

## Appendix F: Participant Rights

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### Appendix F-1: Opportunity to Request a Fair Hearing

The State provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified in Item 1-F of the request; (b) are denied the service(s) of their choice or the provider(s) of their choice; or, (c) whose services are denied, suspended, reduced or terminated. The State provides notice of action as required in 42 CFR §431.210.

**Procedures for Offering Opportunity to Request a Fair Hearing.** Describe how the individual (or his/her legal representative) is informed of the opportunity to request a fair hearing under 42 CFR Part 431, Subpart E. Specify the notice (s) that are used to offer individuals the opportunity to request a Fair Hearing. State laws, regulations, policies and notices referenced in the description are available to CMS upon request through the operating or Medicaid agency.

Alaska's Administrative Code at 7 AAC 49 provides applicants and participants in waiver programs the right to notice of adverse actions, an appeal of adverse actions, and a Fair Hearing. A notice of adverse action must be given to individuals when: their request for services is not acted upon with reasonable promptness, they are not given the choice of home and community-based services as an alternative to institutional care, they are denied the service(s) of their choice or the provider (s) of their choice, or, their services are denied, suspended, reduced or terminated.

During the initial application process, an applicant for waiver services is informed of their rights to notice of adverse action and Fair Hearing when the care coordinator assisting them with the application process gives them the "Notice of Adverse Actions, Hearings and Appeals" information sheet. SDS ensures that the applicant receives the "Notice of Adverse Action" by requiring the Program Recipient Rights" form as part of the complete application. The form requires the applicant to read and initial 18 statements attesting to the fact that they understand their rights under the program. The final statement confirms that they have received a copy of the "Notice of Adverse Actions, Hearings and Appeals" information sheet.

All notices of adverse action originate with SDS and are sent by certified mail on official division letterhead. Notices clearly explain the action to be taken, cite the statute or regulation that provides authority for the action, and inform the applicant or recipient of their rights to appeal the action and request a Fair Hearing. In addition, the notice of adverse action informs the participant that if they continue to satisfy all eligibility criteria other than those at issue in the hearing request, their services will be continued until the date that the final decision is issued, unless the participant informs the State that the participant does not want to receive continuing assistance. A copy of the notice is placed in the applicant or participant's paper file, and uploaded into the SDS computerized client information system where it will remain indefinitely.

A request for a hearing must be made in writing by the applicant, participant, or by their representative, within 30 days of the date on the notice of adverse action. SDS notices direct an applicant or participant to call or write to Conduent, the entity that provides administrative support for Fair Hearing requests. If an appeal request is received by an SDS employee it must be promptly referred to Conduent for appropriate processing. Individuals who want to file for a Fair Hearing who are non-English speaking or illiterate are assisted by either their care coordinator or their agency representative who will develop the request in writing and ensure that it is delivered to Conduent.

All Fair Hearings in the State of Alaska are centralized and conducted by the Alaska Department of Administration and heard before an Administrative Law Judge (ALJ). Fair Hearing Representatives within the SDS Quality Assurance unit are responsible for preparing the case for adverse action and representing SDS at hearing.

The applicant or participant may choose to represent him or herself at the Fair Hearing, or may be represented by a guardian, attorney, friend or family member. Due to conflict of interest concerns, the participant's care coordinator or other service providers may not represent the participant at the Fair Hearing, but may accompany the participant to the hearing, act as an advocate, offer assistance throughout the process, and refer the participant to additional sources of assistance as appropriate. In addition, upon oral or written request from the applicant or participant, the Department's Division of Health Care Services (DHCS) will provide assistance in obtaining representation, preparing the case, and gathering witnesses and/or documents to be used in presenting the claim.

## Appendix F: Participant-Rights

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### Appendix F-2: Additional Dispute Resolution Process

**a. Availability of Additional Dispute Resolution Process.** Indicate whether the State operates another dispute resolution process that offers participants the opportunity to appeal decisions that adversely affect their services while preserving their right to a Fair Hearing. *Select one:*

- No. This Appendix does not apply**
- Yes. The State operates an additional dispute resolution process**

**b. Description of Additional Dispute Resolution Process.** Describe the additional dispute resolution process, including: (a) the State agency that operates the process; (b) the nature of the process (i.e., procedures and timeframes), including the types of disputes addressed through the process; and, (c) how the right to a Medicaid Fair Hearing is preserved when a participant elects to make use of the process: State laws, regulations, and policies referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The State offers a process for mediation in advance of Fair Hearing to address disputes in regards to all services provided through SDS.

