

## Area Agency on Aging

### Grievance Process



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# POLICIES AND REQUIREMENTS

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## Introduction

Area Agencies on Aging (AAA) are governed by the mandates of the Older Americans Act. This law intends for AAAs to be the leader relative to all aging issues on behalf of all older persons in the Planning and Service Area [45CFR1321.53]. In California, the implementation of the Older Americans Act is outlined in Title 22, Division 1.8. The Marin County Area Agency on Aging was designated as a one-county Planning and Service Area by the Board of Supervisors in the late 1970s. The oversight of Marin's AAA is currently under the auspices of the Department of Health and Human Services, Division of Social Services, Office of Aging and Adult Services.

This document outlines the Marin County Area Agency on Aging's complaint resolution process. The purpose of this *Grievance Process Desk Manual* is to guide the Area Agency on Aging and the agencies that contract with the AAA on how to respond to and resolve complaints. The regulations that mandate the specific requirements of this process are cited throughout this document.

## Policy

Each Area Agency on Aging is required to establish a grievance process for the disposition of complaint by older individuals or persons authorized to act on behalf of older individuals against the AAA's programs and employees or volunteers of such programs [CCR 7400 (a) (1)]. The grievance process for both the AAA and service providers will contain the following: [CCR 7400 (a) (2) (A- C)]

1. Time frames which a complaint should be acted on
2. Written notification to complainant containing the following information:
  - Results of the review
  - Service providers process must contain a statement that complainant if unsatisfied with results may complain to the AAA
3. Complainants have a right to privacy. Only information relevant to the complaint may be released to the responding party without consent.

The Marin County Area Agency on Aging has an open door policy that encourages feedback regarding its programs and services. Clients, contractors, staff and volunteers are encouraged to

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provide feedback using open, honest and direct communication in an informal setting. When feedback rises to the level of a complaint, matters should be resolved at the lowest possible level.

## Notification Requirements

The Area Agency on Aging and its contracted service providers shall conform to the following requirements to inform and notify individuals of their complaint resolution process and policies:

1. The agency's Grievance Process must be posted in visible areas that are accessible to clients [CCR 7400 (a) (3) (A)].
2. If a substantial number of older adults served by the program are non-English speaking, the agency's Grievance Process must be posted in the primary language of these individuals [CCR 7400 (a) (3) (A)]. The Marin County AAA has determined that a substantial amount is **5%** of the client population served by the program.
3. Homebound clients must be advised of the agency's Grievance Process either orally or in writing upon contact with the individual.

## Required Information for Filing a Complaint

1. Complaints may involve, but are not be limited to, any or all of the following:
    - Amount of service
    - Duration of service
    - Denial of service
    - Discontinuation of service
    - Dissatisfaction with service
    - Dissatisfaction with service provider [CCR 7404 (d)]
  2. Complaints shall be addressed in writing to the director of the Area Agency on Aging. If the complainant cannot write, the AAA Program Coordinator will take the complaint orally and write it up for signature [CCR 7404 (b)].
  3. Complaints shall include all of the following information:
    - Complainant's name, mailing address, phone number, and email address if available
    - The service being reported
    - The name of the service provider
    - The names of all individuals involved
    - The issue of concern or dispute
    - The date, time, and place of occurrence
    - The names of any witnesses [CCR 7404 (c)]
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4. When appropriate, complainants may seek other remedies, such as presenting at an open meeting of the AAA governing board or advisory council. When the complaint is about an issue of professional conduct, the complainant shall be referred to the proper agency or licensing board [CCR 7400 (d)].

## RESOLVING CLIENT COMPLAINTS

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### Contracted Services

Service providers contracted by the Area Agency on Aging must establish a written grievance process for reviewing and attempting to resolve complaints of clients [CCR 7400 (a) (2)]. The Marin County AAA reviews and monitors its contractors' grievance policies. Contractors of the Marin County AAA shall follow the guidelines below to resolve complaints by or on behalf of clients served by the programs funded and administered by the AAA:

#### First Level of Resolution

- The first level of resolution is handled at the service provider level using the written grievance process and procedures established by the agency. Complaints should be investigated and answered **within 30 days** of receiving the complaint or a time set in the service provider policy, whichever is less [CCR 7402 (a) (1)].
- All complaints received by the California Department of Aging (CDA) for contracted services will be referred to the AAA. All complaints received by the AAA for contracted services will be directed to the contractor.

