California's Appeals Process

Covered California/CA DHCS
April 9, 2013

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Today's Objectives

1. Medicaid/CHIP/Exchange Appeals: Federal and State Requirements, Delegation Options, and Process Flows

2. Step-by-Step Appeals Process: Legal Requirements, State Vision, and Operational Decisions

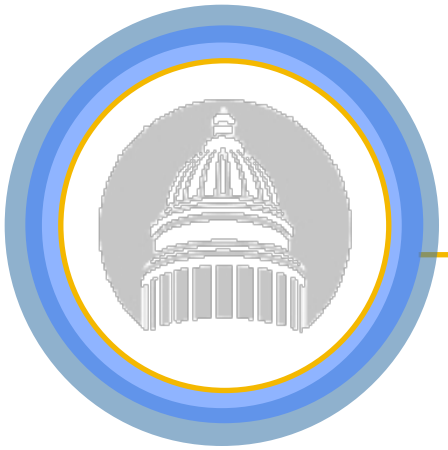
3. Next Steps and Appendix

1. **Medicaid/CHIP/Exchange Appeals: Federal and State Requirements, Delegation Options and Process Flows**

2. **Step-by-Step Appeals Process: Legal Requirements, State Vision, and Operational Decisions**

3. **Next Steps and Appendix**

Medicaid, CHIP, and Exchange Appeals: Legal Authority



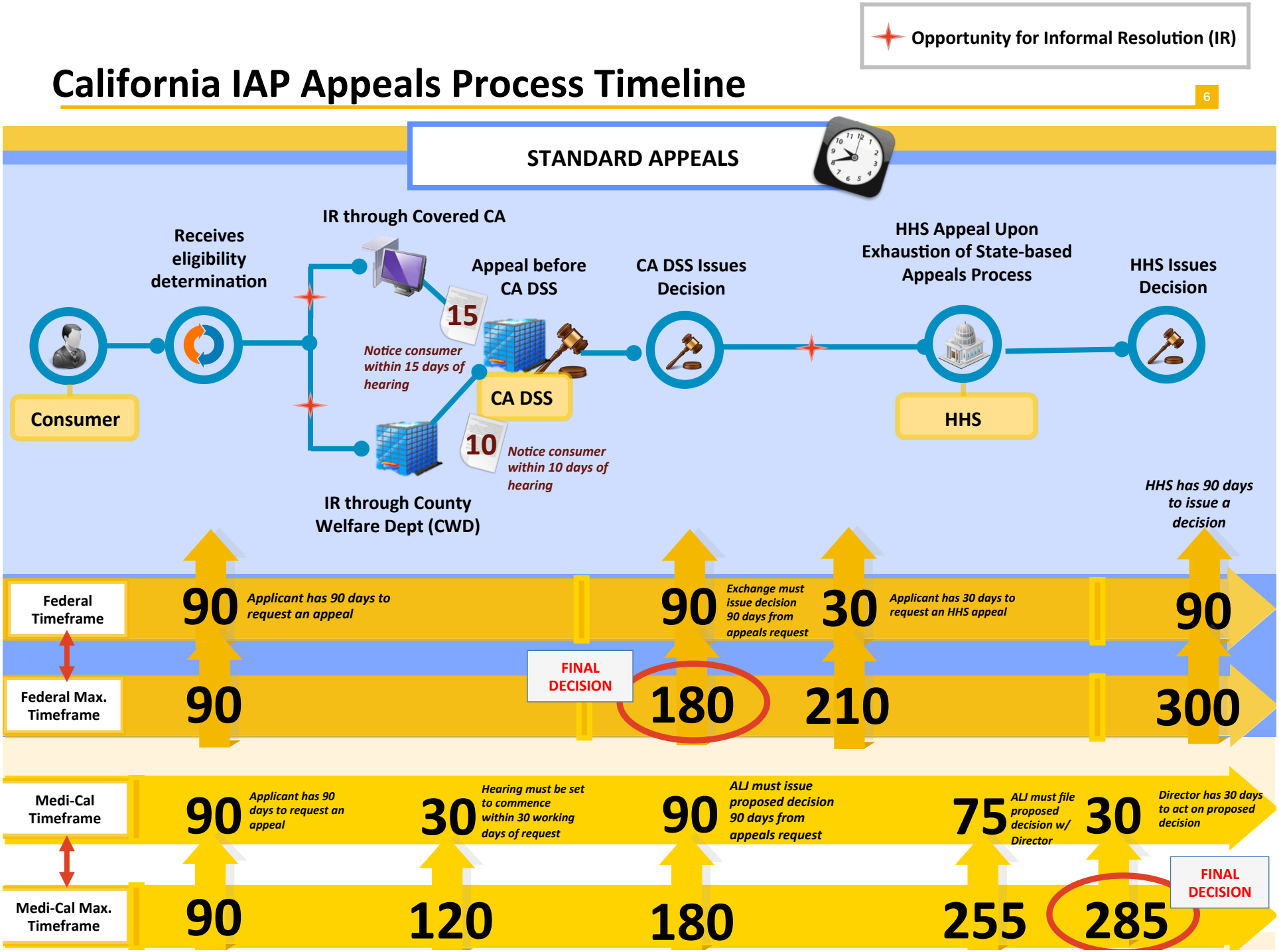
- **Medicaid: Social Security Act §1902(a); 42 C.F.R.§431.200 et seq. (NPRM and Existing Regulations); Goldberg v. Kelly; Cal. Welf. & Inst. Code 10950-10967**
- **CHIP: Federal Law 42 C.F.R.§457.1100 – 457.1190 (NPRM and Existing Regulations)**
- **Exchange: ACA§1411(f)(1) – Federal Appeal**
- **Exchange: 45 CFR§155.500 et seq.**

Creating a Single Delegation Authority: State Options

Entity	Delegation Option	California Policy
State Medicaid Agency *may delegate Medicaid appeals authority to…*	• State-Based Exchange • HHS Appeals Entity (FFE Determination Model) • 3rd Party State Agency	• CA DCHS currently delegates authority to conduct fair hearings to the CA Dept of Social Services (CA DSS) under ICA waiver
State-Based Exchange *may delegate APTC/ CSR appeals authority to…*	• HHS Appeals Entity • State Medicaid Agency * • 3rd Party State Agency *	• Covered CA plans to delegate authority to conduct hearings to the CA DSS

Proposed 42 CFR 431.10(c)
Proposed 45 CFR 155.505(c)
* Proposed regulations do not speak to whether the Exchange may delegate its appeals authority to the State Medicaid Agency or a 3rd Party State Agency; however, CCIIO has indicated that it does not interpret the proposed rules to preclude this delegation approach and may address this issue in the Final Rule.

California IAP Appeals Process Timeline



Opportunity for Informal Resolution

California IAP Appeals Process Timeline

EXPEDITED APPEALS

Expedited Appeal granted if applicant has immediate need for health services and standard appeals could jeopardize life, health or ability to attain, maintain or regain maximum function only in event qualified.

Consumer

Receives eligibility determination

IR through Covered CA or CA DSS?

IR through CWD or CA DSS?

Appeal before CA DSS

CA DSS

2

If denied, notice consumer within 2 days of denial and return to standard timeframe

CA DSS Issues Decision

HHS Appeal Upon Exhaustion of State-based Appeals Process

HHS

HHS Issues Decision

HHS has 90 days to issue a decision

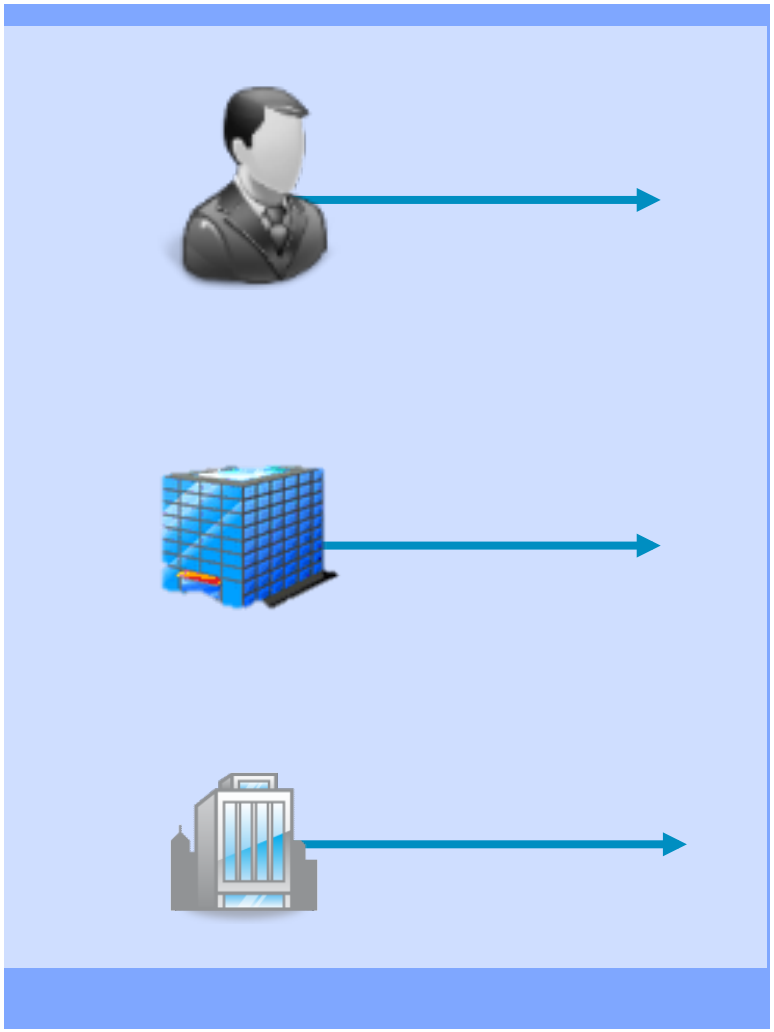
Timeframe	90	*Applicant has 90 days to request an appeal*	*Exchange must issue decision no later than 3 days from appeals request*	3	*Applicant has 30 days to request an HHS appeal*	30	*If expedited, HHS has 3 days to issue a decision*	3
Max. Timeframe	90			93		123		126

1. **Medicaid/CHIP/Exchange Appeals:**
   Federal and State Requirements, Delegation Options and Process Flows

2. **Step-by-Step Appeals Process:**
   Legal Requirements, State Vision, and Operational Decisions

3. **Next Steps and Appendix**

Vision for California's IAP Appeals Process



Develop an efficient, consumer-centered appeals process that seeks to resolve issue promptly and informally, avoiding the need for escalation to appeal while simultaneously supporting a consumer's right to pursue a formal appeal where desired.

