



State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

CCT GL #15-004

DATE: October 5, 2015  
TO: California Community Transitions (CCT) Program Director  
SUBJECT: Notice of Action (NOA), Position Statements, and the State Fair Hearing Process

## PURPOSE

The purpose of this Guidance Letter is to provide CCT Lead Organizations (LOs) with an overview of federal and state NOA and State Fair Hearing regulations. This letter also includes information on issuing NOAs and how to proceed when a CCT Enrollee or Participant receives a state-issued NOA for CCT benefits/services.

## BACKGROUND

### Notice of Action

A NOA is a legal document that informs Medi-Cal beneficiaries, and/or their surrogate decision-makers, when a Medi-Cal benefit/service is decreased, deferred, or denied.

The majority of NOAs issued to CCT Enrollees and Participants **for CCT benefits/services** are automatically issued by the computerized Treatment Authorization Request (TAR) system, at the time of TAR adjudication by a state Registered Nurse (RN). TARs are most frequently deferred or denied when a request for approval is submitted without all of the required documentation and information. Other less frequent reasons a CCT TAR would be deferred or denied include, but are not limited to, the following:

- There is no evidence the individual has a medical need for the services (lack of medical necessity)
- The individual is no longer eligible to receive Medi-Cal benefits/services

In addition to state-issued NOAs, there are two instances in which an LO would issue a NOA:

- 1) Unsafe Transition – It is determined that the medically-necessary home and community based (HCB) long-term services and supports (LTSS) required to maintain the health and/or safety of the beneficiary are unavailable in the community.
- 2) Non-compliance – Documented incident(s) of non-compliance by the beneficiary and/or legal representative that threaten the health and/or safety of the beneficiary in the community.

ALL NOAs must provide written notice of the LO's decision to deny CCT benefits/services; the reason(s) for the decision, and the beneficiary's right to request a State Fair Hearing if (s)he wishes to contest the decision.

The hearing will involve a representative from each party meeting together with the Administrative Law Judge (ALJ). The hearing may be held in person, by telephone, or by video conference, depending on the location of the hearing and the ability of the beneficiary to attend.

### Position Statement

A Position Statement, sometimes called a Statement of Position, is a written document with attached exhibit(s) that is submitted by one or more hearing party(ies) or authorized representative(s) to declare their assessment, review, evaluation, and findings on the situation under consideration.

- If the state issues the NOA, the state must submit a position statement at the hearing and must make the position statement available to the claimant and/or authorized representative at least two (2) business days prior to the hearing date.
- If the CCT LO issues the NOA, the LO must submit a position statement at the hearing and must make the position statement available to the claimant and/or authorized representative at least two (2) business days prior to the hearing date (a sample Position Statement is included as an attachment to this Guidance Letter).
- Claimants and authorized representatives are not required to submit a position statement, but may submit a position statement before, at, or after a hearing.

The Position Statement is part of the judicial proceeding in which each hearing party presents testimony, arguments, and evidence from a witness, and cross examines the witness against them. The ALJ will render a decision based on the testimony and applicable regulations/statute at a later time, usually, within 90 days of the date the hearing was filed.

## **GUIDANCE**

### **1. *When are LOs responsible for issuing NOAs?***

There are only two instances in which an LO would issue a NOA:

- 1) Unsafe Transition – It is determined that the medically-necessary HCB LTSS required to maintain the health and/or safety of the beneficiary are unavailable in the community.
- 2) Non-compliance – Documented incident(s) of non-compliance by the beneficiary and/or legal representative that threaten the health and/or safety of the beneficiary in the community.

LOs should always attempt to work with beneficiaries before a NOA is issued to determine if there is a way to resolve the issue and/or denial of services before involving the judicial system.

If the CCT Enrollee or Participant, and/or his/her legal representative, decides or agrees to disenroll or discontinue from CCT, a NOA is not required.

### **2. *What information must be included in a NOA issued by an LO?***

All NOAs must include, at a minimum, the following information:

- Notice Date
- Effective date (10 days from the Notice Date)
- The action being taken (denial, deferral, etc.)
- Reason/rationale for the action
- Citation of regulation, policy, etc. used to determine action
- Name and telephone number of the LO employee who made the determination
- Information on the individual's right to request a State Fair Hearing, as well as the procedures for requesting a state hearing and the time limits within which a state hearing must be requested.