#### Second Level of Resolution

- Client complaints not resolved at the first level with the contractor may be referred to the Area Agency on Aging. The Area Agency on Aging will follow its Grievance Policy and abide by the appointed timeline identified in the policy to resolve the complaint.
  - Client request for an AAA administrative review of the complaint must be requested in writing and sent to the AAA Program Coordinator assigned to the contract.
  - The AAA Program Coordinator will respond to the complaint **within 10 business days** of the receipt of the formal complaint letter and attempt to informally resolve the issue.
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- If the complaint is not resolved with the AAA Program Coordinator, the next level of review is an informal meeting with the AAA Program Manager. The AAA Program Manager will perform the following:
  1. Schedule to meet with the complainant (by phone or in person) **within 15 business days** of receiving the request for a meeting
  2. Conduct any necessary follow-up
  
- **Within 10 business days** of the meeting with the complainant, the Program Manager will perform the following:
  1. Provide the complainant a written copy of the AAA Program Manager's decision.
  2. Inform the complainant of his or her right to request a formal administrative hearing before an impartial hearing officer or panel.
  3. Inform the complainant that the request for a hearing must be made in writing addressed to the AAA Director and must be made **within 30 days** of receipt of the AAA Program Manager's decision
  4. Instruct the complainant that the hearing request must include the reasons why he or she feels that the decisions of the contractor, the AAA Program Coordinator, and/or the AAA Program Manager regarding the complaint and the appeal are not warranted.

#### Final Level of Resolution

Any complainant dissatisfied with the results of the review conducted by the AAA Program manager will have **30 days** from the receipt of the decision to request a hearing. This request shall be made either orally or in writing to the director of the AAA [CCR 7406 (a)].

The AAA Program Manager and AAA Director will set up the hearing following the administrative process listed below: [CCR 7406 (b)]

- The hearing shall be set at least 30 days after the receipt of the request
  - The complainant and all interested parties involved will receive the date, time, and location of the hearing at least 14 days before the hearing date
  - The complainant has a right to be present or ask someone to act on their behalf including legal counsel
  - The hearing shall be conducted by an impartial hearing officer or panel
  - The hearing shall be conducted in an informal manner with testimony being restricted to the issues requiring resolution [CCR 7406 (d) (2) (A) (1-2)]
  - All parties shall have the right to the following:
    1. To be present at the hearing
    2. To present evidence and witnesses
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3. To examine witnesses and other sources of relevant information and evidence
  - The hearing shall be recorded verbatim either electronically or stenographically
  - Technical rules of evidence and procedure do not apply
  - All persons testifying shall be placed under oath or affirmation [CCR 7406 (a) - (b)]
  - The impartial hearing officer or panel will prepare a proposed decision based upon all relevant evidence presented and in consideration of the policies, procedures, regulations and laws governing the program no later than 30 days after the date the hearing was held [CCR 7406 (b) (1) (B) (5)]

At the minimum proposed decision shall contain all of the following:

- A description of each issue
- A statement as to whether the complaint was upheld or denied
- A citation of applicable laws and regulations

The proposed decision is forwarded to the director of the AAA unless the complaint is against the director. In that case, the proposed decision should be sent to the chairperson of the governing board [CCR 7406 (b) (1) (B) (6)].

No later than 30 days after receipt of the proposed decision, the AAA Director or Chairperson of the governing board will either adopt the proposed decision as the final decision or write a new final decision [CCR 7406 (b) (1) (B) (7)]. The decision shall be:

- Immediately transmitted to the parties involved
- Is final and not subject to further appeal
- If the appeal is upheld, follow up to ensure that remedies are implemented

## AAA Direct Services

Each AAA shall establish an informal administrative review process for the resolution of complaints received for services provided directly by the AAA [CCR 7402 (d)]. This informal administrative review is the first level of resolution for the AAA's direct services and will be conducted by the AAA Program Coordinator. Consult the AAA's Grievance Policy for a more detailed description of the process and the complaint resolution timeline. If the complaint is not resolved at the AAA Program Coordinator level, the complaint resolution process will be completed **within 45 days** and include the following.

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- Acknowledgement of the receipt of the complaint
- Inform the complainant of the complaint review process and timeline
- Conduct an impartial review within **10 business days** of receipt of the complaint. The complaint will be reviewed based on its merits and the verification of the violation of the rights, law, regulation, policy or ordinance cited on the complaint.
- Notify the complainant in writing of the results of the investigation, as well as his or her right to request a meeting with the AAA Program Manager
- Copy the AAA Director and Program manager on all correspondence.