Retain current Medi-Cal appeals process with minimal disruption.

Facilitate integrated hearings via common delegation of Medi-Cal and Exchange hearing authority to the California Department of Social Services (DSS).

Steps in the Appeals Process

Step-by-Step Appeals Process

1. NOTICE OF APPEAL RIGHTS
2. REQUEST FOR APPEAL
3. NOTICE OF RECEIPT OF APPEAL REQUEST
4. INFORMAL RESOLUTION
5. DISMISSALS/ WITHDRAWALS
6. DESIGNATION OF AUTHORIZED REPRESENTATIVE
7. HEARING SCHEDULING/ NOTICE OF HEARING
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Notice of Appeal Rights: Legal Requirements

- Notice must be provided at application and determinations
- Notice must include
  - Right to a hearing;
  - Procedures to request hearing;
  - Right to be represented;
  - Circumstances under which aid may be continued pending an appeal

MEDICAID

- Notice must also include:
  - Right to opt for fair hearing before Medicaid Agency (in states that have delegated to Exchange)
  - Statement of action
  - Reasons supporting action
  - Source of law
  - Right to request a local evidentiary hearing if available of State agency hearing
- Must be sent at least 10 days before date of action

EXCHANGE

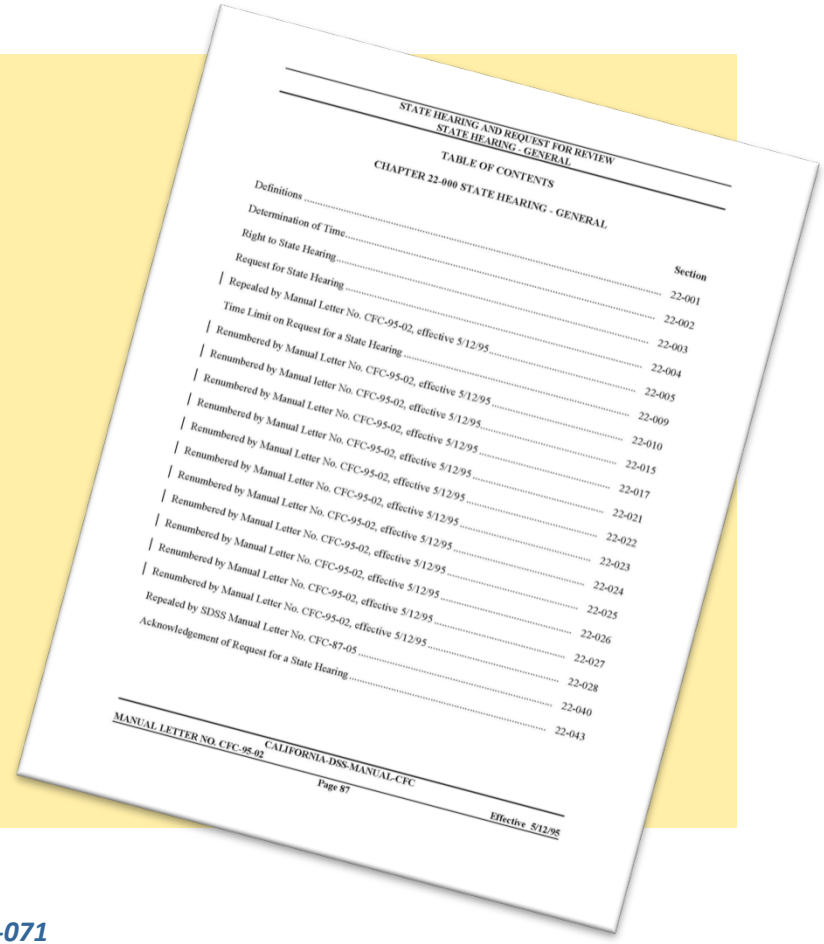
- Notice must also include:
  - Explanation that outcome of appeals decision may result in a change of eligibility for other household members and that such change may be treated as a redetermination

42 CFR §431.206(b) and (c) and NPRM; Preamble 4597 and Proposed 42 CFR §431.206(d)); 42 CFR.210 and NPRM; 42 CFR §431.211 and NPRM

Notice of Appeal Rights: Current Medi-Cal Process

- **At of time of application, county agency provides applicant with a "thorough explanation" of right to request a hearing, and with "Your Rights Under California Welfare Programs" pamphlet.**

- **Notice of Action sent to consumer by CWD when aid is denied, decreased, suspended, cancelled, discontinued or terminated which includes information on appeal rights.**



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

	Section
Definitions	22-001
Determination of Time	22-002
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Request for State Hearing	22-004
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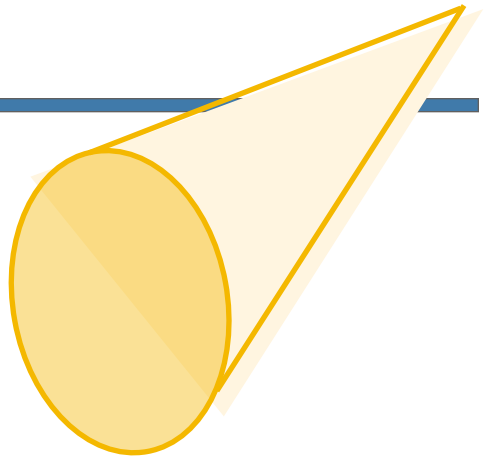
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-026
Repealed by SDSS Manual Letter No. CFC-87-05	22-027
Acknowledgement of Request for a State Hearing	22-028
	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87
Effective 5/12/95

California DSS Manual – Section 22-071

Notice of Appeal Rights: Future Process

Vision & Operational Decisions Made to Date



- Notice of right to appeal will be made available at application and initial determination, as well as at subsequent eligibility determinations.
- Coordinated across Insurance Affordability Programs.
- CalHEERS will generate Notices of Action (NOA), which will include required information on appeal rights and the process for requesting an APTC/CSR appeal and a Medi-Cal appeal.
  - If consumer is determined APTC eligible, NOA will be generated by and printed from CalHEERS system and mailed to consumer by Exchange worker.
  - If consumer is determined Medicaid eligible, CalHEERS generates the NOA and passes it to the Statewide Automated Welfare System (SAWS) for formatting and transmission to applicant; county welfare department (CWD) worker will print the NOA from SAWS and mail it to the consumer.
  - If consumer is determined APTC and Medicaid ineligible, NOA will be generated by and printed from CalHEERS system and mailed to consumer by Exchange worker.

Notice of Appeal Rights: Operational Decisions TBD

POLICY DECISIONS

- In addition to information included in the Notice of Action, through what mechanisms will consumers be informed of their appeal rights?
- Will Notices of Action emphasize that consumers may work to informally resolve the issue at question with Covered CA or Medi-Cal in advance of a hearing?

IT INFRASTRUCTURE

- Will information on appeal rights be available on Exchange web portal other than determination screen (i.e., application screen, in FAQs, etc.)?

PERSONNEL DECISIONS

Steps in the Appeals Process

Step-by-Step Appeals Process

1. NOTICE OF APPEAL RIGHTS
2. **REQUEST FOR APPEAL**
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Request for Appeal Hearing: Legal Requirements

Request for Appeal Modality

- Request by telephone, mail, in-person, online or through other available electronic means
  - Slight variance with Exchange: in-person requests required only if the Exchange is "capable of receiving in-person appeal requests."

Proposed 42 CFR §431.221;
Proposed 45 CFR §155.520.

Timeframe for Appellant Request

- Request must be submitted within 90 days from date of determination
  - Slight variance with Medicaid: "must allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing."

Proposed 42 CFR §431.221(a);
Proposed 45 CFR §155.520(a).

Medicaid Fair Hearing Trigger

- Medicaid agency must treat an appeal to the Exchange of a determination of APTC/CSR eligibility as a request for a Medicaid fair hearing.
- Agency must establish a secure electronic interface through which the Exchange can notify the agency that an APTC/CSR eligibility appeal has been filed.
- Preamble notes intention is to avoid the need for an individual to have to submit two appeal requests (one to the Exchange and one to the Medicaid agency); agency is considering whether to make a later effective date for this provision (e.g., January 1, 2015) to allow states time to operationalize requirement.

