

Service Provider/ Contractor Complaint Resolution Process and Desk Manual



Lee Pullen, Director
PSA 5 –Marin County Area Agency on Aging
10 North San Pedro Road
San Rafael, CA 94903
Tel: 415-457-4636
Fax: 415-473-6465

POLICIES & REQUIREMENTS

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 for service providers and contractors. The purpose of this *Complaint Resolution Process and Desk Manual* is to elucidate for service providers and contractors the process the AAA will follow to handle complaints. This manual also provides guidance to AAA staff on how to respond to and resolve complaints from services providers and contractors. The regulations that mandate the specific requirements of this process are cited throughout this document.

Policy

Each Area Agency on Aging (AAA) shall have a written complaint resolution process for its contractors and service provider applicants who are dissatisfied with an action taken by the AAA [CCR 7250(b) (3) (A-C)]. AAA contractors and applicant service providers are encouraged to provide feedback using open, honest, and direct communication with the AAA in an informal setting. When feedback rises to the level of a complaint, matters should be resolved at the lowest possible level using the following process:

The Service Provider Complaint Process does not include any formal hearings. There are three levels:

1. A meeting with the Program Coordinator/Contract Monitor
2. A meeting with the AAA Program Manager who makes a decision
3. A meeting with the AAA Director who reviews the decision

A service provider may be entitled to a state hearing if the complaint is deemed to be an **adverse determination**. Adverse Determination means a determination or decision by the County or the AAA that corresponds to one of the issues mentioned in CCR Division 1.8 Section 7702 -7704. Every contractor or applicant service provider must submit a written request for a state hearing to the California Department of Aging within 30 days of the receipt of the AAA's final decision on the complaint if it feels it to be an adverse determination.

RESOLVING SERVICE PROVIDER/ CONTRACTOR COMPLAINTS

First Level of Resolution: Meeting with the AAA Program Coordinator

- The assigned AAA Program Coordinator shall set-up a meeting with the service provider **within ten days** of receiving the complaint to gather the information about the complaint and attempt to resolve the issue informally. The AAA Program Coordinator may consult with the AAA Program Manager on getting the issue resolved at the lowest level.
- If the complaint is not resolved informally to the satisfaction of the service provider, the AAA Program Coordinator will ask the service provider to do the following:
 - a. Put the complaint in writing
 - b. Submit the formal complaint **within ten days** of meeting with the AAA Program Coordinator. The formal complaint shall be addressed to the AAA Program Manager for review.
 - c. Include on the formal complaint letter a citation of the regulation or program policy that supports the complaint
- The Program Coordinator must file all documentation and correspondence associated with the complaint with a narrative and timeline of efforts made to resolve the complaint
- The Program Coordinator will debrief the AAA Program Manager of the complaint resolution proceedings that have taken place thus far and provide copies of all documentation and correspondence associated with the complaint.

Second Level of Resolution: Meeting with the AAA Program Manager

- Upon receipt of the formal complaint letter, the AAA Program Manager will review the merits of the claims raised in the service provider's complaint by examining the laws, regulations, or policies cited in the letter. Documents and correspondence associated with the complaint will also be reviewed.
- The AAA Program Manager will set up a meeting with the contractor or applicant service provider **within 10 business days** of the receipt of the formal complaint letter. The

AAA Program Manager will discuss the complaint at length with the contractor or applicant service provider.

- The AAA Program Manager will render a decision in writing and send it to the service provider **within 10 business days** of the meeting with the complainant. The following will be included in the AAA Program Manager's decision letter:
 1. The service provider has an option to ask that the decision be reviewed by the AAA Director
 2. The request for the AAA Director review must be submitted in writing t **within 10 business days** of receiving the AAA Program Manager's decision

Last Level of Resolution: Meeting with the AAA Director

Upon notification that the service provider has requested a review of the AAA Program Manager's decision on the formal complaint filing, the AAA Director shall:

- Review the AAA Program Manager decision **within 10 business days** of the receipt of the letter requesting a meeting with the AAA Director
- Seek legal consultation, as necessary, regarding the complaint and request for review
- Render a final decision in writing **within 30 business days** from the receipt of the request for the AAA Director's review. Include a Notice Regarding Possible Adverse Determination and Right to Appeal and attached code sections (Appendix A). These code sections contain the information regarding a request for a hearing with the California Department of Aging.
- Send a copy of the AAA Director decision letter to the AAA Program Manager and AAA Program Coordinator.

APPENDIX A

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) complaint resolution 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 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).