## APPENDIX A

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### **Notice Regarding Adverse Determination and Possible Right to Appeal and Request a hearing with the California Department of Aging**

You have exhausted all Area Agency on Aging (AAA) Grievance process and appeal procedures. You may have a right to a state hearing with the California Department of Aging if the AAA decision is considered an Adverse Determination [22 CCR 7704]. The following are all the relevant code sections from Code of Regulations (CCR) Title 22:

#### 22 CCR § 7700 General Provisions

The Department shall provide an opportunity for a hearing only when both of the following conditions exist:

- (a) The issue to be appealed falls within one of the categories listed in this article.
- (b) All of the procedures specified in this article are strictly followed.

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3025(b) (5) (C) and 3027(a) (5); and 45 CFR 1321.29(c) and 1321.35(a).

#### 22 CCR § 7702 Definitions

- (a) “Adverse determination” means a determination or decision by the Department or an AAA that corresponds to one of the issues in section 7704.
  - (b) “Appellant” means an entity who is appealing an adverse determination.
  - (c) “Applicant service provider” means an entity, in response to a solicited proposal by an AAA to provide services that submits an application to provide services under a PSA plan. An entity
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that submits an unsolicited application to provide services is not an applicant under this section and does not have a right to request a hearing.

(d) “Departmental Hearing Officer” means a staff member of the Department who presides over a hearing when there is an appeal.

(e) “Existing Service Provider” means an entity that presently is under contract or sub grant with an AAA to provide services under an approved Area plan.

(f) “External Hearing Officer” means an attorney who is retained by the Department to preside over a hearing when there is an appeal and who is not employed by the Department in any other capacity.

(g) “Respondent” means the entity against which the appeal is taken, either the Department or an AAA.

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3002(17), 3002(40), 3022(2), 3025(b) (5) (C) and 3027(a) (5); and 45 CFR 1321.29(c) and 1321.35(a).

#### 22 CCR § 7704 Adverse Determinations

Only the actions specified below shall be considered adverse determinations that are subject to a hearing upon request:

(a) The Department's denial of an application for designation as a PSA from any of the following:

- (1) A unit of general purpose local government.
- (2) A region within the State recognized for area wide planning.
- (3) A metropolitan area.
- (4) An Indian reservation(s).

(b) Any of the following actions taken by the Department against an AAA:

- (1) The disapproval of its Area plan or plan amendment.
- (2) The withholding, suspension, or termination of its funds, including cancellation of its contract.
- (3) The revocation of its designation as an AAA.

(c) Any of the following actions taken by an AAA once the administrative remedies through the AAA have been exhausted:

- (1) A reduction in the level of funding to an existing service provider during a contract or sub grant period. However, a reduction directly attributable to a reduction in the of funding to AAAs by the State or federal government shall not be considered an adverse determination.
- (2) A cancellation or termination of an existing service provider's contract or sub grant prior to the contractor's or subgrant's expiration date.
- (3) The denial of an application to provide services from an applicant service provider when any of the following exist:
  - (A) The presence of a conflict of interest, real or apparent, as specified in 45 CFR 92.36(b)(3).
  - (B) The occurrence of a procedural error or omission, such as the failure of an AAA to include a federal mandate in its solicitation request.
  - (C) The lack of substantial evidence to support an AAA's action.

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3025(b)(5)(C), 3026(e) and 3027(a)(5); and 45 CFR 1321.29(c) and 1321.35(a).

#### 22 CCR § 7706 Notice of Adverse Determination

A notice of adverse determination from the Department or an AAA shall meet all of the following conditions:

(a) Be in writing and delivered by either of the following methods:

- (1) Faxed with a mailed follow-up original.
- (2) Certified or overnight mail, return receipt requested.

(b) Describe the grounds for the adverse determination in sufficient detail to enable the entity to respond.

(c) Include all of the following information:

- (1) The reason(s) for the adverse determination.
- (2) The evidence on which the adverse determination is based.
- (3) The effective date of the adverse determination.
- (4) The legal or contractual citation upon which the adverse determination is based.
- (5) A citation to, or copy of, the hearing process to be followed, including the entity's right to a hearing and the time period in which to request a hearing.
- (6) In addition, an AAA shall include in its final notice of adverse determination to an existing service provider or an applicant service provider a statement that all appeal procedures have been exhausted.

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3025(b)(5)(C) and 3027(a)(5); and 45 CFR 1321.29(c) and 1321.35(a).

#### 22 CCR § 7710 Deadline for Requesting a Hearing

(a) An existing service provider or applicant service provider shall submit its written request for hearing to the Department within 30 calendar days from the date of receipt of the AAA's final adverse determination.

(b) All other appellants shall submit their written request within 30 days of receipt of the Department's notice of adverse determination.

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3025(b)(5)(C) and 3027(a)(5); and 45 CFR 1321.29(c) and 1321.35(a).

