KanCare Ombudsman Office
Phone: Toll Free: 1-855-643-8180
TTY: 771
Email: KanCare.Ombudsman@ks.gov
Website: www.kancare.ks.gov/kancare-ombudsman-office

KanCare Appeals and State Fair Hearing Process

The ***KanCare appeal and state fair hearing process*** is for KanCare members who are currently ***receiving services***. KanCare members must complete the appeal process with their managed care organization (MCO) prior to submitting a request for a state fair hearing.

The ***state fair hearing process*** is for current members who have already completed the KanCare Appeals process with their MCO **or** for people who are in the *eligibility process or renewal process* for receiving KanCare**.** Applicants or beneficiaries in the eligibility process (application or renewal process) are not required to submit an appeal prior to submitting a request for a state fair hearing.

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Note – changes to grievances, appeals and state fair hearings contract with the MCOs starting May 1, 2017.

- ***NEW*** -The member must complete the MCO's appeal process ***before*** making a request for a state fair hearing.
- ***NEW*** – All submission and resolution timeframes changed from business days to calendar days.
- ***NEW*** – If the MCO extends the timeframe for issuing an authorization decision, the Member has the opportunity to file a grievance.
- ***NEW*** – If the MCO fails to issue service authorization decisions or meet grievance and appeal resolution timeframes for standard and expedited service authorizations, grievances and appeals, such untimely authorizations or resolutions *constitute a denial and are adverse actions. (The member then has the ability to file an appeal then a state fair hearing if the appeal is not successful.)*
- ***NEW –*** If the state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the fair hearing was pending, the Contractor must authorize or provide the disputed services promptly.
- ***NEW –*** *If the state fair hearing officer reverses a decision to deny authorization of services, and the Member received the disputed services while the fair hearing was pending, the Contractor must pay for those services.*

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I. APPEALS

What is an appeal?

An appeal is your request for a review of an Adverse Action. ***An Action*** is when a managed care organization (MCO) *such as Amerigroup, Sunflower or United, or a state agency such as Kansas Department of Health and Environment, Kansas Department of Aging and Disability Services or Kansas Department of Children and Families:*

- Denies or limits a service you want;
- Reduces, suspends or terminates a service you are getting;
- Fails to authorize a service in the required time; or
- Fails to respond to a grievance or appeal in the required time.

-Portions taken from United 2015 Member Handbook, p.43

With a KanCare Appeal (also referred to as an MCO Appeal), the Managed Care Organization (Amerigroup, Sunflower or Untied) team will review your case information and any new documentation you send to determine if they agree with you or with the original decision.

A "**notice of action**" or "**notice of adverse action or determination**" letter is mailed to tell a KanCare member that there has been a change in the KanCare services. It will tell the member that there is an option to appeal the action. The appeal must be filed within 30 calendar days from the date on the letter (plus 3 calendar days if the notice was mailed.)

Basics

- You should not be treated differently by your MCO or MCO Care Coordinator if you file an appeal.
- ***DO NOT WAIT. Turn in the appeal right away.*** You can always withdraw the appeal if you decide not to go forward with the appeal. They do not make exceptions for missed deadlines.
- The member must complete the MCO's appeal process ***before*** making a request for a state fair hearing.
- **What documentation do I need?**
    - Call your MCO or send in your appeal letter as soon as possible saying you want to appeal. It does not have to state your case yet. ***See pages 5-6 for assistance on filing a KanCare Appeal (KanCare Appeals Worksheet).***
    - Follow up with documentation showing why you are appealing the case and disagree with the decision. It can be a letter from yourself and other professionals that can identify:
        1. the change that has been determined by the managed care organization
        2. why this should not be done and the problems it will cause
        3. the effect it will have short and long-term on the physical, mental and emotional well-being of the member.

- For HCBS member, get a copy of the current Integrated Service Plan (ISP) (plan of care) and the new one with the changes and compare them by line and state the case based on the changes (line by line.) For example, decreasing meal preparation from 8 hours/wk. to 4 hours/wk.; decreasing bathing from 6 hours wk. to 3 hours/wk. How will this impact the member short and long term? Have the professionals (doctors, nurses, LPN, physical therapists, home attendants, etc.) write something as well as the member. It will be helpful if the professionals knows the specific things that are being denied and why. If it is not the Integrated Service Plan (plan of care) *hours* being reduced, note what specific services are being reduced so the professionals can help explain why those services are needed based on your issues/concerns.