Proposed 42 CFR §431.221(e); Proposed 435.1200(g); Preamble 4598

Request for Hearing: Current Medi-Cal Process

- Consumer can request a hearing in writing (by mailing written request to their County Welfare Department or DSS) or orally (by calling DSS toll-free hotline or making in-person request at DSS in Sacramento).
- Written request can be in any form, including, but not limited to, the reverse side of the Notice of Action.
- When written request is received by the County Welfare Department (CWD) it is forwarded to the State Hearings Division within 3 working days of receipt (or entered into the state hearing computer system online if CWD has been granted authority to do so).
- If the request for hearing concerns an action which is subject to adequate notice provisions, a copy of the applicable NOA will be sent with request.

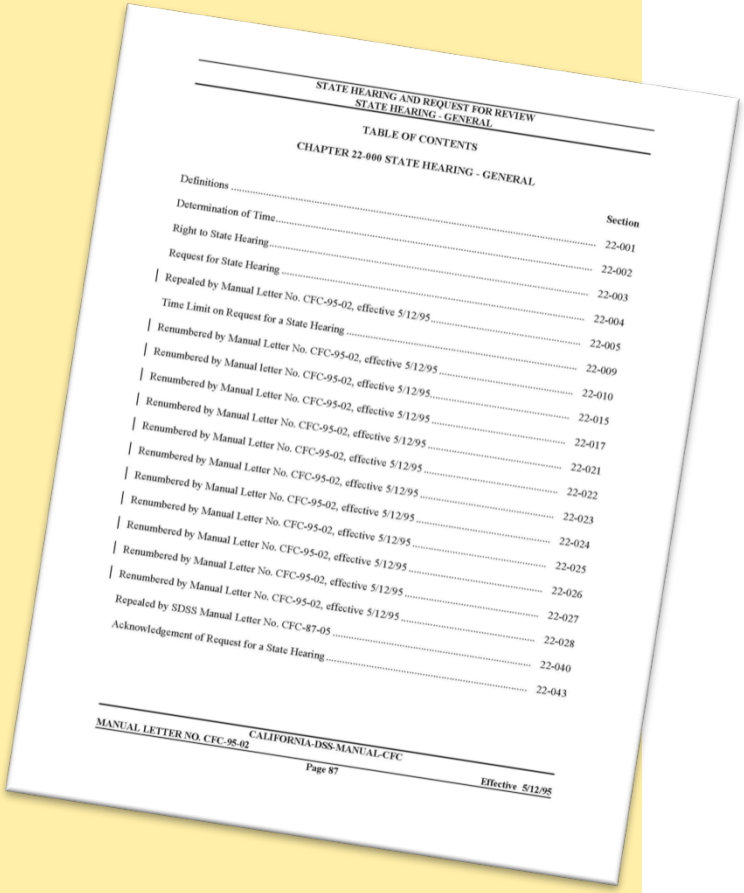

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TABLE OF CONTENTS

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Repealed by SDSS Manual Letter No. CFC-87-05	22-028
Acknowledgement of Request for a State Hearing	22-040
	22-043

California DSS Manual – Section 22-004

Request for Hearing: Future Process

Vision & Operational Decisions Made to Date

- Covered CA appeal requests for APTC determinations will be accepted online through the CalHEERS web portal and processed by Exchange workers.
- Medi-Cal appeal requests will be accepted via phone, mail and in-person and processed by CWD workers or DSS staff.
- CalHEERS currently contains functionality that notifies a consumer who receives eligibility results online via the CalHEERS web portal of the ability to file an appeal. The screen will indicate that:
    - If the consumer wants to file an appeal of APTC/CSR eligibility determination, she can click a button in the web portal that enables her to file an online request for appeal; this request is then transmitted to the Covered CA Service Center for follow up.
    - If the consumer wants to file an appeal of the Medi-Cal determination, she is instructed to call the DSS hotline who will put her in touch with the appropriate CWD contacts.

Request for Hearing: Operational Decisions TBD

POLICY DECISIONS

COVERED CA:

- How will requests submitted via the online portal and sent to CalHEERS Service Center be processed? How are CAHBX staff alerted to request to begin IR?
- If final rule requires that all modalities be made available, how will CAHBX accept requests via phone or mail?
- How will requests be transmitted to DSS?

MEDI-CAL:

- If final rule requires that all modalities be made available, how will Medi-Cal accept online requests?

CROSS-ENTITY ISSUES:

- What, if any, protocols are necessary to define what constitutes a request for an appeal?
- How will appeal requests be coordinated between CAHBX and Medi-Cal?

IT INFRASTRUCTURE

COVERED CA:

- Will functionality exist to allow consumer to include description of reason for appeal?

CROSS-ENTITY ISSUES:

- How will appeal requests be tracked?
- What will be the standards and IT infrastructure for tracking requests throughout appeals process?
- If final rule requires Medicaid hearing trigger, how will CAHBX notify Medi-Cal of APTC eligibility appeal?

PERSONNEL DECISIONS

COVERED CA:

- What staff at the Exchange will handle appeal requests? How many are needed? Will there be a team dedicated to appeals (e.g., an Exchange Appeals Unit)?
- What specific skill sets are required? Will there be clerical staff as well as individuals with more advanced eligibility expertise?

CROSS-ENTITY ISSUES:

- What training is required for Exchange staff or Medi-Cal county workers with regard to appeals requests?

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Notice of Receipt of Appeal Request: Legal Requirements

EXCHANGE

- **Upon receipt of a valid appeal request, must send "timely acknowledgement" to appellant of receipt of request; notice must include information regarding potential eligibility pending appeal and explanation that any APTC paid on behalf of tax filer pending appeal are subject to reconciliation. Must also transmit the appeals request via secure electronic interface to the appeals entity and appellant's eligibility record.**

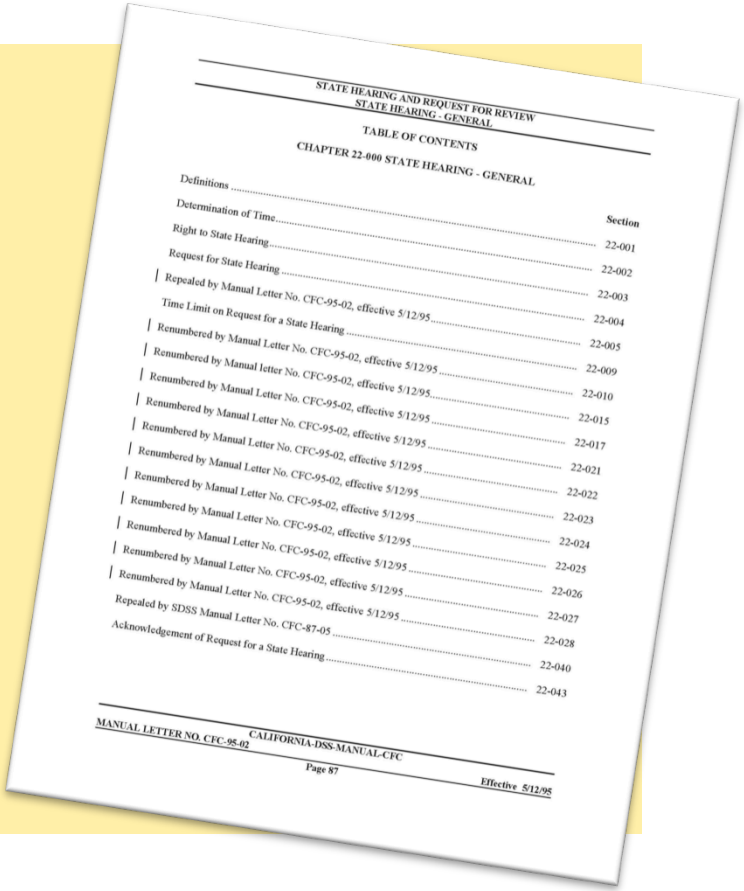
- **Upon receipt of an invalid appeal request (i.e., one that was submitted after the 90-day deadline or that falls outside of the scope of appealable decisions), must "promptly and without undue delay" send written notice to applicant or enrollee that request was not accepted and must note the nature of the defect in the request. The Exchange must treat as valid an amended appeal request that is revised to meet requirements.**

Proposed 45 CFR § 155.520(d)

Notice of Receipt of Appeal Request: Current Medi-Cal Process

- **DSS mails the consumer written acknowledgement of all requests for state hearings.**

- **DSS also notifies the county if the county did not receive the original request.**



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Acknowledgement of Request for a State Hearing	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-043

Notice of Receipt of Appeal Request: Future Process

Vision & Operational Decisions Made to Date

- **DSS will issue Notice of Receipt for Medi-Cal appeal requests.**

Notice of Receipt of Appeal Request: Operational Decisions TBD

POLICY DECISIONS

COVERED CA:

- What entity will issue Notices of Receipt for APTC/CSR appeal requests?
- Will appeals requests be screened for validity prior to issuing Notice of Receipt?
- What are timing requirements for Notice of Receipt of valid request? Invalid request?
- Through what modality will Notice of Receipt be transmitted to consumer (e.g., via mail, email)?
- Will Notice of Receipt be combined with a Notice of Hearing? Or will these be sent as separate notices to allow time for informal resolution before hearing is scheduled?
- Will Notice of Receipt inform consumer that he or she can continue to work to informally resolve issue in advance of hearing?

IT INFRASTRUCTURE

COVERED CA:

- Will CalHEERS contain functionality that allows for upfront screening of validity of an appeal request?
- Will CalHEERS contain functionality that allows for automation of Notice of Receipt?