State Agency Operating the Process: Mediation services are provided by a third party contractor who is a lawyer and who operates under the Office of Administrative Hearings (OAH) within Department of Administration.

Procedures and Timeframe: Participants (or care coordinators of behalf of participants) who have requested a Fair Hearing are automatically scheduled for an informal mediation session. OAH sends a notice to the appellant with a date and time for the informal mediation session, generally 10 days from the time OAH receives the case referral. The OAH schedules the mediation at the earliest time slot available. Participants may reschedule the mediation to suit their availability and may also decline mediation. A Calendar Call (a short scheduling conference to set a date and time for the Fair Hearing if the case is not settled in mediation) is also identified within this notice. The notice also states that the mediation is voluntary, is not a pre-requisite or substitute for a Fair Hearing, and that the appellant retains the right to a Fair Hearing if the disputes are not resolved during the mediation, as set forth in 7AAC 49.010, Chapter 49 Hearings.

Each mediation is scheduled for one hour with the mediator (the lawyer contracted by OAH) acting as a neutral party, an SDS Fair Hearing Representative (there are two SDS hearing representatives who are available for this process), and an SDS professional with the ability to make changes to the existing authorization of services. Appellants have the opportunity to have care coordinators and others assist and advise on their behalf, without representing the appellant. Care coordinators may assist participants in retrieving and forwarding new records or information for the mediation. They may also assist in explaining complex ideas as a result of the mediation. The participant has a choice to include or not include a care coordinator in their mediation. During the mediation session, the mediator sets forth basic mediation rules and directs the communication. Disagreements are discussed in a highly informal manner, and additional information, including new records, can be considered. The parties may reach a total or partial resolution. Resolutions are voice recorded during the mediation session, and an order dismissing the case is issued by OAH if resolution is reached.

After a partial resolution, the State will record the portion of the agreement that was reached and inform the ALJ of the terms of the partial resolution. Once there is a final decision from the ALJ on any remaining issues, SDS authorizes the services and informs the participant and the service agency.

Appellants can let the OAH know at any time up to and during the mediation session that they do not want to pursue settlement through mediation, and that they wish to proceed to Fair Hearing. If the parties do not reach an agreement, the case goes on to a Calendar Call and a Fair Hearing is scheduled.

In addition to the informal mediation, both the appellant and the State may request a formal mediation in which an Administrative Law Judge, who is not assigned to preside over the case, will act as a mediator. Both parties have to agree to undergo a formal mediation, and the mediator will make a recommendation for settlement. Like informal mediation, use of formal mediation does not preclude the right to a Fair Hearing if the disputes are not resolved in formal mediation.

Types of Disputes: During both the informal and formal mediation sessions, the parties may discuss new information including medical documentation and other potential environmental changes, and how these affect the appellant's eligibility for level of care or specific services. The types of disputes addressed through this mediation process include initial waiver denial, material improvement and waiver termination decisions, eligibility for services

such as chore, respite, and day habilitation, determination of developmental disability decisions, denials of enhanced payments for acuity, and any disagreements stated by the appellant which are addressed in the State's notice authorizing or denying services. Any matters discussed during mediation remain confidential. Partial resolutions are allowable, if documented, and remaining unresolved issues can proceed to Fair Hearing.

Preserving Right to Fair Hearing: The appellant retains the right to a Fair Hearing if the disputes are not resolved during informal or formal mediation, as set forth in 7 AAC 49.010, Chapter 49. The appellant has the ability to bypass mediation and continue to schedule a Fair Hearing at any time during this process.

## Appendix F: Participant-Rights

### Appendix F-3: State Grievance/Complaint System

**a. Operation of Grievance/Complaint System. *Select one:***

**No. This Appendix does not apply**

**Yes. The State operates a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under this waiver**

**b. Operational Responsibility.** Specify the State agency that is responsible for the operation of the grievance/complaint system:

SDS has a complaint management policy and procedure outlining a system that offers a number of approaches to resolve problems and issues with program operations or services. This system, which includes provider grievance processes as well as State agency processes, fosters the identification of problems that, when remediated, lead to improvement in the quality of program operations and to the health, safety, and welfare of participants.

While the system provides latitude for filing complaints, it is not a substitute or a pre-requisite for a Fair Hearing, and filing with SDS does not undermine the participant's right to request a Fair Hearing. Participants who file complaints with SDS about problems that fall under the scope of the Fair Hearing process are assisted with the information provided in the Notice of Adverse Actions, Hearings and Appeals.