- **Where to file an MCO appeal**:
  - **Sunflower** Toll Free: (1-877-644-4623) (TTY: 1-888-282-6428)
    Fax: 1-888-453-4755
    Mail to:
    Sunflower Health Plan Quality Department
    8325 Lenexa Dr., Suite 200
    Lenexa, KS 66214

  - **Amerigroup** Toll Free:(1-800-600-4441) (TTY: 711); Direct: 913-749-5955 (TTY 711)
    Mail to:
    Central Appeals Processing
    Amerigroup Kansas, Inc.
    PO Box 62429
    Virginia Beach, VA 23466-2429
    Visit us in person at:
    Amerigroup Kansas, Inc., Administrative Review and Grievance Department
    9225 Indian Creek Parkway, Building #32
    Overland Park, KS 66210

  - **United Healthcare** (1-877-542-9238) (TTY: 711)
    Mail to:
    United Healthcare
    Grievance and Appeals
    P.O. Box 31364
    Salt Lake City, UT 84131-0364

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What happens to my services while I am appealing?

- **Non-HCBS Services:** You have a ***10 day deadline from the date on the "Notice of Action Letter"*** to request that non-HCBS services continue during the appeals process. Please keep in mind that you *may* have to pay for those services if you lose the appeal. ***NEW –*** *If the state fair hearing officer reverses a decision to deny authorization of services, and the Member received the disputed services while the fair hearing was pending, the Contractor must pay for those services.*
- **Home and Community Based Services (HCBS):** If you file an appeal related to services that are provided as Home and Community Based Services (HCBS), you will automatically keep getting those services while the appeal is being decided. You will ***not*** have to pay for this care if the appeal decision in not in your favor unless fraud is present.

II. EXPEDITED APPEALS – for an appeal related to services that put your health at immediate risk, you may file an expedited appeal with your MCO. The appeal will be reviewed within 3 calendar days of the request. They can be submitted in writing or verbally (by phone). A member must file an expedited appeal first, if that is denied, the member can then file an expedited state fair hearing. (Once submitted, contact the MCO to confirm whether or not it qualifies as a standard or expedited appeal.)

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KanCare (MCO) Appeals Worksheet

- **Request your appeal** as soon as possible informing the Managed Care Organization (MCO) you want to appeal the adverse action. Appeals may be made by phone or in writing.
- **Options:** You may use the following worksheet as a script to guide you on the phone, in writing a letter, or you may mail or fax the worksheet as an alternative to a phone call or letter to file the initial appeal.
- **Do Not Wait:** Appeals have a ***30 calendar day deadline from the date on the "Notice of Action Letter"*** **plus 3 calendar days if it is mailed.** The initial request for appeal does not have to state your case yet.
- **Follow up** with a letter or this worksheet and any additional documentation from yourself and other professionals that support your case.

  This documentation should be able to identify:

  (1) The change that has been determined by the MCO or state agency,

  (2) Why this should not be done and problems it will cause,

  (3) The effect it will have short and long-term on the physical, mental and emotional well-being of the member.

- **Continuation of HCBS Services during the appeal:** If you file an appeal related to services that are provided as Home and Community Based Services (HCBS), you will keep getting those services automatically while the appeal is being decided. You will not have to pay for this care if the appeal decision in not in your favor unless fraud is present.
- **Continuation of Non-HCBS Services during the appeal:** You have a ***10 calendar day deadline from the date on the "Notice of Action Letter"*** to request that non-HCBS services continue during the appeal process. Please keep in mind that you *may* have to pay for those services if you lose the appeal. ***NEW –*** *If the state fair hearing officer reverses a decision to deny authorization of services, and the Member received the disputed services while the fair hearing was pending, the Contractor must pay for those services.*

For HCBS MEMBERS: State the case based on the changes line by line. Get a copy of the **"current Integrated Service Plan (ISP)"** (current plan of care) and the **"new ISP"** and compare them line by line to show the unwanted changes and help providers to identify what issues and risks may be involved.

For example: (1) Decreasing meal planning & preparation from 8 hours/week to 4 hours/week, (2) Decreasing dressing/grooming from 7 hours/week to 3 hours/week. Write out how each of these will impact the member (1) short term, (2) long term.

Have the professionals write something as well as the member.

The letter(s) would be about why this should not be done and problems it will cause, stating the short and long term effects it will have on the physical, mental and emotional well-being of the member.