PERSONNEL DECISIONS

COVERED CA:

- What staff will be screening validity of requests?
- What staff will be sending consumer Notice of Receipt?
- What staff will accept amended appeal requests (i.e., requests that were initially deemed invalid and amended/ resubmitted by consumer)?

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Step-by-Step Appeals Process

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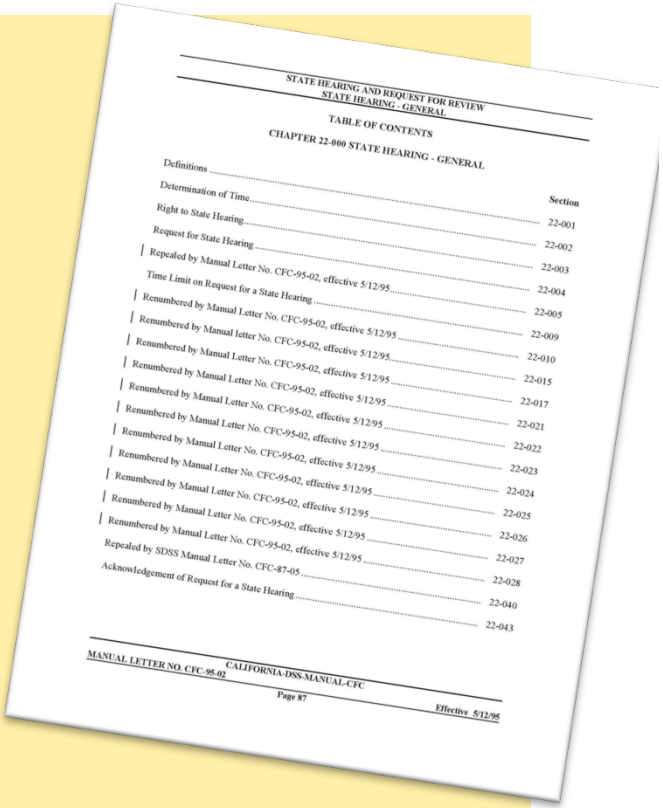
Informal Resolution: Legal Requirements

- **Required for HHS Appeals**
- **Option for State Medicaid Agency and SBE**
- **Medicaid agency must establish a secure electronic interface with the Exchange or Exchange appeals entity through which 1) the Exchange can notify the Medicaid agency that an APTC/CSR eligibility appeal has been filed triggering a Medicaid fair hearing request and 2) electronic account, including any information provided by the individual to the Medicaid agency or Exchange, can be transferred between programs.**
- **Medicaid agency must ensure that as part of hearing, it does not request information or documentation from the individual already included in her electronic account or provided to the Exchange or Exchange appeals entity.**
- **Exchange appeals entity must minimize burden on consumer by not requesting that he or she provide duplicative information or documentation previously provided during the application or IR process.**

Proposed 45 CFR §155.535(a); Proposed 42 CFR 435.1200(g); Proposed 45 CFR 155.535(a)

Informal Resolution: Current Medi-Cal Process

- Upon filing of hearing request, case is assigned to a county representative with no immediate prior involvement with case who assumes responsibility for preparing and presenting case at the hearing.
- Prior to the hearing the county representative:
  - Determines issues raised by the request;
  - Reviews applicable regulations and policies in light of evidence in the case record, contacts the eligibility worker and county personnel as appropriate;
  - Makes a determination of appropriateness of county action and need for/advisability of a hearing; if representative concludes that:
    - County action was incorrect, contacts consumer and attempts to resolve case without a hearing (potentially resulting in conditional withdrawal procedure);
    - County action was correct, contacts consumer to inquire whether she plans to attend and, if so, raise any further contentions at hearing, and provides all information which can be of assistance to consumer in preparing for hearing;
  - Advises DSS if an interpreter may be needed for hearing or if home hearing appropriate; and
  - Prepares a typewritten position statement summarizing facts of case and regulatory justification for county action.



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Acknowledgement of Request for a State Hearing	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-073

Informal Resolution: Future Process

Vision & Operational Decisions Made to Date

- To the maximum extent possible, the state will attempt to resolve issues informally in advance of a hearing.
- Medi-Cal county workers will lead the Informal Resolution process for Medicaid appeals; Exchange workers will lead the Informal Resolution process for APTC/CSR appeals. While not federally required, these workers ideally will not have been previously involved in the consumer's eligibility determination or ongoing case management.
- The IR process will be proactive, with Medi-Cal county workers and Exchange workers reaching out to consumers via phone and mail in an attempt to reach informal resolution of issues.

Informal Resolution: Operational Decisions TBD

POLICY DECISIONS

COVERED CA:

- Will there be a "Resolution Period" (i.e., time between when hearing request is submitted and request is submitted to DSS/hearing scheduled) and how long will it span?
- What triggers IR process (i.e., will any IR take place prior to submission of appeal request or is appeal request the trigger)?

CROSS-ENTITY ISSUES:

- How will IR process be coordinated between Exchange and Medi-Cal, including the submission of new evidence relevant to the appeal?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES:

- How will IR process be tracked (including case notes to record ongoing IR outreach, discussions with consumer, submission of new evidence) and shared between agencies?

PERSONNEL DECISIONS

COVERED CA:

- What staff will lead IR process for Exchange (i.e., specific staff dedicated to IR)?
- How many staff are needed to support robust IR process at Exchange?
- What skill sets and training are required of IR staff?

MEDI-CAL:

- Are additional county representatives needed to support robust IR process?
- What skill sets or new training is required for county representatives conducting IR?

Opportunity for Informal Resolution (IR)

California IAP Appeals Process

BIFURCATED REQUEST & IR PROCESS

Applies through web portal

Receives Eligibility Determination: APTC/ CSR approval; Medicaid denial

Submits APTC/CSR appeal request to Covered California

Notice of receipt of appeals request

IR through Covered CA

Automatic trigger of Medicaid hearing request

Proposed 42 CFR 431.221(e)

Prohibited from requesting documents already in individual's electronic account or submitted to Exchange

42 CFR 435.1200(g)

Consumer

Submits Medicaid appeal request to DSS

Notice of receipt of appeals request

IR through CWD

Notice consumer within 15 days of hearing

Proposed 45 CFR 155.535(b)

15

Appeal before CA DSS

CA DSS

10

Notice consumer within 10 days of hearing

Cal. Welf. & Inst. Code 10952

Reconciliation of consumer request; submitted documents; scheduling of hearing

DSS Transmits Decision to Exchange, Consumer, and CWD

Eligibility Scenarios that May Require Coordination

SCENARIOS

MEC

Mary Jo L. applies through Covered California and is determined ineligible for Medicaid on basis of income and ineligible for APTC/CSR on basis of existing Minimum Essential Coverage (MEC). Mary Jo appeals her APTC/CSR determination and engages in IR through Covered California. She provides documentation establishing her income at 100% FPL, but acknowledges having MEC.

Citizenship

Robert F. applies through a CWA and is determined ineligible for Medicaid based on both income and citizenship documentation status (does not meet 5 year bar requirement). Robert appeals Medicaid decision and engaged in IR with the CWA. He provides documentation showing a much lower income, but also acknowledges being subject to the 5 year bar.

Subsidy Level

Sheena P. applies through CWA and is determined ineligible for Medicaid and eligible for APTC/CSR. Sheena believes she is Medicaid eligible, appeals the determination an engages in IR with the CWA. CWA finds the Sheena's income is lower than originally determined, but still above Medicaid eligibility levels.

POTENTIAL WAYS TO COORDINATE

- Consumer notice and instructions
- Cross program training and coordination in IR process
- Cross program coordination at hearing.

Steps in the Appeals Process

Step-by-Step Appeals Process

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2. REQUEST FOR APPEAL
3. NOTICE OF RECEIPT OF APPEAL REQUEST
4. INFORMAL RESOLUTION
5. **DISMISSALS/ WITHDRAWALS**
6. DESIGNATION OF AUTHORIZED REPRESENTATIVE
7. HEARING SCHEDULING/ NOTICE OF HEARING
8. EVIDENCE PACKET
9. APPEALS HEARING MODALITY & ADJUDICATORS
10. EXPEDITED APPEALS HEARING
11. HEARING DECISION
12. POST-HEARING

Dismissals/Withdrawals: Legal Requirements

Withdrawal of Hearing Request

- Appeals entity must dismiss an appeal if the appellant: withdraws the request in writing; fails to appear at a scheduled hearing; fails to submit a valid appeal request; or dies while the appeal is pending.
  - Slight variance with Medicaid: agency "may deny or dismiss" a request for hearing if applicant withdraws request in writing or fails to appear at scheduled hearing with good cause.

Proposed 45 CFR §155.530; 42 CFR§431.223

Modality for Submission of Withdrawal

- Exchange rule preamble indicates that written requests may be in electronic or hard copy format.
- Medicaid rule preamble contemplates allowing withdrawal of Medicaid hearing request via all the modalities permitted for application submission (i.e., via web portal, telephone, mail, in-person or through other common electronic means).

