Appendix F: Participant Rights

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.

Upon denial of initial enrollment into the HCBA Waiver program, or when a service has not been approved as requested, is reduced, terminated, or denied by the Waiver Agency or DHCS, the entity making the determination will issue a NOA, "State Fair Hearing Notice Request" form, and the informational letter "Your Right to Appeal the Notice of Action." The NOA, hearing request form, and the informational letter are mailed to the participant and/or legal representative/legally responsible adult(s) by the Waiver Agency or DHCS.

In the event of a reduction or termination of continuous and previously authorized services, the Waiver Agency or DHCS mails the NOA, hearing request form, and informational letter to the participant, her legal representative/legally responsible adult(s), the participant's current primary care physician, and the waiver service provider at least 10 calendar days prior to the effective date of the action.

The NOA advises the participant of the Waiver Agency or DHCS' decision and the reason(s) to: 1) terminate or deny waiver enrollment; 2) reduce or terminate previously authorized waiver services; or 3) deny or modify new waiver services. The NOA includes instructions advising the participant and/or their authorized representative(s) on how to request a State Fair Hearing before an Administrative Law Judge (ALJ), and how to request continuation of services pending the outcome of the State Fair Hearing. The participant must request a State Fair Hearing within 90 calendar days after the date the NOA is mailed to the participant.

If the request for a State Fair Hearing is submitted to the DSS Hearings Division prior to the expiration date printed at the top of the NOA, or within ten (10) calendar days of the date of the notice, the participant's waiver enrollment and/or previously authorized services will continue without interruption pending the outcome of the State Fair Hearing. The participant and/or their legal representative/legally responsible adult(s) are responsible for submitting the request for a State Fair Hearing before the action takes place. A copy of the NOA and the fair hearing request form is filed in the participant's case record maintained by the Waiver Agency or DHCS.

State Plan and waiver services unaffected by the NOA will continue to be provided as authorized. The participant's Medi-Cal eligibility is not affected by a NOA, unless the NOA specifically indicates that the action taken with respect to the HCBA Waiver will impact the Waiver participant's Medi-Cal eligibility.

Upon request of a State Fair Hearing, the Waiver Agency or DHCS staff will contact the applicant or participant and/or their legal representative/legally responsible adult(s) to provide them with additional information on the State Fair Hearing process, and advise them they will receive the Waiver Agency or DHCS' written position statement before the scheduled hearing date. If the participant and/or their legal representative/legally responsible adult(s) have not identified legal representation, the Waiver Agency or DHCS will refer the participant and/or their legal representative/legally responsible adult(s) to the toll- free phone number on the back of the NOA for information regarding hearing rights, free legal aid, and information regarding Protection and Advocacy, Inc. The Waiver Agency or DHCS will continue to work with the participant and/or their legal representative/legally responsible adult(s) to resolve the hearing issues before the scheduled date of the hearing. If a hearing is held and the DHCS Director's Decision upholds the Waiver Agency or DHCS' action that is being appealed, any aid paid pending the outcome of the State Fair Hearing will stop.

The participant may request a rehearing. Instructions on how to request a rehearing, and the grounds upon which a rehearing can be requested, are included with the ALJ's written decision. To request a rehearing, the participant must mail a written request to the address indicated in the instructions within 30 calendar days of the final decision. The participant must state the date the decision was received and the reason(s) why a rehearing should be granted. A request may be granted if the participant submits evidence that was not reasonably available at the time of the hearing that could change the outcome of the original decision. The Director may deny the request, or order the ALJ to conduct a rehearing on one, several, or all issues that were presented for review in the original State Fair Hearing.

If the participant is unsatisfied with the outcome of the original hearing or rehearing, s/he can elect to seek judicial review by filing a petition in Superior Court within one year of receiving notice of the final decision adopted by the DHCS Director. The participant may file this petition without first requesting a rehearing.

The following are some, but not all, reasons, each alone or in conjunction with each other, for issuing a NOA affecting the participant's enrollment in, or benefits received under, the waiver:

- The participant loses Medi-Cal eligibility.
- There is no evidence establishing the medical necessity of the requested waiver services.
- The participant moves from the geographical area in which the HCBA Waiver services were authorized to a new area where there is no Waiver Agency, and no provider has agreed to render waiver services to the participant.