Note: It will be helpful for the professionals to know the specific things that are being denied and why. If it is not the ISP (plan of care) *hours* being reduced, tell the professionals which services specifically are being reduced or suspended, so they can help explain why those services are needed based on your issues/concerns.

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KanCare (MCO) Appeals Worksheet

- To avoid missing critical deadlines, the KanCare Ombudsman's office recommends that the member contacts their MCO by phone immediately to inform them of their (1) request to appeal and (2) request to keep *non-HCBS services* during the appeals process (HCBS services will automatically continue during the appeals process.). Then follow up with appeal letter or worksheet as well any additional documentation that supports the member's case.
- ***This is not a legal form or document*** and is intended to help the KanCare consumer to organize important information needed to request an appeal with their Managed Care Organization (MCO). The KanCare member can file an appeal without using this document.

A. Contact Information & Important Dates:

1. Name (KanCare member):
   _____
2. Mailing Address:
   _____
3. Phone: _____ Medicaid ID#: _____
4. Date on "Notice of Action" Letter from MCO/State Agency: _____
5. Make a copy of the "Notice of Action Letter" and send the copy in with your appeal letter or this worksheet. If you are appealing by phone, have the "Notice of Action Letter" in front of you when you make the call.
6. Date member requested appeal (by phone or in writing): _____ (***30 calendar day deadline from date on "Notice of Action" letter.)***
7. Date member requested that Non-HCBS related services continue during the appeals process (by phone or in writing): _____ (***10 calendar day deadline from date on "Notice of Action" letter.)*** Please keep in mind that the consumer may have to pay for those services if they lose the appeal.
8. Date member sent the appeal letter (or this worksheet) and any additional documentation from KanCare member that supports member's case: _____
9. Optional: Date member sent the appeal letter (or this worksheet) and any additional documentation from professionals (doctors, therapists, etc.) that supports member's case: _____

B. State your case by answering the following questions for each change on your benefits/services:

1. What service(s)/benefit(s) are being changed?
   _____
   _____
2. How will this impact your physical/mental/emotional well-being short term (up to 6 months)?
   _____
   _____
3. How will this impact your physical/mental/emotional well-being long term (over 6 moths)?
   _____
   _____

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III. STATE FAIR HEARINGS

What is a State Fair Hearing?

The state fair hearing is done through the Office of Administrative Hearings (OAH) with the State of Kansas. It is an opportunity for the member to speak about his/her issue. The member, an MCO representative and the Medicaid state agency (representing the MCO) meet before a Presiding Officer that is an administrative law judge, who is an impartial individual. He or she will enter an initial order based upon what is presented by the agency and by you at the hearing.

It is usually done on the phone as a conference call, but a member can request to have the hearing in person.

There is no expense for a state fair hearing, either on the phone or in person.

A "**notice of action**" or "**notice of adverse action or determination**" letter is mailed to tell a KanCare member that there has been a decision made regarding their KanCare application or services. It will tell the member that there is an option to appeal the action. The appeal or hearing must be filed within 30 calendar days plus 3 calendar days if the notice was mailed.

Basics

- You should not be treated differently by your MCO or MCO Care Coordinator if you file a state fair hearing.
- ***DO NOT WAIT. Request the state fair hearing right away.*** You can always withdraw the request if you decide not to go forward with the state fair hearing. They do not make exceptions for missed deadlines.
- **What is the timing of the state fair hearing?**
  - If you wish to ask for a state fair hearing after an MCO has denied your appeal, the Kansas Office of Administrative Hearing must receive your request for a state fair hearing within 33 calendar days after the date of the MCO's response letter advising you of the outcome of your MCO's appeal.
  - If you wish to ask for a state fair hearing because of an eligibility issue, the Kansas OAH must receive your request for a state fair hearing within 33 calendar days after the date on the "notice" letter advising you of your eligibility status.

Filing a state fair hearing:

- State fair hearing; by mail or fax:
  - Office of Administrative Hearings 1020 S. Kansas Ave.
    Topeka, Kansas 66612
  - Fax: 785-296-4848

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What happens to my services while I am filing a state fair hearing?