Preamble 4651; Preamble 4598

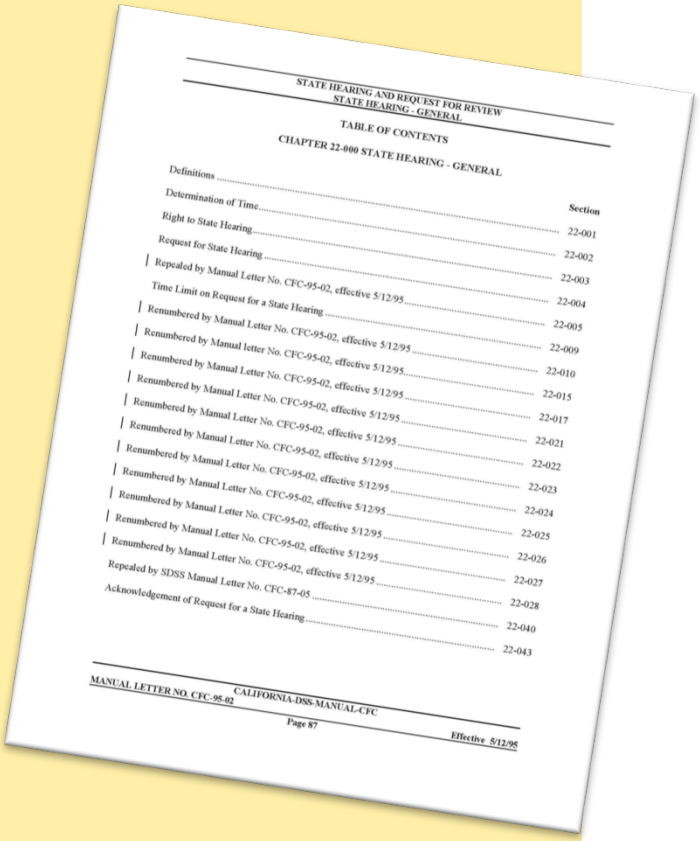
Notice of Dismissal

- Exchange appeals entity must provide "timely" notice of dismissal to consumer and include: reason for dismissal; an explanation of the dismissal's effect on the consumer's eligibility; and an explanation of how the consumer may show good cause why dismissal should be vacated. Must also provide timely notice to Medicaid and CHIP, as applicable, including instruction regarding the eligibility determination to implement and discontinuation of aid pending.

Proposed 45 CFR §155.530

Dismissals/Withdrawals: Current Medi-Cal Process

- **Consumer may withdraw hearing request any time before final decision is signed. Withdrawals may be conditional or unconditional and must be submitted in writing.**
  - **If withdrawal is unconditional, hearing request is immediately dismissed.**
  - **If withdrawal is conditional, it must be accompanied by an agreement signed by consumer and county which provides that action of both parties will be taken within 30 days of the conditional withdrawal form being signed by both parties and received by county.**
  - **If the consumer verbally withdraws request prior to hearing, and withdrawal is unconditional, DSS sends a letter confirming withdrawal of request. The letter serves as the written withdrawal, and request is considered withdrawn unless, within 15 days of mailing the letter, DSS receives notice (either in writing or orally) that consumer has not withdrawn request.**



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

	Section
Definitions	22-001
Determination of Time	22-002
Right to State Hearing	22-003
Request for State Hearing	22-004
Repealed by Manual Letter No. CFC-95-02, effective 5/12/95	22-005
Time Limit on Request for a State Hearing	22-009
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-010
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Repealed by SDSS Manual Letter No. CFC-87-05	22-028
Acknowledgement of Request for a State Hearing	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-054

Dismissals/Withdrawals: Operational Decisions TBD

POLICY DECISIONS

CROSS-ENTITY ISSUES:

- Through what modalities will withdrawals be accepted?
- How will Unconditional Withdrawals be coordinated between the Exchange, Medi-Cal and DSS to ensure that all entities know that a matter has been resolved through IR? Conditional Withdrawals?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES:

- How will IT infrastructure allow for information on withdrawals to be shared between agencies?

PERSONNEL DECISIONS

CROSS-ENTITY ISSUES:

- What staff will be responsible for tracking and implementing withdrawals?
- How many staff are needed?
- What skill sets and training are required?

Steps in the Appeals Process

Step-by-Step Appeals Process

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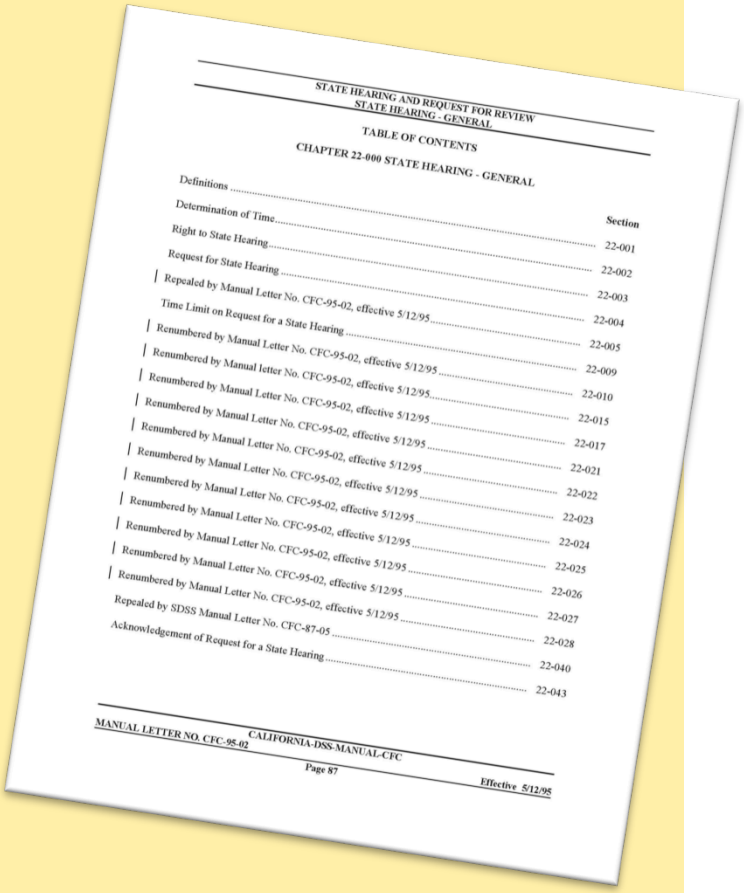
Designation of Authorized Representative: Legal Requirements

- **Right to designate authorized representative to represent appellant in any stage of the appeal**

Proposed 42 CFR 435.923(a) & (b);
Proposed 45 CFR 155.505(e)

Designation of Authorized Representative: Current Medi-Cal Process

- Consumer may authorize a person or organization to represent him/her during all aspects of the hearing process by signing and dating a written statement to that effect or stating at the hearing that the person is authorized.
  - AR may be designated at time of hearing request or by submitting a completed and signed AR form to DSS via mail or to the judge at the hearing. Consumers may obtain AR forms from their CWD or by calling DSS to request a form.
  - Authorization may be limited in scope or duration by claimant, and revoked at any time.
- When consumer has an authorized representative (AR), the AR must be furnished with a copy of all notices and decisions concerning the hearing which are provided to the consumer, including any notices or correspondence related to conditional withdrawal.



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

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Definitions	22-001
Determination of Time	22-002
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	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-085

Designation of Authorized Representative: Future Process

Vision & Operational Decisions Made to Date

- **Consumers will have the right to assign an authorized representative (AR) to represent them throughout all stages of Appeals process.**

Authorized Representative: Operational Decisions TBD

POLICY DECISIONS

COVERED CA:

- What is AR designation process (i.e., through what modalities is designation accepted)?
- Can consumer change AR during process? Have more than one AR?
- What is process to ensure that AR receives all relevant communications and notices sent to consumer?

CROSS-ENTITY ISSUES:

- How will AR designation be communicated/coordinated between Medi-Cal and Exchange?
- What will be the role of the community based organizations and other non-profit groups who provide consumer assistance?
- What privacy/security protections are necessary to ensure the consumer has authorized the representative?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES

- Through what electronic formats will consumers be able to designate an AR?
- How will assignments be tracked for purposes of appeals?
- How will AR be able to access electronic account on behalf of appellant?

PERSONNEL DECISIONS

COVERED CA:

- What staff will be responsible for overseeing AR assignment?
- How many staff are needed?

Steps in the Appeals Process

Step-by-Step Appeals Process

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Hearing Scheduling/Notice of Hearing: Legal Requirements

MEDICAID

- Hearing must be conducted only after adequate written notice of the hearing.

STATE LAW REQUIREMENTS:

- Hearing must be set to commence within 30 working days of filing the request.
- Written notice of the time and place of the hearing must be sent at least 10 days prior to the hearing.

42 CFR § 431.240(a)(2); Cal. Welf. & Inst. Code 10952

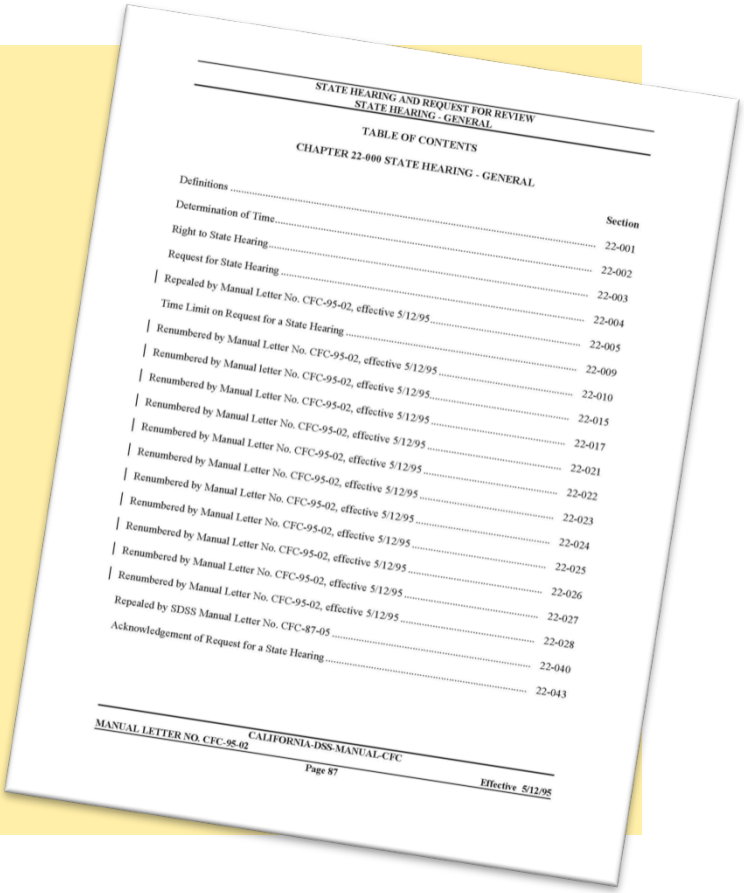
EXCHANGE

- When a hearing is scheduled, must send written notice of date, time and location or format of hearing no later than 15 days prior to the hearing date.