### **3. *Do the NOAs need to follow a standard format or meet accessibility requirements?***

#### Print Size

The body of the notice must be at a minimum of Arial font size 12. ALL CAPS should be avoided whenever possible because it is difficult to read.

### Format

All of the following information must to be included in the Header and Footer of the NOA:

Header:

- Notice Date
- Case Number
- LO Contact's Name
- LO Contact's Telephone Number
- LO's Mailing Address
- LO's Office Hours

Footer:

- Hearing Rights
- Any applicable laws or regulations

### Language

At a minimum, providers must provide oral interpretation of all forms, materials, and notices necessary for the individual to participate in and benefit from CCT. If an interpreter is not available in the requested language, a service such as those that provide telephone-based interpretation should be used to ensure adequate language access.

If possible, all print materials should be made available in the individual's primary language, regardless of whether that language is a threshold language in the state.

**4. *What are the LO's responsibilities to individuals when their organization does not issue a NOA for CCT services/enrollment (i.e., to state-issued NOAs)?***

The LO is responsible for responding to a state-issued NOA when **LO staff submitted a TAR without sufficient information**. If this occurs, the LO is required to submit an updated TAR with all of the necessary information as soon as possible, and must notify both the CCT Enrollee or Participant and the assigned state CCT Nurse.

**5. *When is the LO required to write a Position Statement in response to a NOA?***

LOs are required to write a Position Statement every time they issue a NOA to an individual. Sometimes the issue may be resolved prior to going to a state hearing, but whenever a CCT LO issues a NOA, it should be assumed that the NOA will lead to a state hearing.

**6. *What information needs to be included in a Position Statement prepared by an LO?***

The following information must be included in a position statement:

- basic demographic case information;
- the issue being heard;

- statement of known facts, in chronological order;
- analysis of the situation or occurrence;
- the agency's position;
- applicable State or Medi-Cal laws, waivers, demonstration, programs, and/or regulations, etc.; and
- the agency's conclusion based on the foregoing.

Supporting documents, letters, regulations, or forms, etc., may be attached to a position statement to be presented to the hearing judge.

A sample DHCS Position Statement is attached to this guidance letter for educational purposes. Each LO must draft their Position Statements on their agency letterhead when submitting them to ALJs at State Fair Hearings.

**7. *What are the steps in the State Fair Hearing process?***

- 1) NOA is issued
- 2) Hearing Request is filed – within 90 days
- 3) Notice of Request is issued
- 4) Time available to discuss NOA issues – 2 weeks
- 5) Hearing is scheduled
- 6) Time available to discuss NOA issues
- 7) Hearing is held
- 8) Judge writes decision
- 9) Decision is published

**8. *When does the 90-day period for requesting a fair hearing begin?***

The 90-day period begins the day after the post-marked date on the NOA.

**9. *Is there time for both parties to discuss the issues more thoroughly (and possibly resolve the issue) without going to a state hearing before the 90 day deadline?***

The parties may discuss the NOA issue until the date of the hearing.

**10. *How will an LO know when a NOA has been issued by state CCT staff?***

LOs will know that a NOA has been sent to a client anytime a TAR for CCT services is deferred or denied. In addition, fostering open and consistent communication with clients should include asking CCT Enrollees and Participants if they have been denied for any other, non-CCT, Medi-Cal services.

### **11. Who needs to attend the State Hearing?**

The individual and/or his/her authorized representative, a representative of the organization that issued the NOA, and anyone else the individual would like at the hearing may attend.

### **ADDITIONAL RESOURCES**

#### Websites

1. California Department of Social Services – State Hearing Division:  
<http://www.cdss.ca.gov/cdssweb/pg27.htm>
2. Medi-Cal Fair Hearing: <http://www.dhcs.ca.gov/services/medi-cal/Pages/Medi-CalFairHearing.aspx>

### **QUESTIONS**

For further questions regarding issuance of a NOA, please contact the CCT Project Director, Karli Holkko, at (916) 322-5253 or [karli.holkko@dhcs.ca.gov](mailto:karli.holkko@dhcs.ca.gov). You may also contact your assigned CCT Project Nurse.

Sincerely,

*(Original signed by)*

Rebecca Schupp, Chief  
Long-Term Care Division

Enclosures: *SAMPLE* NOA (LOs must generate their own notices)  
*SAMPLE* Position Statement  
**YOUR HEARING RIGHTS** Form