

**1.3 Grievances / Notices of Action / Appeals / Affirmative Action**

**1.3.1 Authorities (as amended)**

- For Medicaid Programs, KSA 77-601 et seq., 75-3304, 75-3306, and 75-5945 and KAR 30-7-65, 30-7-66, 30-7-67, and 30-7-68;
- For Older Americans Act (OAA) 306(a)(10) and 307(a)(5), KSA 77-601 et seq. and 75-5908, and KAR 26-4-1 et seq.; and
- For State Funded Programs KSA 77-601 et seq. and 75-5908, and KAR 26-4-1 et seq.

**1.3.2 Definitions**

**Customer:** Any individual that requests or receives services, information, or assistance from the Kansas Department on Aging (KDOA), an Area Agency on Aging (AAA)/Case Management Entity (CME), or contracted providers.

**Notice of Action (NOA) (KDOA 904 form):** Written notification to a customer, provider, or other authorized person of an action taken or to be taken.

**Adequate NOA:** An NOA that is sent prior to the action occurring.

**Timely NOA:** An NOA that is sent at least ten (10) clear calendar days before the effective date of an adverse action.

- Clear days means neither the effective date of action nor the mailing date shall be considered in determining the ten-day period.
- For example: an NOA that closes the case effective on the first day of the following month shall be mailed no later than the 20th of the month in 31 day months or the 19th of the month in 30 day months to be considered timely.

**1.3.3 Grievance Procedure Requirements (OAA only)**

- A. Each AAA shall establish a written grievance procedure for customers who are dissatisfied with or denied OAA services.
- B. During the initial implementation of OAA services provided in the home, the customer or his or her representative must receive the AAA's written grievance procedure.
- C. Congregate meal providers are not required to give a copy of the grievance procedure to each customer. The written grievance procedure shall be posted in clear view for all customers.
- D. Legal services providers shall provide the written grievance procedure upon initial contact with the customer.

**1.3.3 (cont.)**

- E. Transportation providers shall provide the written grievance procedure before or upon the customer's initial use of transportation services.
- F. Once the AAA has made a determination regarding the grievance, the AAA must send an NOA to the customer in accordance with subsection 1.3.5.

**1.3.4 Customer Rights and Responsibilities (All programs)**

- A. The customer Rights and Responsibilities form (SS-12) shall be included with each NOA.
- B. All customers or their representatives shall be provided the Rights and Responsibilities form (SS-12) when the following occur:
  - 1. The applicant's initial determination or redetermination of eligibility for services provided in the home has been made;
  - 2. The applicant or customer is sent an NOA; or
  - 3. The applicant or customer has inquired about his or her rights and responsibilities.
- C. State General Fund (SGF) and OAA service providers shall also provide the Rights and Responsibilities form (SS-012) to customers in the following circumstances:
  - 1. Congregate meal providers shall make the form available to the customer upon request;
  - 2. Home delivered meals providers shall provide the form before or upon the delivery of the customer's first home delivered meal;
  - 3. Legal services providers shall provide the form upon initial contact with the customer; or
  - 4. Transportation providers shall provide the form before or upon the customer's initial use of transportation services.

**1.3.5 Notice of Action Requirements (All programs)**

- A. The originator of the NOA shall send a copy of the NOA and the Rights and Responsibilities form (SS-12) to the customer, his or her legal representative (if any), and all providers affected by the change. A copy of the NOA shall be maintained as part of the customer's case file.

**1.3.5 (cont.)**

**B. Required Elements**

1. For all programs, NOAs sent to customers shall contain, at a minimum, the following information:
  - a. The customer's name;
  - b. A description of the action to be taken;
  - c. The effective date of the action;
  - d. The citation(s) of the rule, policy, or statute upon which the action is based;
  - e. The date the notice was sent;
  - f. A note of who is copied on the NOA; and
  - g. The customer Rights and Responsibilities form (SS-12), which contains information regarding the right to appeal the decision, shall be included with the NOA.
  
2. For the Home and Community Based Services for the Frail Elderly (HCBS/FE) program, NOAs sent to customers shall also contain the following:
  - a. The customer's Medicaid identification (ID) number;
  - b. The Targeted Case Manager's (TCM's) name, address, and telephone number;
  - c. All waived services, with details, for initial eligibility determination and annual eligibility redetermination (e.g., hours per day, hours per week, etc.);
  - d. The affected waived services when plan of care (POC) updates occur; and
  - e. The customer's client obligation (if applicable).

**C. Adverse Actions**

1. Adverse actions are actions the AAA/CME intends to take to discontinue, terminate, suspend, or reduce service. Adverse actions include, but are not limited to, the following:
  - a. The applicant or customer is determined ineligible for the program he or she is requesting or receiving;
  - b. The customer is denied a service;
  - c. The customer will not receive the quantity of service units he or she has requested or previously received; or
  - d. The customer's case will close.
  