Proposed 45 CFR § 155.535(b).

Hearing Scheduling/Notice of Hearing: Current Medi-Cal Process

- DSS schedules hearing to take place in the county where the consumer is living at the time of the hearing unless the parties agree to another location or modality.
- DSS must "mail or provide" the consumer and the county with notice of the time and place of the hearing at least ten days prior to the hearing.
  - Time of notice may be shortened with consent of the parties.
  - If either party has not received notice as least ten days in advance, they will be granted a postponement upon request.



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

	Section
Definitions	22-001
Determination of Time	22-002
Right to State Hearing	22-003
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Repealed by SDSS Manual Letter No. CFC-87-05	22-028
Acknowledgement of Request for a State Hearing	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-045

Hearing Scheduling/Notice of Hearing: Future Process

Vision & Operational Decisions Made to Date

- **Coordinated across Insurance Affordability Programs.**

Hearing Scheduling/Notice of Hearing: Operational Decisions TBD

POLICY DECISIONS

COVERED CA:

- What entity schedules hearing?
- What entity will issue Notice of Hearing (e.g., Exchange, DSS)?

CROSS-ENTITY ISSUES:

- What triggers scheduling of hearing?
- How is scheduling information shared among Exchange, Medi-Cal and DSS?
- Through what modalities will Notices of Hearing be made available?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES:

- Through which IT system(s) will hearing scheduling be tracked?
- Through which IT system(s) will hearing notices be generated and distributed? Can process be automated?

PERSONNEL DECISIONS

COVERED CA:

- What staff are responsible for coordinating hearing scheduling with DSS?
- How many staff are required?

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Evidence Packet: Legal Requirements

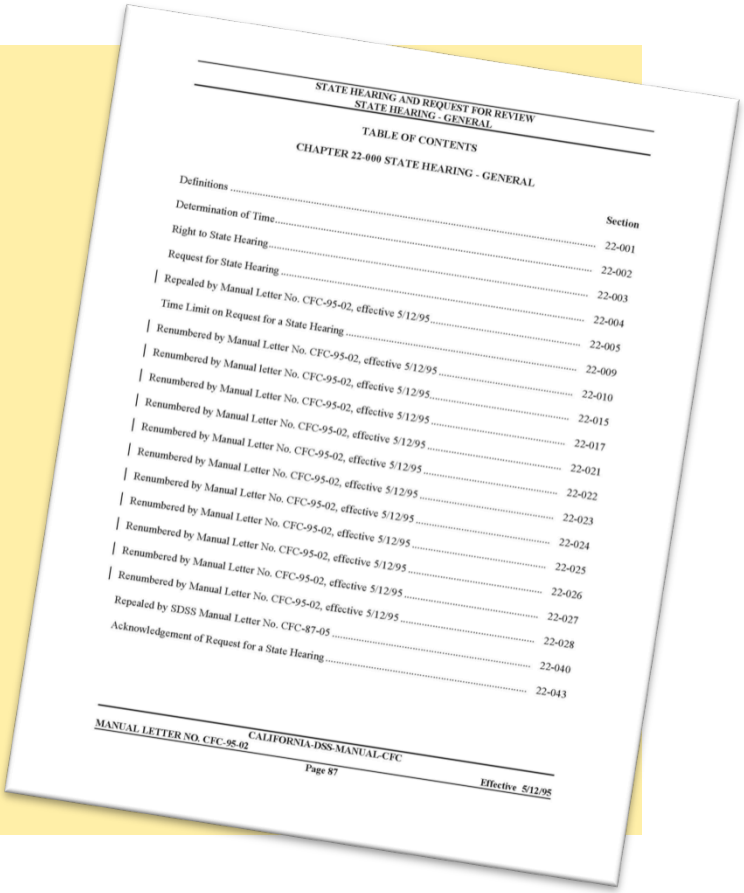
- Right to examine case file (Medicaid NPRM: electronic account) and evidence at a reasonable time before the date of hearing and during hearing
- Right to refute evidence at hearing
- State Medicaid law also requires that the county or state's "Position Statement" be made available to the appellant at the county welfare department at least two working days prior to the hearing

42 CFR 431.242 and NPRM; Proposed 45 CFR 155.535(d); Cal. Welf. & Inst. Code 10952.5

Evidence Packet: Current Medi-Cal Process

- **Upon request, the CWD must allow the consumer to examine her case record at the CWD during regular working hours.**

- **Prior to or during the hearing, the consumer may examine information that was used by the county in making its decision to take the action that is being appealed.**



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

	Section
Definitions	22-001
Determination of Time	22-002
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Acknowledgement of Request for a State Hearing	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-051

Evidence Packet: Future Process

Vision & Operational Decisions Made to Date

- **Evidence packet will be accessible to consumer at a reasonable time in advance of the hearing and during the hearing.**

Evidence Packet: Operational Decisions TBD

POLICY DECISIONS

CROSS-ENTITY ISSUES:

- How can a consumer submit evidence in advance of the hearing? To what entity? Is there a time limit on consumer's submission of evidence in advance of hearing?
- Through what modalities can evidence be submitted?
- What entity (or entities) is responsible for compiling Evidence Packet? What is timeline for compilation (and transmission to DSS if compiled by other entity)?
- How will compilation of Evidence Packet be coordinated across Medi-Cal, the Exchange and DSS?
- Through what modalities will Evidence Packet (or materials to be compiled into Evidence Packet) be made available to DSS? To consumer?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES:

- What information will be available in CalHEERS system for inclusion in Evidence Packet?
- To what extent can compilation of Evidence Packet be automated?
- Can consumer access Evidence Packet electronically, such as via the web portal?
- Is there a way to automate access to Position Statement? Will it be available via the portal?

PERSONNEL DECISIONS

CROSS-ENTITY ISSUES:

- What staff will be responsible for overseeing compilation and ensuring comprehensiveness of evidence packet?
- How many staff are needed? What training is required?

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Step-by-Step Appeals Process

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10. EXPEDITED APPEALS HEARING
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12. POST-HEARING

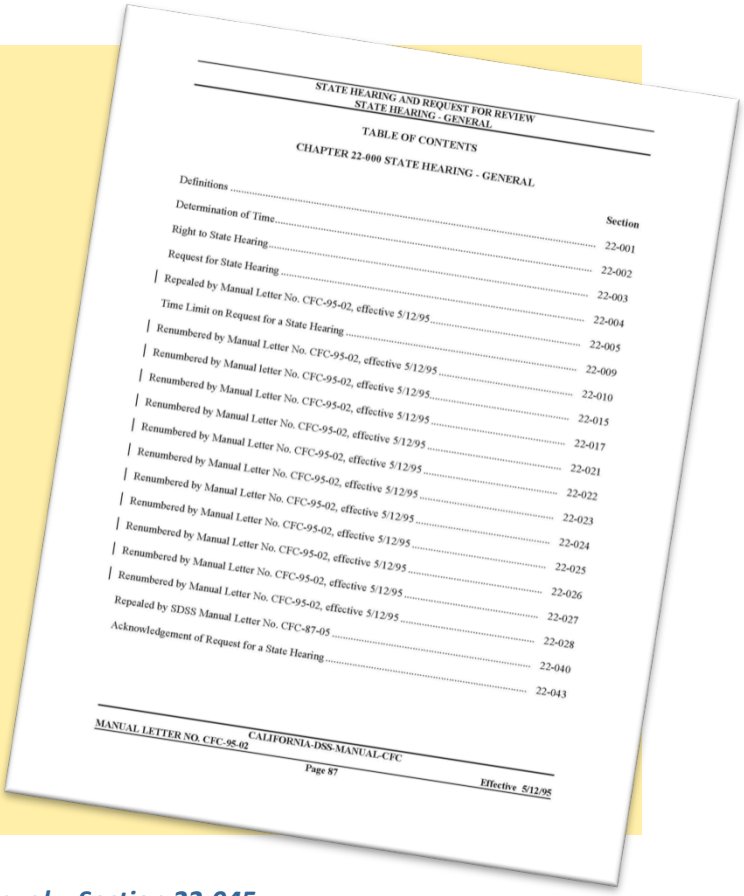
Hearing Modality and Adjudicators: Legal Requirements

- **Hearing must be heard orally**
- **Hearing must be adjudicated by an impartial officer**

42 CFR §431.205(d); 42 CFR §431.240.;
Proposed 45 CFR §155.505(d); Proposed 45 CFR §155.535(c).

Hearing Modality and Adjudicators: Current Medi-Cal Process

- **Hearings are held in-person in the county in which the consumer is living at time of hearing, though hearings may also be held via telephone or video-conference with consumer consent.**
  - **If consumer rescinds consent to have the hearing by telephone prior to its commencement, it is considered a postponement for good cause and an in-person hearing will be scheduled.**
- **Hearings are adjudicated by a DSS Administrative Law Judge.**
- **Administrative Law Judges must be admitted to practice law in California and possess any other qualifications prescribed by the State Personnel Board.**



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

	Section
Definitions	22-001
Determination of Time	22-002
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	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

Cal. Welf. & Inst. Code 10953; California DSS Manual – Section 22-045

Hearing Modality and Adjudicators: Future Process

Vision & Operational Decisions Made to Date

- In-person hearings, with potential option for telephone hearings.
- Hearings will be adjudicated by DSS Administrative Law Judges.

