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# NOTICE OF AGENCY ACTION AND HEARING RIGHTS

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## Directive 1.6

Authorizing Code: [62A-5-103](#)

Rule: R539-1, R539-3-8, R539-2, R497-100, R410-14

Federal Code: 42 CFR 431.220(a)(1)(iv)

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Forms: 522-I, 490S

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### Purpose

This directive establishes a policy and procedure for providing Notices of Agency Action (NOAA) and hearing rights. It further establishes processes to complete an appeal, or resolve a grievance. It is intended to protect and preserve a Person's right to a fair and impartial hearing.

The Division may use either an administrative hearing, a dispute resolution process, or both, to resolve a dispute or grievance. Determining which of the available processes are to be followed is solely the decision of the Person or interested party, not of the Division.

The dispute resolution process described in this directive is designed to help the Division respond to a Person's or other interested party's concerns or grievances with regard to eligibility for, and implementation of, Division services. The dispute resolution process is not intended to limit a Person's access to administrative hearings.

### Definitions

**AAG** – the Assistant Attorney General assigned to the Division.

**Division** – means the Division of Services for People with Disabilities (DSPD).

**“Division Director or their designee”** – means either the Director of Division of Services for People with Disabilities (DSPD), or their designee who is typically a program Manager over a waiver, or the intake and waiting list Manager. Community Supports Waiver (CSW) disputes are, for example, typically overseen by that waiver’s program Manager, and so they are often the “designee” in those cases. The designee may also be other Division staff with similar oversight for the program.

**DIH** – means the Division of Integrated Healthcare, the State Medicaid Authority (SMA) for Utah Medicaid.

**DHHS**– Department of Health and Human Services

**Imaged Document** – means a scan or other graphic reproduction of an original signed document for electronic transfer or upload.

**Manager** – means a waiver Manager, or an intake and waiting list Manager.

**OAH** – means the Office of Administrative Hearings.

**Person** – means an individual who is receiving DSPD services, or who has been found ineligible for services.

**Support Coordinator (SCE)** – means someone who provides support coordination services as an employee of an external contracted provider, or who is such a contractor.

## Policy & Procedures

1. A Notice of Agency Action (NOAA) is issued whenever there is:
  - a. An initial or subsequent state eligibility determination;
  - b. An implementation grievance;
  - c. A budget neutral change;
2. The NOAA is sent at least ten days before the Division changes, terminates, or reduces a Person’s services or benefits. The Division shall send the Person a written Notice of Agency Action on Form 522-I.
3. Authorizing administrative rules that grant the hearing rights:
  - a. If the Person is exclusively receiving non-waiver services, then they have a right to request an administrative hearing with the Department of Health and Human Services under Rule R497-100.
  - b. If the Person is receiving waiver services, then they have a right to request an administrative hearing with the Department of Health and Human Services under Rule R410-14.
4. The Division shall simultaneously send the Person a Hearing Request Form 490S when the Division sends the Notice of Agency Action Form 522-I.
5. If a Person is unable to read or comprehend the written Notice of Agency Action, the Support Coordinator (SCE) assigned to that Person shall explain and discuss the agency action with the Person.
6. Request for Hearing - A Person shall have 30 days from the date of notice to request a hearing.
  - a. If the Person returns a Hearing Request form within ten days, the Division shall begin the appeal process and not take the action described in the Notice of Agency Action while the appeal process is pending.