- **Non-HCBS Services**
  - **For Members requesting a state fair hearing because their appeal to the MCO was denied regarding "non-HCBS" services:**
    - If a Member submits a request for (1) a state fair hearing (to OAH) ***and*** requests (2) continuation of non-HCBS services (to MCO) within 10 calendar days of the mailing date of the "notice of appeal resolution/denial," the MCO will continue the non-HCBS services through the date of the decision in the state fair hearing. Please keep in mind that you *may* have to pay for those services if you lose the state fair hearing.
    - ***NEW –*** *If the state fair hearing officer reverses a decision to deny authorization of services, and the Member received the disputed services while the fair hearing was pending, the Contractor must pay for those services.*
  - **For Members requesting a state fair hearing during the eligibility process:**
    - An Applicant/Member must submit request for (1) a state fair hearing (to OAH) ***and*** request (2) continuation of "non-HCBS" services (to MCO) within 10 calendar days of the of the effective date on the "notice of action" letter. Please keep in mind that you *may* have to pay for those services if you lose the state fair hearing.
- **Home and Community Based Services (HCBS):**
  - **For Members requesting a state fair hearing because their appeal to the MCO was denied:**
    - If a Member submits a request for (1) a state fair hearing (to OAH) *and* requests (2) continuation of HCBS services (to MCO) within 10 calendar days of the mailing date of the "notice of appeal resolution/denial," the MCO will continue the HCBS services through the date of the decision in the state fair hearing**.** You will ***not*** have to pay for this care if the appeal decision in not in your favor unless fraud is present.
  - **For Members requesting a state fair hearing during the eligibility process:**
    - An Applicant/Member must submit request for (1) a state fair hearing (to OAH) *and* request (2) continuation of HCBS services (to MCO) within 10 calendar days of the of the effective date on the "notice of action" letter. You will ***not*** have to pay for this care if the appeal decision in not in your favor unless fraud is present. You will not have to pay for this care if the appeal decision in not in your favor unless fraud is present.

Note: There can be no *continuation of services* for services not already being received.

What documentation do I need?

For a State fair hearing:

- Send in your state fair hearing request form as soon as possible saying you want a hearing. Prove an explanation of why the decision/final action is unsatisfactory in your circumstances. Include a copy of the "notice" letter. This initial request does not have to state all the details of your case yet. Follow up with a letter and documentation from yourself and other professionals that will support your case. It can identify:
    1. the change that has been determined by the managed care organization
    2. why this should not be done and the problems it will cause
    3. the effect it will have short and long-term on the physical, mental and emotional well-being of the member.
        - For HCBS member, get a copy of the current Integrated Service Plan (ISP) (plan of care) and the new one with the changes and compare them by line and state the case based on the changes (line by line.) For example, decreasing meal preparation from 8 hours/wk. to 4 hours/wk.; decreasing bathing from 6 hours wk. to 3 hours/wk.). How will this impact the member short and long term? Have the professionals (doctors, nurses, LPN, physical therapists, home attendants, etc.) write something as well as the member. It will be helpful if the professionals knows the specific things that are being denied and why. If it is not the Integrated Service Plan (plan of care) *hours* being reduced, note what specific services are being reduced so the professionals can help explain why those services are needed based on your issues/concerns.

Other State Fair Hearing Information:

- You may have an attorney represent you at the hearing. The attorney will be at your expense. If you hire an attorney, he or she must be licensed in the State of Kansas and enter their appearance on your behalf prior to the hearing. If you choose Kansas Legal Services or Disability Rights Center of Kansas, they do not charge a fee. ***The KanCare Ombudsman's office recommends members consider having a lawyer assist with preparing for the state fair hearing and come to the state fair hearing with them.***
- ***Deadlines for state fair hearing information will come by letter from the Office of Administrative Hearing. Be sure to read every letter from them thoroughly.***
- The ***most frequent mistake*** made by individuals during the process of preparing is failing to read the notices and documents issued as part of the hearing process. Read everything you receive ***very carefully***.
- Most state fair hearings are done by phone on conference call. If you prefer to meet in person, you can request it.

Legal Services

The Disability Rights Center of Kansas

The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency empowered by federal law to advocate for the civil and legal rights of Kansans with disabilities. DRC is the Official Protection and Advocacy System for Kansas and is a part of the national network of federally mandated and funded protection and advocacy systems.

Contact Information

214 SW 6th St., Suite 100
Topeka, KS 66603
Voice: (785) 273-9661
Toll Free Voice: (877) 776-1541

Kansas Legal Services

Kansas Legal Services is a statewide non-profit organization dedicated to helping low-income Kansans meet their basic needs through the provision of essential legal, mediation and employment training services. Kansas Legal Services can assist individuals with cases involving health issues, housing, employment, juvenile issues (delinquent, termination of parental rights), income maintenance, Indian laws, family issues, individual rights and consumer issues.