Hearing Modality and Adjudicators: Operational Decisions TBD

POLICY DECISIONS

CROSS-ENTITY ISSUES:

- What is criteria for an in-person hearing versus a telephone hearing?
- Does state want to explore paper-based or video conferencing hearing processes?

IT INFRASTRUCTURE

PERSONNEL DECISIONS

CROSS-ENTITY ISSUES:

- How many DSS ALJ's will be required to handle volume of appeals related to eligibility determinations?
- What and how many administrative and clerical staff will be needed and what will the operational infrastructure look like?

Steps in the Appeals Process

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10. **EXPEDITED APPEALS HEARING**
11. HEARING DECISION
12. POST-HEARING

Expedited Appeals Hearing: Legal Requirements

- **Must establish "an expedited appeals process" for instances in which "there is an immediate need for health services because a standard appeal could seriously jeopardize the appellant's life or health or ability to attain, maintain, or regain maximum function."**
  - **Slight variance with Medicaid: "expedited review process for hearings when an individual requests or a provider requests, or supports the individual's request, that the time otherwise permitted for a hearing could jeopardize the individual's life or health or ability to attain, maintain, or regain maximum function."**
- **If request for expedited appeal is denied, appeals entity must handle appeal request under standard process/timelines and notify consumer of denial either orally or through electronic means; if notified orally, must follow up with consumer by written notice within 2 days of the denial.**
  - **Slight variance with Medicaid: "within 2 calendar days of denial."**
- **Decision must be issued within 3 working days of expediting hearing request.**

Proposed 42 CFR §431.224; Proposed 45 CFR §155.540.

Expedited Appeals: Future Process

Vision & Operational Decisions Made to Date

- DSS will handle adjudication of expedited appeals.
- Current CA Department of Managed Health Care (DMHC) expedited Independent Medical Review (IMR) process may inform development of expedited appeal process for IAPs.

Expedited Appeals Hearing: Operational Decisions TBD

POLICY DECISIONS

CROSS-ENTITY ISSUES:

- What entity handles requests for expedited appeals?
- What standards will define who is eligible for an expedited appeal and what will be the process for determining whether a consumer meets that standard?
- What entity will oversee expedited appeals communications/noticing?
- Will there be any IR process for expedited appeals?
- What entity adjudicates expedited appeals?
- How will expedited appeal hearings be handled (e.g., by telephone, in-person, combination)?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES:

- How will decisions from expedited appeals be communicated across Medi-Cal and Exchange?

PERSONNEL DECISIONS

CROSS-ENTITY ISSUES:

- What staff will assess whether consumer meets standard for expedited appeal?
- Will there be staff within DSS (or Exchange or Medi-Cal) dedicated to processing expedited appeals (including noticing, IR process as applicable, evidence compilation)?
- How many staff are needed?

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12. POST-HEARING

Appeal Decision: Legal Requirements

- Must be written;
- Based exclusively on relevant evidence provided during appeals process and applicable law;
- Provide rationale for decision;
- Notice of right to request a state agency hearing (if the decision was a local evidentiary hearing) or seek judicial review (if available).

42 CFR §431.244; Proposed 45 CFR §155.545.

EXCHANGE

- Notice of right to seek an HHS Appeal

Appeal Decision (Timeframe): Legal Requirements

MEDICAID

- Agency must take final administrative action within 90 days of request (and no later than 3 working days from request receipt for expedited appeal).
- Within 45 days of Exchange appeals decision if bifurcated hearing process.

STATE LAW REQUIREMENTS:

- Proposed decision must be issued within 90 days of appeal request.
- Proposed decision must be submitted to Director for review within 75 days of conclusion of hearing.
- Director must take action to adopt, amend, or order for further hearing within 30 days of receipt of proposed decision; if no action taken, decision is deemed adopted.

Proposed 42 CFR § 431.224; Cal. Welf. & Inst. Code 10958-59

EXCHANGE

- Must issue written notice of the appeal decision to the appellant within 90 days of the date an appeal request is received, "as administratively feasible."

Proposed 45 CFR § 155.534(b)

Appeal Decision (Transmission & Accessibility): Legal Requirements

MEDICAID

TRANSMISSION:

- Agency must transmit hearing decision to the Exchange via secure electronic interface when 1) individual was initial determined ineligible for Medicaid by the Exchange and 2) individual was initially determined ineligible for Medicaid by the Medicaid and had account transferred to Exchange for evaluation of APTC/CSR eligibility (i.e., individual may be receiving APTC/CSR).

ACCESSIBILITY:

- Record must be made available to appellant.
- Public must have access to all agency hearing decisions (subject to privacy and confidentiality safeguards).

42 CFR § 431.244; Proposed 42 CFR § 431.1200(g)(3);

EXCHANGE

TRANSMISSION:

- Appeals entity must provide notice of appeal decision and instructions to cease aid pending, if applicable, via secure electronic interface to the Exchange or Medicaid/CHIP agency, as applicable.

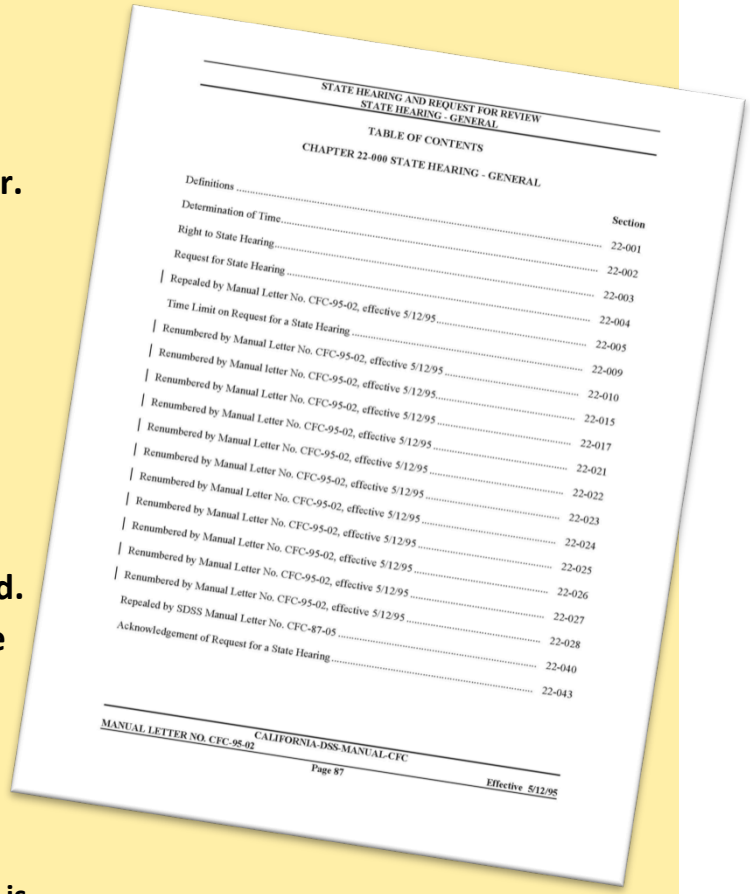
ACCESSIBILITY:

- Appeal record must be made available to appellant at convenient time and place.
- Appeals entity must provide public access to all appeal records (subject to privacy and confidentiality safeguards).
  - Appeal record means: the appeal decision, all papers and requests filed in the proceeding, the transcript or recording of hearing testimony or an official report containing the substance of what happened at the hearing (if hearing was held), and any exhibits introduced at the hearing.

Proposed 45 CFR § 155.550; Proposed 45 CFR 155.500

Appeal Decision: Current Medi-Cal Process

- After the hearing has been closed and within 90 days of the appeal request, the ALJ either submits a proposed decision for review by Chief ALJ and submission to the Director, or adopts a final decision pursuant to authority delegated to ALJ by Director.
  - Decisions rendered by ALJs pursuant to authority delegate to them by the director are considered final upon signing and dating by ALJ.
- Decisions are based exclusively on evidence and other material introduced at the hearing (or after hearing if record remains open), and specifies reasons for decision and the supporting evidence/regulations.
- Within 30 days of receipt of a proposed decision, the Director must adopt the decision, decide the matter, or order a further hearing. If alternate decision is issued, proposed decision is void.
- After ALJ's proposed or final decision is adopted or an alternate decision rendered by the Director, a copy is mailed to the claimant and county.
  - If alternate decision has been rendered, copy of both the ALJ's proposed decision and Director's alternate decision are sent to consumer and county.
  - If further hearing has been ordered, copy of voided proposed decision is include with notice of scheduled further hearing.



STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL

TABLE OF CONTENTS

CHAPTER 22-000 STATE HEARING - GENERAL

	Section
Definitions	22-001
Determination of Time	22-002
Right to State Hearing	22-003
Request for State Hearing	22-004
Repealed by Manual Letter No. CFC-95-02, effective 5/12/95	22-005
Time Limit on Request for a State Hearing	22-009
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-010
Renumbered by Manual letter No. CFC-95-02, effective 5/12/95	22-015
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-017
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-021
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-022
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-023
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-024
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-025
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-026
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95	22-027
Repealed by SDSS Manual Letter No. CFC-87-05	22-028
Acknowledgement of Request for a State Hearing	22-040
	22-043

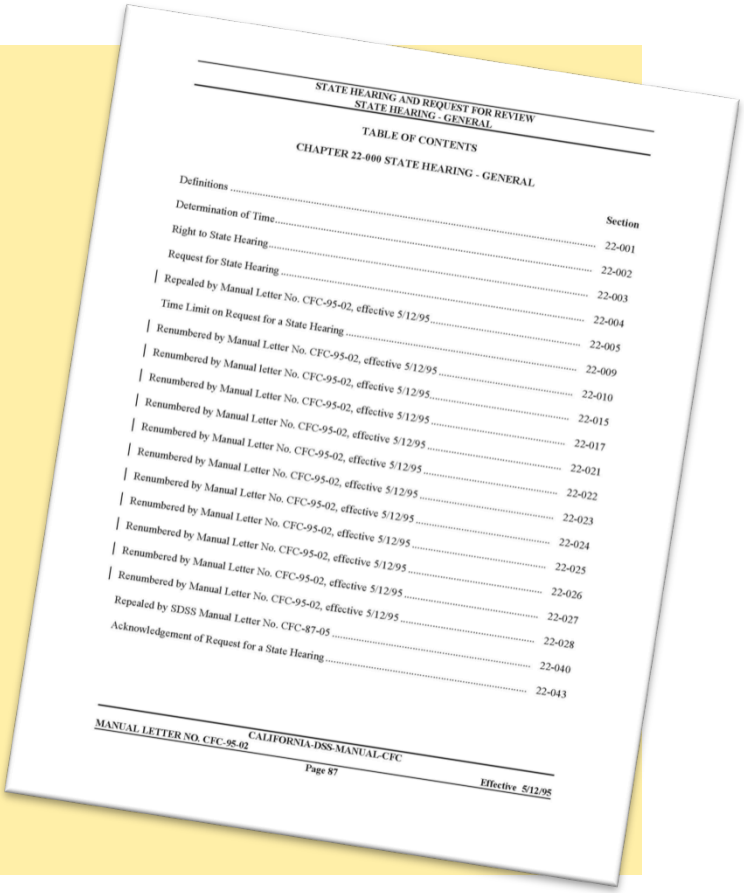
MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC Page 87 Effective 5/12/95

California DSS Manual – Section 22-060 through 22-063

Appeal Decision (Accessibility): Current Medi-Cal Process

- **State Hearing Record (including recording of the hearing or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in proceedings, and any final, proposed or alternate decision) must be made available to consumer and county during normal working hours at DSS or mutually-agreed upon location for 3 years after date of any decision issued by Director.**

- **DSS compiles and distributed to each CWD a current digest of decision which is open to public inspection (subject to privacy and confidentiality safeguards).**



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Acknowledgement of Request for a State Hearing	22-040
	22-043

MANUAL LETTER NO. CFC-95-02 CALIFORNIA-DSS-MANUAL-CFC
Page 87 Effective 5/12/95

California DSS Manual – Section 22-064; Cal. Welf. and Inst. Code 10964

Appeal Decision: Future Process

Vision & Operational Decisions Made to Date

- **Decisions to be issued in writing within 90 days from request.**

Appeals Decisions: Operational Decisions TBD

POLICY DECISIONS

MEDI-CAL:

- How will current proposed vs. final appeal decision framework align with new requirements? What are implications for HHS appeals timeline?

COVERED CA:

- What entity is responsible for sending notice of decision to consumer?
- What is process for implementing decision once received from DSS?
- What is process for making appeal record available to consumer? The public?

CROSS-ENTITY ISSUES:

- How will notices of decision be coordinated across Exchange, Medi-Cal and DSS?

IT INFRASTRUCTURE

CROSS-ENTITY ISSUES:

- How will decisions be transmitted via secure electronic interface from DSS to the Exchange and Medi-Cal where required?
- How/in what IT system are appeal decisions tracked?
- Will written decisions or the appeal record be available via the web portal in applicant's electronic account?

PERSONNEL DECISIONS

COVERED CA:

- What staff will handle consumer communications/ noticing around appeal decisions?
- What staff will handle implementation of appeal decisions?
- What staff will manage making appeal record available to consumer for review? To public?
- How many staff and what level of training are required?

Steps in the Appeals Process

Step-by-Step Appeals Process

1. NOTICE OF APPEAL RIGHTS
2. REQUEST FOR APPEAL
3. NOTICE OF RECEIPT OF APPEAL REQUEST
4. INFORMAL RESOLUTION
5. DISMISSALS/ WITHDRAWALS
6. DESIGNATION OF AUTHORIZED REPRESENTATIVE
7. HEARING SCHEDULING/ NOTICE OF HEARING
8. EVIDENCE PACKET
9. APPEALS HEARING MODALITY & ADJUDICATORS
10. EXPEDITED APPEALS HEARING
11. HEARING DECISION
12. **POST-HEARING**

Post-Hearing: Legal Requirements

State Rehearing Process

- Consumer or county may file a request for a rehearing with DSS no more than 30 days after receipt of the hearing decision . Request may be filed in any form.
- Upon receipt of rehearing request, DSS will mail a copy of request to other party.
- Director must grant or deny request no earlier than 5 nor later than 15 working days from receipt. If Director does not take action within 15 days, request is deemed denied.

Cal. Welf. and Inst. Code 10960;
DSS Manual 22-065

HHS Appeals Process

- Upon exhaustion of the State-Based Exchange appeals process, a consumer may request an appeal before HHS.
- Consumer must make appeal request to HHS within 30 days of Exchange appeal decision via phone, mail, in-person (as applicable) or internet.
- It appears that information sharing and coordination requirements between the State-Based Exchange and Medicaid apply to the HHS Exchange appeal entity.

Proposed 45 CFR §155.505(c);
Proposed 45 CFR 155.520(c);
Proposed 45 CFR 155.500

Judicial Review

- Consumer may seek judicial review to the extent it is available by law.
- Under California law, consumer or county may file a petition with the superior court within one year after receiving notice of the Director's final decision requesting a review of the entire proceedings in the matter related to questions of law involved in the case.

Proposed 45 CFR §155.505(g);
Cal. Welf. and Inst. Code 10962

Post-Hearing: Issues for Future Consideration

Rehearing Process

- Coordination required:
  - across Medi-Cal, Covered CA and DSS, including for information sharing among agencies, implementation of decisions, and consumer noticing
  - between state rehearing process and HHS appeals process (particularly in light of parallel, but misaligned timelines)

HHS Appeals Process

- Coordination required:
  - across Medi-Cal, Covered CA, DSS, and HHS (including for information sharing among agencies, implementation of HHS appeal decisions and consumer noticing)
  - with state rehearing process

Judicial Review

- Coordination required:
  - across Medi-Cal, Covered CA, DSS and Superior Court (including for information sharing among agencies, implementation of decisions, and consumer noticing)

OPEN POLICY QUESTIONS:

- What if decision issued via Rehearing Process conflicts with HHS Appeals decision?
- What if HHS Appeals Decision conflicts with Judicial Review decision?

1. **Medicaid/CHIP/Exchange Appeals: Federal and State Requirements, Delegation Options and Process Flows**

2. **Step-by-Step Appeals Process: Legal Requirements, State Vision, and Operational Decisions**

3. **Next Steps and Appendix**

Work Plan

Project Scope	Timeframe
Background research of legal statutory and regulatory appeals requirements, implications for integrated IAP appeals process, and initial drafting of Appeals features and considerations	January 18 – February 27, 2013
Launch Meeting with CA Appeals Team to validate scope of work and outline next steps	March 13 and March 18 2013
Develop detailed CA IAP Appeals Features: State Vision, Operational Decisions and Open Issues framework	March 18, 2013 – April 5, 2013
Hold in-person working session to review Appeals Features framework with CA Appeals Team	April 9, 2013
Revise framework and draft summary of Appeals Features based on feedback from CA Appeals Team	April 9, 2013 – April 23, 2013
Share summary of Appeals Features with CA Appeals Team	April 24, 2013
Discuss summary of Appeals Features with CA Appeals Team (possibly via a second in-person working session)	Week of April 29, 2013
Revise Appeals Features based on CA Appeals Team feedback	April 29, 2013 – May 13, 2013
Final Appeals Features delivered to CA Appeals Team	May 13, 2013

Appendix

Medicaid and Exchange Regulatory Requirements

Scope of Appealable Decisions

- Eligibility determination or redetermination

MEDICAID

- Determination of income for cost-sharing obligations
- Termination, suspension or reduction of covered services;
- Determination of the amount of medical expenses which must be incurred to establish income eligibility
- Determination by nursing facilities and adverse determinations by state related to preadmission screening and annual resident review

EXCHANGE

- Level of Advance Premium Tax Credit/Cost Sharing Reduction
- Exemption determination for individual mandate;
- Failure of the Exchange to provide timely notice of an eligibility determination or redetermination

42 CFR §431.201; 42 CFR 431.241; NPRM;
Proposed 45 CFR §155.505(b).