**c. Description of System.** Describe the grievance/complaint system, including: (a) the types of grievances/complaints that participants may register; (b) the process and timelines for addressing grievances/complaints; and, (c) the mechanisms that are used to resolve grievances/complaints. State laws, regulations, and policies referenced in the description are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

SDS operates an internal complaint and referral system and accepts complaints/grievances from participants, providers, stakeholders and the public about SDS, any provider or participant concerning any aspect of service provision and/or program compliance, including the quantity and quality of services received or failure of services to be provided.

As part of the initial application process and during waiver renewal, the care coordinator assists the applicant or participant to complete the SDS "Recipient Rights" form. The applicant or participant initials the form affirming they understand that they have a right to file a complaint or grievance about their provider or about SDS at any time. They also initial and affirm that they have a right to a Fair Hearing in response to adverse action taken by SDS. In addition, the care coordinator provides the applicant or participant with the "Notice of Hearings and Appeals" form that outlines the process for requesting a Fair Hearing. The care coordinator explains the difference between a complaint or grievance and the more formal Fair Hearing process, and that filing a grievance or making a complaint is not a pre-requisite or a substitute for a Fair Hearing.

Complaints made orally or in writing through the Central Intake unit are reviewed by the Quality Assurance (QA) unit. If the complaint involves a vulnerable adult the report is routed to Adult Protective Services (APS) in addition to QA. If the complaint involves a provider of assisted living home services or a resident, the DHCS Section of Residential Licensing and Background Check Programs (RL) also receives the intake. QA screens the intakes to determine the appropriate response, either through technical assistance or investigation.

If the complaint is about the behavior of an SDS employee or an SDS administrative process (e.g., conduct considered negligent, rude, or discourteous, timeliness of actions, request for unreasonable or unnecessary

documentation or clarification, and treatment different than others without reasons related to regulations) the complaint is routed to the appropriate SDS program unit manager within three business days. Deficiencies in SDS operations are addressed with changes in process or policy, clarification of policy or regulations, individual, unit or division-wide training, and in cases of grievous misconduct, referral to Human Resources.

SDS bases its determinations regarding a complaint about provider operations or services on criteria such as consistency with purpose of program, adherence to regulations, standards or the application of agency policy and standards as described in the providers application for SDS certification. SDS investigative staff then reviews provider records, SDS records pertaining to the substance of the complaint, and as necessary, conducts on-site interviews. If the complaint is determined to be without merit, the case is closed and required data is entered into the Central Intake unit's tracking system. If the complaint brings a deficiency to light, SDS plans and implements appropriate remediation.

Remediation for providers includes a report of findings issued within 30 days of the investigation disposition and if warranted, remediation measures such as additional training, or sanctions as required by Medicaid regulations at 7 AAC 105.400 – 105.490. A written summary of action taken or a report of findings (if the administrative action is final) is available to a complainant, including a participant, upon request.

All certified provider agencies are required to develop and implement policy and procedures for the handling and resolution of complaints and grievances. Providers are required to describe the methods in which complaints may be filed and processed and how outcomes are recorded. Participants are encouraged, but not required, to utilize the complaint system of their provider agency as described by SDS policy and procedure, but may always file a complaint directly with SDS. Providers also are required to monitor for and address any retaliatory actions that are suspected. To ensure adequate investigation and resolution has taken place, providers must report on the outcomes of participant or other stakeholder complaints and grievances as part of their application to renew certification and upon request if receiving a provider review by SDS. Additionally, providers are required to submit their own quality improvement reports as a part of their recertification application to incorporate the following information: grievances, critical incident reports, medication errors, use of restrictive interventions, consumer satisfaction and internal reviews.

The Research and Analysis unit reviews and analyzes aggregated complaint data on a monthly basis which is forwarded to the QA unit. The QA unit prepares a report for the SDS Quality Improvement Workgroup (QIW), including analysis of complaint data, recommendations for provider or SDS improvements or remediation, development of new or modification of current policy and procedures, and improvements to the complaint process. In turn, the QIW reviews monthly reports of findings and recommendations by the QA unit, develops a plan to address identified issues, recommends administrative or operational changes if indicated, identifies training and technical assistance needs, tracks and evaluates progress on actions items, and reports on the performance of SDS complaint process activities to the departmental Quality Improvement Steering Committee (QISC) on a quarterly basis.