellant may have a representative of his/her own choice at the hearing, along with the ability to have witnesses and produce documentary evidence relating to his/her appeal. Failure to participate in the scheduled hearing or any other matter scheduled regarding your appeal may result in your appeal being dismissed.

5. The hearing shall be conducted by a Presiding Officer from the Office of Administrative Hearings. (K.S.A. 75-37,121)
6. A recording shall be made of the hearing, and this recording shall be reduced to a transcript if requested for good cause shown by any of the parties to the hearing. If such a request is made, it will be the requesting party's responsibility to pay for the transcript.
7. A copy of the initial order of the Presiding Officer shall be mailed to the appellant and the respondent.
8. A request for administrative hearing shall be in writing (except in food assistance where the request may be oral) and received by the agency within 30 days (90 days for food assistance) from the date of the order or notice of action taken by the agency.
9. If an individual is in need of any special accommodation, in order to be involved in their hearing, they should notify the Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612.
10. The Office of Administrative Hearings does not accept any filings by e-mail without prior approval of the Presiding Officer or their designee.

This form taken from the Office of Administrative Hearings website at: [www.oah.ks.gov/Home/Forms](http://www.oah.ks.gov/Home/Forms).