

KANSAS MEDICAID STATE PLAN

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30-7-64

30-7-64. Definitions. (a) "Appellant" means an individual or entity that has requested a fair hearing from an agency decision affecting the individual or entity.

(b) "Applicant" means an individual who has applied for or requested assistance or benefits from a program administered by the agency.

(c) "Recipient" means an individual who is receiving assistance or benefits from a program administered by the agency. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-65 (1)

30-7-65. Notice to recipients of intended action. (a) (1)
"Adequate notice" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific policies supporting the action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance is continued if a hearing is requested.

(2) "Timely" means that the notice is mailed at least 10 days, including Saturdays, Sundays and legal holidays, before the date upon which the action would become effective.

(b) When the agency intends to take action to discontinue, terminate, suspend, or reduce assistance, timely and adequate notice shall be given by the agency, except as set forth in subsection (c) of this regulation.

(c) Under the following circumstances, timely notice shall not be required, but an adequate notice shall be sent by the agency not later than the date of action :

(1) when the agency has factual information confirming the death of a recipient or of the ADC payee and there is no relative available to serve as a new payee;

(2) when the agency receives a clear written statement signed by a recipient that the recipient no longer wishes assistance or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, an understanding that termination or reduction of assistance will be

30-7-65 (2)

the consequence of supplying the information;

(3) when the recipient has been admitted or committed to an institution, and further payments to that individual are not authorized by program regulations as long as the person resides in the institution;

(4) when the recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(5) when the recipient's whereabouts are unknown and agency mail directed to the recipient has been returned by the post office indicating no known forwarding address. The check shall, however, be made available to the recipient if the recipient's whereabouts become known during the payment period covered by a returned check;

(6) when the agency has established that a recipient has been accepted for assistance in a new jurisdiction;

(7) when a child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by the child's legal guardian;

(8) when a change in the level of medical care is prescribed by the recipient-patient's physician;

(9) when a special allowance granted for a specific period is terminated and the recipient was informed in writing at the time the allowance was granted that it would automatically terminate at the end of the specified period;

(10) when the agency takes action because of information the recipient furnished in a monthly status report or because the

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recipient has failed to submit a complete or a timely monthly status report without good cause; or

(11) when the recipient is disqualified due to fraud through:

(A) a court of appropriate jurisdiction;

(B) a disqualification hearing process in accordance with K.A.R.

30-7-102; or

(C) waiver of an administrative disqualification hearing in accordance with K.A.R. 30-7-103.

(d) This regulation shall take effect on and after January 1, 1997. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended July 1, 1991; amended Jan. 1, 1997.)

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50-7-66 (1)

50-7-66. Continuation of assistance. (a) If the recipient requests a hearing within the timely notice period as required by K.A.R. 50-7-65, assistance shall not be suspended, reduced, discontinued, or terminated, (but is 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:

(1) The request for fair hearing concerns the suspension of program payments to a provider or the termination of a provider from program participation;

(2) the request for a fair hearing concerns a discontinued program or service;

(3) 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

(4) a change affecting the recipient's assistance occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change.

(b) The agency shall promptly inform the recipient in writing if assistance is to be discontinued pending the hearing decision.

(c) In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of federal or

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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 (a)(1), (2), (3), or (4). The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

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30-7-67

30-7-67. Administrative hearings section, hearing officer.
The administrative hearings section shall administer the agency's
fair hearing program. The effective date of this regulation
shall be July 1, 1989. (Authorized by K.S.A. 75-3304;
implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec.
302; effective July 1, 1989.)

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30-7-88

30-7-88. Request for fair hearing. (a) Unless preempted by federal law, a request for fair hearing shall be in writing and received by the agency within 30 days from the date the order or notice of action is mailed. Pursuant to K.S.A. 1988 Supp. 77-631, an additional three days shall be allowed if the notice or order is mailed.

(b) A request for fair hearing involving food stamps shall be received by the agency within 90 days from the date the notice of action is mailed. Pursuant to K.S.A. 1988 Supp. 77-631, an additional three days shall be allowed if the notice or order is mailed.

(c) The freedom to request a fair hearing shall not be limited or interfered with by the agency. The effective date of this regulation shall be January 1, 1990. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1989, Ch. 283, Sec. 21; effective July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990.)

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30-7-68

30-7-68. Request for fair hearing. (a) Unless preempted by federal law, a request for fair hearing shall be in writing and received by the agency within 30 days from the date of the order or notice of action. Pursuant to K.S.A. 77-531, an additional three days shall be allowed if the notice or order is mailed.

(b) A request for fair hearing involving food stamps shall be received by the agency within 90 days from the date of the notice of action. Pursuant to K.S.A. 77-531, an additional three days shall be allowed if the notice or order is mailed.

(c) The freedom to request a fair hearing shall not be limited or interfered with by the agency. The effective date of this regulation shall be January 2, 1991. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended Jan. 7, 1991.)

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30-7-69

30-7-69. Pre-appeal administrative remedies. (a) A pre-appeal administrative remedy is any procedure or process, the purpose of which is to encourage settlement or otherwise resolve the dispute before appeal to the administrative hearings section.

(b) Pre-appeal administrative remedies are to be encouraged to promote the resolution of disputes between the parties involved. Pre-appeal administrative remedies may also be used by the parties to narrow and define the issues to be appealed to the administrative hearings section. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-1104; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 303; effective July 1, 1989.)