#### 22 CCR § 7712 Granting or Denial of a Request for a Hearing

(a) Within 5 calendar days of receipt of a request for a hearing, the Director shall review the request and take one of the following actions:

(1) Grant the request, if the appellant has followed all procedures and the Director has determined the issue is one of those specified in section 7704, and appoint one of the following to preside over the hearing:

(A) An external hearing officer when the appellant is appealing an adverse determination by the Department.

(B) A departmental hearing officer(s) when the appellant is appealing an adverse determination by an AAA.

(2) Deny the request if the appellant has not followed all procedures or the Director has determined that the issue is not one of those specified in section 7704. A written denial explaining the reasons for the action shall be mailed to the appellant.

(b) The granting of a hearing shall not stay the effective date of the proposed adverse determination until a final decision is rendered, unless either of the following circumstances exist:

(1) Federal law or regulation requires that the action be stayed.

(2) The Department, based upon the particular situation determines that a stay is warranted. In making its determination, the Department shall consider such factors as the reasons for the adverse determination and the effect of the adverse determination on the provision of services to older individuals residing in the PSA.

(c) The hearing officer, in conjunction with the Department shall:

(1) Unless a later date is mutually agreed upon by all parties, schedule the hearing for no later than either of the following:

(A) Ten calendar days from the date the request for a hearing is granted by the Director, when there is an immediate threat to the public's health, safety or general welfare.

(B) Twenty calendar days from the date the request for a hearing is granted by the Director, when there is no immediate threat to the public's health, safety or general welfare.

(2) Provide written notice of the hearing via fax, followed by a mailed original, or certified or overnight mail, return receipt requested, to the appellant and the respondent. The notice of hearing shall specify the location, date, and time of the hearing.

22 CCR § 7714 Hearing Officer Function and Authority

(a) The hearing officer's primary function shall be to determine either, or both, of the following. Whether the:

(1) Adverse determination being appealed violates the provisions of the Area Plan, department or area agency policies, contract, or grant terms, rules, laws, regulations, or procedural due process.

(2) Selection of a bidder was arbitrary, capricious, grossly erroneous, or an abuse of discretion.

(b) The hearing officer's authority and power shall include, but not be limited to, all of the following:

(1) Holding conferences, including pre-hearing conferences, to settle, simplify, or fix the issue in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings.

(2) Requiring parties to state their position with respect to the various issue(s) in the proceeding.

(3) Directing the parties to exchange their evidentiary exhibits and witness lists, and narrative summaries of their expected testimony, either prior to or during the hearing.

(4) Determining the order of evidentiary presentation.

(5) Deciding procedural matters.

(6) Regulating the course of the hearing, including the location, date, and time.

(7) Examining witnesses.

(8) Fixing the limits for submission of written documents.

(9) Taking any action authorized by this hearing procedure.

(10) Recording the hearing.

(c) The hearing officer shall do all of the following:

(1) Conduct a fair and impartial hearing.

(2) Take all necessary actions to avoid delay.

(3) Maintain decorum.

(d) Strict rules of evidence shall not be applicable to hearings pursuant to this article. However, the scope of testimony shall be relevant to the issue(s) identified in the written request for hearing.

(e) The Department may terminate the hearing process if the parties negotiate a written agreement which resolves the issue(s).

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3025(b)(5)(C) and 3027(a)(5); and 45 CFR 1321.29(c) and 1321.35(a).

22 CCR § 7716 Decision of the Hearing Officers

(a) The hearing officer(s) shall prepare a written proposed decision which shall include findings of fact and conclusions based thereon and a recommended proposed decision to the Director. The proposed decision shall be forwarded to the Director within 10 calendar days from the close of the hearing.

(b) The Director shall review and consider the proposed decision and take one of the following actions:

(1) Adopt the proposed decision as the final decision.

(2) Modify the proposed decision as the final decision.

(3) Write a new final decision.

(4) Remand the proposed decision to the hearing officer(s).

(c) The Director shall notify the parties in writing by certified or overnight mail, return receipt requested, of the final decision within ten calendar days from the date that the proposed decision was submitted to the Director.

(d) Each final decision shall include either of the following, as appropriate:

(1) A statement that the Director's decision is final and no other administrative remedies are available.

(2) An explanation of the appellant's right pursuant to federal law and regulation to appeal the decision to the Commissioner or Assistant Secretary.

Note: Authority cited: Sections 9102 and 9105, Welfare and Institutions Code. Reference: 42 U.S.C. 3025(b)(5)(C) and 3027(a)(5); and 45 CFR 1321.29(c) and 1321.35(a).

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