

Managed Care Organization (MCO) Fair Hearing Process

The **MCO 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) and be denied in order to submit a request for a state fair hearing.

What is a State Fair Hearing?

- The state fair hearing is defined as an administrative hearing involving the presentation of evidence and argument before a presiding officer from the Kansas Office of Administrative Hearings (OAH) concerning an adverse determination. (Note: also referred to as a fair hearing.)
- A **Notice of Adverse Benefit Determination** is sent to tell a KanCare member that there has been a decision made regarding their KanCare services. It will tell the member that there is an option to appeal the action through your MCO. If that appeal resolution is not in your favor (MCO denied your appeal), the member may then submit a request for a fair hearing within 120 calendar days from the sent date on the Notice of Appeal Resolution (plus three calendar days if the notice was mailed.)
- The fair hearing process is done through the Office of Administrative Hearings (OAH) with the State of Kansas. It is an opportunity for the member to:
 1. speak about his/her issue
 2. present documentation that supports their case.
- 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. The Presiding Officer will enter an order based upon what is presented by you and the agency at the hearing.
- Most fair hearings are done on the phone as a conference call, but a member can request to have the hearing in person.
- There is no fee required for a fair hearing, either on the phone or in person.

Requirements for fair hearing process

- The member must complete the MCO's appeal process **before** making a request for a fair hearing.
- **NEW!** The fair hearing must be filed within 120 days of the sent date on the Notice of Appeal Resolution (letter indicating your appeal has been denied.)
- **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 can file an appeal, then a fair hearing if the appeal is not successful.)
- All submission and resolution timeframes changed from business days to calendar days.
- If the MCO extends the timeframe for issuing an authorization decision, the Member can file a fair hearing.
- If the 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.

Filing a Fair Hearing

- You should not be treated differently by your MCO or MCO Care Coordinator if you file a fair hearing.
- ***DO NOT WAIT. Request the fair hearing right away.*** You can always withdraw the request if you decide not to go forward with the fair hearing. They do not make exceptions for missed deadlines.

What documentation do I need?

- Send a letter or the “request for Medicaid/Administrative hearing” form, see page 5, to the Office of Administrative Hearings along with the Notice of Adverse Benefit Determination letter. Your letter should state that your MCO has denied your appeal and you want to file for a fair hearing.
- In your letter or on the form, why you are not satisfied with the decision and note the specific issue(s) for this hearing
 - the change that has been determined by the managed care organization
 - why this should not be done and the problems it will cause
 - 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 Person-Centered Service Plan (PCSP) (plan of care) and the new Person-Centered Service Plan with the changes and compare them by line, stating your 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 healthcare individuals (doctors, nurses, LPN, physical therapists, home attendants, etc.) write something as well as the member. It will be helpful if the professionals know the specific things that are being denied and why. If it is not the Person-Centered 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 do I file a Fair Hearing?

- Mail:
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, Kansas 66612
- Fax: 785-296-4848
- If you want to request a hearing by phone, see the listing on the Medicaid Hearing form (at the bottom of the page).

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

- Non-HCBS Services
 - For Members requesting a fair hearing because their appeal to the MCO was denied regarding “non-HCBS” services:
 - Continued services will end 10 calendar days following the sent date of the notice of appeal resolution unless the member requests a fair hearing within that 10-day deadline. Please keep in mind that you may have to pay for those services if you lose the fair hearing.
 - **NEW** – *If the 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):**
 - The MCO must continue the member’s HCBS waiver services if:
 - The member requests an appeal on time.
 - The member requests a fair hearing on time.
 - The appeal involves the termination, suspension or reduction of a previously authorized course of treatment.
 - The services were ordered by an authorized Provider.
 - The period covered by the original authorization has not expired.

Other 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 work with 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 fair hearing and come to the fair hearing with them.***
- Deadlines for 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.***



KanCare Ombudsman Office
Phone: Toll Free: 1-855-643-8180
TTY: 711
Email: KanCare.Ombudsman@ks.gov
Website: www.kancare.ks.gov/kancare-ombudsman-office

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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REQUEST FOR ADMINISTRATIVE HEARING

Date: _____
Name: _____
Case Number or Medicaid ID Number: _____
Date of Birth: _____
Address: _____

Representative: _____
Representative's Address: _____

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

Worker/Employee/Agent: _____
Agency Office: _____
Type of Program: _____
Date of Action Being Appealed: _____

I am requesting consideration of this matter because: *(continue on an attached page if necessary)*
(Explain why decision or final action is not satisfactory in your circumstances)

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

Signature: Person Requesting Administrative Hearing

Date

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RULES AND REGULATIONS RELATING TO FAIR HEARINGS

1. K.S.A. 75-3306, as amended, provides that “The secretary ... shall provide a fair hearing for any person ... who appeals from the decision or final action of any agent or employee of the secretary”. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et. seq.
2. A dissatisfied individual or entity must request an administrative hearing in writing and sign it (except for food assistance where the request may be oral). This form may be used but it is not a requirement. The request for an administrative hearing should be returned to the local agency office or sent to the Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612. The individual or entity requesting the administrative hearing shall then be called an appellant and the party whose decision is appealed shall be called the respondent.
3. 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.
4. 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.
5. The hearing shall be conducted by a Presiding Officer from the Office of Administrative Hearings. (K.S.A. 75-37,121)
6. 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.
7. A copy of the initial order of the Presiding Officer shall be mailed to the appellant and the respondent.
8. A request for administrative hearing shall be in writing (except in food assistance where the request may be oral) and received by the agency within 30 days (90 days for food assistance) from the date of the order or notice of action taken by the agency.
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 without prior approval of the Presiding Officer or their designee.

This form taken from the Office of Administrative Hearings website at: www.oah.ks.gov/Home/Forms.