• In areas where there is no Waiver Agency, the participant's medical condition resulting in frequent emergency hospitalization is unstable as demonstrated by repeated, unplanned hospitalizations, and the waiver does not provide enough medically necessary services and supports to protect and sustain the participant's health and safety in the community
• The participant's condition does not meet the medical eligibility criteria for an evaluated LOC described in the waiver.
• The participant or the legal representative/legally responsible adult(s) refuses to comply with the participant's current primary care physician's orders in the POT, and the Waiver Agency or DHCS determines that such compliance is necessary to assure the health, safety, and welfare of the participant in a community-based setting.
• The participant or the legal representative/legally responsible adult(s) does not cooperate in attaining or maintaining the goals identified in the POT, thereby jeopardizing the participant's health and welfare.
• The identified support network system or a primary caregiver cannot be identified, is not able, or is no longer willing or available, to assume the responsibility to act as a backup caregiver for the participant. The Waiver Agency or DHCS will work with the participant and responsible persons to develop a POT and identify providers so the participant can continue to reside safely in a home-like setting, when possible.
• The home evaluation completed by the Waiver Agency, or DHCS in areas where there is no Waiver Agency an HCBS provider, documents an environment that does not support the participant's health, safety and welfare, or is otherwise not conducive to the provision of HCBA Waiver services.
• The HCBA Waiver service provider is unwilling or unable to provide the amount of authorized services as order by the participant's POT and/or primary care physician's order. If this inability to provide services impacts the health and safety of the participant, at the request of the participant and/or the legal representative/legally responsible adult(s), DHCS shall assist by identifying and authorizing services to be provided by a licensed health care facility, until another HCBA Waiver service provider accepts the responsibility for providing services in the home setting.
• Any documented incidence of noncompliance by the participant or legal representative/legally responsible adult(s) with the requirements of this agreement and/or any failure to comply with all regulatory requirements.
• A Participant is found to be a threat or harm to others with who they are residing or from whom they are receiving services, including but not limited to caregivers or service providers, care managers or the community at large; or are unable to safely integrate into social settings to protect the health and safety of the Participant's circle of support.
• The participant, legal representative/legally responsible adult(s), and/or circle of support are requesting direct care services that exceed 24 hours per day, and do not agree to a reduction of services so as not to duplicate services.
• The participant receives 360 hours per month or more of combined IHSS, WPCS, and paramedical services, has not been issued an overtime exemption by DHCS, and does not have two (2) or more personal care providers to protect the safety of the participant.
• In areas where there is no Waiver Agency, the participant, legal representative/legally responsible adult(s), participant's current primary care physician, or waiver service provider, has not submitted to DHCS a complete and current POT that is signed by the participant's current primary care physician, within 90 days of notification that they are eligible for enrollment in the HCBA Waiver or within 60 days of the end-date of the previous POT.
•The Waiver Agency or DHCS has not authorized a waiver service within 90 days of notification that the participant is eligible for enrollment in the HCBA Waiver or within 60 days of the termination date of the last authorized waiver services.
•Participant has been residing in an institutional setting for more than 30 consecutive days.

In the event of a reduction or termination of waiver services and/or enrollment, the Waiver Agency or DHCS will assist the participant in identifying local community resources that may be available.

Individuals are informed about the State Fair Hearing process during entrance into the HCBA Waiver program. Upon initial enrollment or denial of enrollment individuals are given the Informing Notice, NOA, State Fair Hearing Notice Request, and Your Right to Appeal the Notice of Action.

All NOA and supporting documentation is stored in the MedCompass case management system, to which both DHCS and Waiver Agencies have access to their assigned caseload.

Appendix F: Participant-Rights

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.

DHCS continually reviews all information submitted by the Waiver Agency and any other sources of information regarding participant complaints and grievances, and instances of abuse, neglect, and/or exploitation. Contracts between DHCS and Waiver Agencies require Waiver Agencies to implement and maintain written grievance policies and procedures describing the submission, documentation, evaluation, and resolution of all participant grievances.

