

SECTION V.8. Notices, Variances & Appeals Procedures

I. Notice

- A. When the **Department of Disabilities, Aging and Independent Living (DAIL)** makes a decision regarding an applicant or participant's eligibility, type or amount of services authorized, or variance request, a written notice of the decision shall be sent.
- B. The written notice of decision shall include:
1. The basis for the decision;
 2. The legal authority for the decision;
 3. The right to request a variance;
 4. The right to appeal; and
 5. Information on how to file an appeal.

II. Provider Responsibilities

Agencies, organizations, and individuals who provide Choices for Care services shall abide by applicable laws, regulations, policies and procedures. **DAIL** may terminate the provider status of an agency, organization, or individual that fails to do so.

III. Variances

- A. **DAIL** may grant variances to the Choices for Care regulations.
- B. Variances may be granted upon determination that:
1. The variance will otherwise meet the goals of the Choices for Care waiver; and
 2. The variance is necessary to protect or maintain the health, safety or welfare of the individual.
 3. Applicants, participants, and providers may submit requests for a variance to the DAIL at any time.
 4. Variance requests shall be submitted in writing, and shall include:
 - a. A description of the individual's specific unmet need(s);
 - b. An explanation of why the unmet need(s) cannot be met; and
 - c. A description of the actual/immediate risk posed to the individual's health, safety or welfare.
 5. In making a decision regarding a variance request, DAIL may require further information and documentation to be submitted. DAIL also may require an in-home visit by DAIL staff. DAIL shall review a variance request and forward a

decision to the individual, his or her legal representative, if applicable, and to the provider(s).

6. DAIL shall make a decision regarding a variance request within thirty (30) days of receiving the request and shall send written notice of the decision, with appeal rights, within thirty (30) days.

IV. Appeals

An applicant or participant (or legal representative) may appeal a decision made by the Department through a Commissioner's hearing, a fair hearing before the Human Services Board, or both. An appeal may be made to the Commissioner and the Human Services Board at the same time. An appeal may also be made to the Human Services Board following a Commissioner's hearing.

A. Commissioner's Hearing

1. An applicant or participant, or his or her legal representative, who wishes to appeal a decision regarding clinical eligibility, termination of eligibility, the type or amount of services authorized or a variance may request a formal review of that decision by the Commissioner of the Department.
2. The request for a Commissioner's hearing may be made orally or in writing, and shall be made within thirty (30) days of receiving written notice.
3. A request for a Commissioner's hearing shall be made by calling or writing to:

Commissioner's Office
Department of Disabilities, Aging & Independent Living
103 South Main Street
Waterbury, VT 05671
802-241-2401

4. The Commissioner shall send written notice of the decision, with appeal rights, to the applicant or participant within thirty (30) days of the completion of the hearing.

B. Fair Hearing

An applicant or participant, or his or her legal representative, may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Department action affecting his or her receipt of assistance, benefits or services; or because the individual is aggrieved by Department policy as it affects his or her situation. The Department shall respond to any clear indication (oral or written) that an applicant or participant wishes to appeal by

helping that person to submit a request for a hearing.

1. An applicant or participant, or his or her legal representative, who wishes to appeal a decision of the Commissioner or any decision regarding clinical eligibility, termination of eligibility, the type or amount of services authorized or a variance may request a fair hearing with the Human Services Board.
2. The request for a fair hearing must be made within ninety (90) days of receiving the written notice of determination or the written notice of the decision of the Commissioner.
3. A request for a fair hearing shall be made to:

Human Services Board
120 State Street
Montpelier, VT 05620-4301
802-828-2536

C. Continuation of Services Pending Appeal

1. Long-term care services shall not be provided to new applicants during the appeals process.
2. Long-term care services may continue to be provided to enrolled participants during the appeals process.
3. In order to continue to receive services, enrolled participants must request continued services when submitting the appeal. Choices for Care services shall be discontinued on the effective date of the decision unless the appeal is requested as of the effective date of the decision. In no event shall the effective date occur on a weekend or holiday.
4. Continuation of services does not apply when the appeal is based solely on a reduction or elimination of a benefit required by federal or state law affecting some or all beneficiaries, or when the decision does not require advance notice.

D. Adverse Action

When a DAIL decision will end or reduce the amount of services an individual has been receiving, the notice of decision shall be mailed at least eleven (11) days before the decision will take effect, except when:

1. DAIL has facts confirming the death of the individual;
2. DAIL has facts confirming that the individual has moved to another state;
3. DAIL has facts confirming that the individual has been granted Medicaid in

- another State;
4. The individual has been admitted to a facility or program that renders the individual ineligible for services;
 5. The Department receives a statement signed by an individual that states that he or she no longer wishes services; or
 6. The individual's whereabouts are unknown and the post office returns agency mail directed to him or her indicating no forwarding address.

E. Financial Eligibility

Financial eligibility decisions or patient share determinations must be filed pursuant to DCF Medicaid regulations. If such an appeal is inadvertently submitted to the Department, it shall be forwarded to DCF as soon as possible.