Legal Assistance Toll Free Central Intake Line

Phone: (800) 723-6953

Main Office: (785) 233-2068 (voice)

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Managed Care Organization (MCO) Handbook Information on Grievances, Appeals and State Fair Hearings

- Amerigroup Handbook
  https://www.myamerigroup.com/Documents/KSKS_Member_Handbook_ENG.pdf
  - Grievances: p. 69-70
  - Appeals and State Fair Hearings: p. 71-75
- Sunflower Handbook
  https://www.sunflowerhealthplan.com/content/dam/centene/sunflower/pdfs/Sunflower-member-handbook-English.pdf
  - Grievances: p. 39-40
  - Appeals and State Fair Hearings: p. 40-42
- United Handbook
  http://www.uhccommunityplan.com/content/dam/communityplan/plandocuments/handbook/en/KS-MemberHandbook.pdf
  - Grievances: p. 60
  - Appeals and State Fair Hearings: p. 61-62

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REQUEST FOR ADMINISTRATIVE HEARING – MEMBER/CONSUMER

Date: _____

Name: _____

Address: _____

Representative (if applicable): _____

Representative's Address: _____

If you are a provider representing a member, please use this request form for consumers/members. Please also include your authorized representative form when submitting this form to the Office of Administrative Hearings.

I request an administrative hearing to review the decision or action taken by:

State Agency (DCF, KDADS, or KDHE): _____

List MCO _____

Local Agency Office (if applicable): _____

Type of Program: _____

Date of Action Being Appealed: _____

I am requesting consideration of this matter because:

(Explain why decision or final action is not satisfactory in your circumstances)

_____

_____

_____

_____

_____

_____ *(continue on attached page if necessary)* _____

Please attach a copy of the notice from which you are appealing.

I understand that this is a hearing before an impartial Presiding Officer of the Office of Administrative Hearings.

_____ Signature: (Person Requesting Administrative Hearing)

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RULES AND REGULATIONS
RELATING TO MEDICAID FAIR HEARINGS

1. K.S.A. 75-7403, as amended, provides authority to the Secretary of Health and Environment for "implementation and administration of the powers, duties and functions prescribed for or transferred to the department as provided by law", including the authority to "enter into contracts as may be necessary to perform the powers, duties and functions of the department". Today, the Secretary of KDHE administers Medicaid by delegating various functions of that program to the Department for Children and Families (DCF) and to the Department for Aging and Disability Services (KDADS), each of which must provide for fair hearings in accord with the Kansas Administrative Procedure Act (KAPA) found at K.S.A. 77-501 *et seq.*

2. Medicaid fair hearings of these agencies shall be conducted by a Presiding Officer from the Office of Administrative Hearings (OAH). *See,* K.S.A. 75-37,121. However, in cases where a Medicaid service provider disputes agency action regarding the provider's Medicaid reimbursement, the provider must first satisfy all applicable appeal processes before requesting a fair hearing that goes before OAH.

3. A dissatisfied individual or entity must request an administrative hearing. The request for an administrative hearing must be submitted as specified in the notice of agency action that is being challenged, and/or the request may be sent directly **in writing, signed by the requesting party**, to the **Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, Kansas 66612**. This form may be used but it is not a requirement.

4. A request for administrative hearing must be received by the agency **within 30 days** (33 days if mailed) from the date of the order or notice of action taken by the agency. The individual or entity requesting the administrative hearing shall then be called an appellant and the State agency whose decision is appealed shall be called the respondent.

5. Written notice of the time and place of the hearing or prehearing shall be given by the Office of Administrative Hearings to the appellant and to the respondent at least ten days prior to the hearing.

6. The appellant may have a representative of his/her own choice at the hearing, along with the ability to have witnesses and produce documentary evidence relating to his/her appeal. Failure to participate in the scheduled hearing or any other matter scheduled regarding your appeal may result in your appeal being dismissed.

7. A recording shall be made of the hearing, and this recording shall be reduced to a transcript if requested for good cause shown by any of the parties to the hearing. If such a request is made, it will be the requesting party's responsibility to pay for the transcript.

8. A copy of the initial order of the Presiding Officer shall be mailed to the appellant and the respondent. In keeping with K.S.A. 77-531, whenever there is a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

9. If an individual is in need of any special accommodation in order to be involved in their hearing, they should notify the Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612.

10. The Office of Administrative Hearings does not accept any filings by e-mail.

Office of Administrative Hearings