2. Regardless of program funding type, a timely NOA (10 days) shall be sent when an adverse action is to be taken.

**1.3.5 (cont.)**

**D. Other Actions**

1. Under the following circumstances, Medicaid and/or State Funded customers shall be sent an adequate NOA for the following actions:
  - a. The customer requests an action to be taken, and that request is noted on the NOA implementing that action. If the action is adverse:
    - i. implement the service change to begin on the date the customer specifies; and
    - ii. change the Kansas Aging Management Information System (KAMIS) POC with an effective date 10 working days after the implementation date;
  - b. The customer is determined eligible for the program he or she is requesting or receiving;
  - c. The customer has a permanent change in case manager; or
  - d. The customer's services are being implemented, changed, or other service-related changes have occurred which are not adverse and are reflected on the POC (i.e., change in service units, service transfers to another provider, county, or program, client obligation, etc.).
2. Upon receiving notice that a customer's service(s) has been interrupted for hospitalization, admission to a nursing facility, or any other reason that the customer is not available to receive services, the AAA/CME shall send an NOA, with start and end dates. If the end date is not known at the time of the initial NOA, a second NOA must be sent to reinstate services.
3. Upon receiving notice of the customer's death, the AAA/CME shall send an NOA to the customer's legal representative and providers that the customer's case is being closed.
4. If an OAA customer files a grievance with the AAA regarding OAA services for an action other than those adverse actions in Section 1.3.5.C, and the AAA has made a determination regarding the grievance, an adequate NOA shall be sent by the AAA informing the customer of the determination.
5. Failure by the AAA/CME to notify a provider of a customer's change in status may result in an overpayment and subsequent recoupment to that provider.
6. A POC shall be authorized in KAMIS or an effective dating request verified prior to the NOA being sent. If the CME authorizes services without appropriate authorization from KDOA, the CME will be responsible for payment to the provider(s) for services rendered prior to the KDOA approval date.

**1.3.6 Appeals**

**A. Right to a Fair Hearing**

A customer has the right to a fair hearing if he or she disagrees with an action or decision regarding his or her case. The customer Rights and Responsibilities form (SS-12) contains the customer's right to appeal and additional appeal information.

**B. Continuation of Assistance for Medicaid Customers** (excerpts from KAR 30-7-66)

1. If the customer requests a hearing within 10 days of the NOA mailing, services shall not be suspended, reduced, discontinued, or terminated, (but are subject to recovery by the agency if its action is sustained), until an initial decision of the hearing officer is rendered in the matter, unless:
  - a. The request for a fair hearing concerns a discontinued program or service;
  - b. A determination is made by the hearing officer that the sole issue is one of federal or state law, regulation or policy, or change in federal or state law, regulation or policy and not one of incorrect grant computation; or
  - c. A change affecting the customer's assistance occurs while the hearing decision is pending and the customer fails to request a hearing after notice of the change.
2. The originator of the NOA shall promptly inform the customer, in writing, if service is to be continued or discontinued pending the hearing decision.
3. In any case where action was taken without timely notice, if the customer requests a hearing within ten (10) days of the NOA mailing, and the agency determines that the action resulted from other than the application of federal or state law or policy or a change in federal or state law, assistance shall be reinstated and continued until a decision is rendered in the matter except as set forth in (1) (a), (b), or (c), above.

**C. Continuation of Assistance for State General Funded Programs**

If the customer requests a hearing within ten (10) days of the NOA mailing, services shall not be suspended, reduced, discontinued, or terminated, (but are subject to recovery by the agency if its action is sustained), until an initial decision of the hearing officer is rendered in the matter, unless it is a situation involving immediate danger to the public's health, safety, or welfare (see KAR 26-4-1(b)(2)).

**D. KDOA and the AAA/CME/Contracted Provider shall have separate roles during the appeal process.**

1. KDOA's Role:

**1.3.6.D.1 (cont.)**

- a. KDOA shall be responsible for presenting the case in initial defense of the action being appealed.
  - b. KDOA shall prepare the Appeal Summary, and shall, in all respects, represent the contractor during the appeal.
2. AAA/CME/Contracted Provider Role:
- a. The AAA/CME/Contracted Provider shall fully cooperate and assist KDOA in such defense, and participate in the appeal process as needed.
  - b. The AAA/CME/Contracted Provider shall provide in a timely manner to KDOA access to any witnesses and/or documents pertinent to the case in order to help KDOA prepare for and defend the appeal.
  - c. A component of case management is to assist the customer with the appeal process, as requested.
  - d. The AAA/CME/Contracted Provider is not prohibited from explaining how a customer may seek review of a program decision or from providing an appropriate form for the customer to use in requesting a hearing.
  - e. During the hearing, the customer may be represented by any person or attorney as long as the representative is not the AAA/CME/Contracted Provider.
3. Appeals Above the Administrative Level:
- a. To the extent permitted by law, the AAA/CME/Contracted Provider shall retain the right to appeal, pursuant to KAR Article 26-4 and the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (KSA 77-601 et seq., as amended), any final order or decision rendered at the administrative agency level which adversely affects the AAA/CME/Contracted Provider's interests and which KDOA decides not to appeal.
  - b. The AAA/CME/Contracted Provider shall be responsible for presenting its own case on appeal and KDOA shall be responsible for assisting the AAA/CME/Contracted Provider by providing copies of documents for use at the District Court level, and, if the District Court orders additional discovery, by making employees available to testify as witnesses.
  - c. KDOA has the right to take whatever action is necessary to protect its interests while the AAA/CME/Contracted Provider makes its appeal.

**1.3.7 Affirmative Action**

Organizations receiving funds from KDOA must follow the letter and spirit of the Kansas Act Against Discrimination of 1953, the Americans With Disabilities Act of 1990, the Civil Rights Act of 1964 and the Rehabilitation Act of 1973, as amended. Organizations must have written policies for the above Acts adopted by a formal action of their governing body that are available for their employees and the public.