Waiver Agencies design policies and procedures that fit their unique operational structures and the participants they serve. Grievance policies and procedures are subject to review and approval by DHCS during the QAR and as necessary. DHCS provides technical assistance to Waiver Agencies handling complaints, grievances, and complicated situations. Waiver Agencies report in their QPRs all complaints, grievances, and outcomes. Medi-Cal State Fair Hearings serve as an additional dispute resolution method for participants. A participant's right to receive a State Fair Hearing is preserved if a participant elects to make use of the grievance process. Participants shall be informed that the employment of the additional dispute resolution mechanism does not serve as a prerequisite or substitute for a State Fair Hearing.

All NOA and supporting documentation is stored in the MedCompass case management system, to which both DHCS and Waiver Agencies have access to their assigned caseload.

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:

DHCS

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).

Waiver Agencies must implement and maintain policies and procedures that describe the submission, documentation, evaluation, and resolution of participant grievances. Grievances are categorized as verbal or written complaints. This grievance/complaint procedure is a mechanism to address participant expressions of dissatisfaction that are outside of the scope of the State Fair Hearing Process. The filing of a grievance or complaint is not a pre-requisite to the filing of a State Fair Hearing, regardless of whether the grievance should or could be addressed in a Fair Hearing.

A verbal complaint consists of any expression of dissatisfaction by a participant to the Waiver Agency or DHCS, in person or by telephone. For example, a participant may verbally complain that their qualified case manager does not return phone calls in a timely manner. The Waiver Agency or DHCS responds to verbal complaints verbally. Verbal complaints are usually resolved within 72 hours. The Waiver Agency or DHCS is responsible for documenting the verbal complaint and resolution.

A written complaint is considered a formal complaint and consists of any written expression of dissatisfaction by a participant to the Waiver Agency or DHCS. Although some Waiver Agencies design forms for participants to use when submitting written complaints, use of these forms is not obligatory. When written complaints are received, Waiver Agencies or DHCS must record each complaint in a complaint log. Different levels of staff may be involved in the written complaint review process.

Waiver Agencies or DHCS provide written assurances that any participant who requests or needs assistance with the submission of a complaint shall receive it. The Waiver Agency or DHCS presents and reviews these assurances with all participants at the time of enrollment and upon request. Upon completing the review of the complaint, the Waiver Agency or DHCS provides the participant a signed confirmation of receipt.

Waiver Agencies are required to submit a list of grievances and complaints that have been filed along with their resolution to DHCS on a quarterly basis as part of their QPR.

All Waiver Agency and DHCS grievance policies and procedures are provided to the participant and/or the participant's legal representative in writing at the time of enrollment and upon request, and must address/include the following:
• A description of the process and general timelines for resolution of the complaint within the Waiver Agency. If a participant requests to have DHCS' contact information provided to them, their request cannot be refused by the Waiver Agency;
• Written information about Waiver Agencies' grievance policies, procedures, and form(s), if applicable, must be provided to the participant at the time of enrollment and upon request, and include telephone numbers for obtaining information on State Fair Hearing appeal rights;
• All grievances must be brought to the attention of the participant's qualified case manager for first-level resolution, and must be presented during the subsequent QAR;
• All grievances must be reviewed by the Waiver Agency or DHCS following submission of the grievance. Appropriate action is taken as a result;
• If a verbal complaint cannot be resolved by the participant's qualified case manager, the participant must be asked if they would like to submit a formal, written complaint;
• If a verbal complaint becomes a written complaint, the Waiver Agency must notify DHCS of the grievance in the subsequent quarterly progress report and provide DHCS information pertaining to the case. If the grievance is resolved, the Waiver Agency must notify DHCS of the resolution that was reached and/or the outcome; and
• Serious issues involving licensed providers are immediately reported to the appropriate licensing agency when DHCS becomes aware of such issues.
• If a participant is unwilling to substantiate a complaint, or provide details necessary to perform an investigation, the Waiver Agency is not obligated to continue investigating the complaint and/or seek resolution, and may close the case. The Waiver Agency shall notify the participant of its decision in writing.