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30-7-70

30-7-70. Agency's review of decision. (a) Upon receipt of notice that a request for fair hearing has been made, the agency shall review its action or decision. Upon reconsideration, the agency may amend or change its action or decision before or during the hearing.

(b) If a satisfactory adjustment is reached prior to the hearing, the agency shall submit a report to the hearing officer, in writing, but the appeal shall remain pending until the appellant submits a signed, written statement withdrawing the appellant's request for fair hearing. If the appellant fails to timely submit a signed, written statement withdrawing the request for fair hearing, the hearing officer may dismiss the request for fair hearing. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

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30-7-71

30-7-71. Venue. (a) Fair hearings for applicants or recipients shall be held in the social and rehabilitation services' administrative area in which the applicant or recipient resides unless another site has been designated by the hearing officer or the hearing is conducted pursuant to the provisions of K.A.R. 30-7-72.

(b) Fair hearings for other appellants shall be held in Topeka, Kansas unless another site has been designated by the hearing officer or the hearing is conducted pursuant to the provisions of K.A.R. 30-7-72. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 386, Sec. 302; effective July 1, 1989.)

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30-7-72

30-7-72. Telephone hearings. The hearing officer may conduct the fair hearing or any prehearing by telephone or other electronic means if each participant in the hearing or prehearing has an opportunity to participate in the entire proceeding while the proceeding is taking place. A party may be granted a face to face hearing or prehearing if good cause can be shown that a fair and impartial hearing or prehearing could not be conducted by telephone or other electronic means. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

TN#MS-91-42 Approval Date OCT 05 1992 Effective Date OCT 01 1991 Supersedes TN# New

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30-7-73

30-7-73. Summary reversals. The hearing officer may, without notice or hearing, summarily reverse the agency's decision or action in the matter if it is clear from the agency's summary that the agency's decision or action was incorrect. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

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30-7-74

30-7-74. Independent medical, psychiatric and psychological examinations. When the hearing involves medical, psychiatric or psychological issues, the hearing officer may order on the hearing officer's own motion that an independent medical, psychiatric or psychological assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary. If a party requests the independent assessment, that party shall pay the costs incurred in obtaining the assessment. If the party requesting the assessment signs a poverty affidavit, the independent medical, psychiatric or psychological assessment shall be performed at agency expense. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1983, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-75. Agency's summary. Within 15 days after notification of the request for fair hearing the agency shall furnish the appellant and the administrative hearings section with a summary setting forth the following information:

(a) Name and address of the appellant;

(b) a summary statement concerning why the appellant is filing a request for a fair hearing;

(c) a brief chronological summary of the agency's action in relationship to the appellant's request for a fair hearing;

(d) a statement of the basis of the agency's decision;

(e) a citation of the applicable policies relied upon by the agency;

(f) a copy of the notice which notified appellant of the decision in question;

(g) applicable correspondence; and

(h) the name and title of the person or persons who will represent the agency at the hearing. The effective date of this regulation shall be July 1, 1991. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended July 1, 1991.)

30-7-76. Transcripts. (a) A transcript of the hearing may be prepared if requested by an appellant, the agency, the hearing officer, the state appeals committee or the secretary. The party requesting the transcript or review of the hearing officer's decision shall pay any costs associated in obtaining a transcript.

(b) If an appellant requests a transcript, the agency shall pay the costs of transcribing the recording if the appellant signs a poverty affidavit.

(c) If a transcript is prepared, the reporter shall sign the following certification on all copies: "This is to certify that

_____ conducted a
Name of Hearing Officer
hearing on the application of _____
Name of Appellant
in _____ county, state of Kansas, on _____
Date
at _____ and that the foregoing is a true and
correct transcript of the record of the hearing."

Signature of Reporter

The effective date of this regulation shall be January 2, 1992.
(Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306;
effective July 1, 1989; amended Jan. 2, 1992.)

30-7-77. Rehearing. (a) Any party, within 15 days after service of the hearing officer's decision, may file a petition for rehearing with the administrative hearings section, stating the specific grounds upon which the rehearing of the hearing officer's decision is requested.

(b) A rehearing may be granted to either party on all or part of the issues when it appears that the rights of the party are substantially affected because:

- (1) Of an erroneous ruling of the hearing officer;
- (2) the decision in whole or in part is contrary to the evidence; or
- (3) of newly discovered evidence which the moving party could not with reasonable diligence have discovered or produced at the hearing.

(c) The filing of a petition for rehearing is not a prerequisite for review at any stage of the proceedings. The filing of a petition for rehearing does not stay any time limits or further proceedings that may be conducted under the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto, or any other provision of law. The effective date of this regulation shall be January 2, 1992. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Jan. 2, 1992.)

30-7-78. State appeals committee. (a) The secretary may appoint one or more state appeals committees to review the decisions or orders of hearing officers.

(b) The committees shall consist of three impartial persons.

(c) Decisions of the committee shall be by majority vote.

(d) The record, as defined in K.S.A. 77-532, shall be the basis for the state appeals committee review. The effective date of this regulation shall be January 2, 1992. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Jan. 2, 1992.)

30-7-79

30-7-79. Motions. (a) Motions, unless made during a hearing, shall:

- (1) Be in writing; and
- (2) state with particularity their bases.

(b) The opposing party shall have 15 days from the date of mailing or personal delivery within which to file a response. The hearing officer may waive the deadline for good cause.

(c) The hearing officer on his or her own motion or at the request of either party may conduct a hearing on the motion. A party requesting a hearing shall include the request in the motion or response. The effective date of this regulation shall be August 1, 1990. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective Aug. 1, 1990.)