- b. If the Person returns a Hearing Request form more than ten days, but less than 30 days after the date of notice, the Division may take the action described in the Notice of Agency Action and begin the appeal process.
  - c. If the Person returns a Hearing Request form more than 30 days after the date of notice, the right to appeal has expired and the action described in the notice will proceed.
7. A Person may request an administrative hearing, the Division dispute resolution process, or both.
- a. A Person may use the Division's dispute resolution process alone or before an administrative hearing.
    - i. To preserve the Person's right to an administrative hearing, the Person must file a request for an administrative hearing before the 30-day deadline.
    - ii. If a Person selects both the dispute resolution process and an administrative hearing, the Manager must:
      - 1. Send the hearing request to OAH as described below; and
      - 2. Copy or forward that request for the administrative hearing to the Division's AAG. The Division's AAG will request a stay or a continuance of the hearing, depending upon when the dispute resolution is completed.
    - iii. If the Person selects the dispute resolution process alone, the Manager must inform the Person of their right to an administrative hearing.
8. The Director, or their designee, coordinates the request for an administrative hearing.
- a. If the Person requests an administrative hearing, regardless of whether they are on a waiver or only receive state-funded services:
    - i. Copy the hearing request to DSPD's AAG. They will file a stay or continuance, if applicable.
    - ii. Submit a Hearing Request packet to the DHHS Office of Administrative Hearings through interoffice mail or by email to: [dhshearings@utah.gov](mailto:dhshearings@utah.gov) . The hearing request packet includes:
      - 1. the hearing request form;
      - 2. the Notice of Agency Action and proof of service; and
      - 3. the name, phone number, mailing address, and email address of the Person or people who are handling the matter for DSPD.
    - iii. The DHHS Office of Administrative Hearings schedules an initial hearing in the order that requests are received.
9. The Manager, or their designee will inform the SCE by email of the Hearing Request.
10. The Manager, or their designee, documents receipt of a hearing request as follows:
- a. Update USTEPS
    - i. In the NOAA screen, check off the corresponding NOAA, and each requested appeal process.
    - ii. Upload the Hearing Request as an imaged document.

- b. Update the Google Sheet used to track hearing requests, “the Hearing Request Sheet.”
    - i. The Hearing Request Sheet is accessible by all parties within DHHS who need the information to perform their duties. This includes, among other, the Division’s AAG and the LTSS/DSPD Liaison (at DIH).
11. The Division’s Dispute Resolution Process - the Division Director, or their designee oversees the dispute resolution process.
- a. If a designee is appointed, it will typically be the Manager for the program involved, or someone with similar oversight for the program.
  - b. The designee shall not be the same Person who originally made the disputed decision.
12. The Director, or their designee, will consult with any appropriate parties, including relevant Division staff.
- a. A representative from Finance and Contracts will typically be consulted as one of those parties.
13. The Director, or their designee will inform the support coordinator of the Hearing Request by email, and then schedule the dispute resolution meeting.
- a. They will request dates and times that the Person and their team are available to meet via Zoom or Google Meet.
  - b. They will create a Google invitation and include all the relevant participants.
14. The Services Administrator may participate in a dispute resolution at the Manager’s request.
15. The Division Director, or their designee conducts the dispute resolution meeting.
- a. They will inform the Person’s team that the dispute resolution meeting is an informal opportunity to discuss the denial and to present any additional information, perspective, or other relevant details that could justify the need for the service.
  - b. They will inform the team that a decision is not made during the dispute resolution meeting. The Division will make a decision after considering the information presented at the dispute resolution meeting. The Division will make every effort to send the Person a written decision in a timely manner.
16. The Division Director, or their designee, will draft a decision letter and email the letter to the Person or their team, and where applicable, to the Support Coordinator, and the Division budget specialist.
- a. The written decision will convey the Division’s proposed decision, and next steps for the Person’s team to follow.
    - i. If the Person or their team also requested an administrative hearing, the letter must include information describing how to contact OAH as appears below in ii. The letter will not presume any knowledge of the Person’s decision based upon what happened at the dispute resolution. It is the Person’s sole choice and responsibility to either proceed with their hearing request or to rescind it.
    - ii. If a hearing was requested, the language in the letter should include the following, or its equivalent: *You have indicated that you wish to pursue an administrative hearing. As noted in the decision letter, all hearing requests have been forwarded to the Office of Administrative Hearings for their independent review of each case. If you are no longer interested in pursuing an administrative hearing, you must contact the OAH to withdraw your request. You can contact them at dhhshearing@utah.gov or call at (801) 538-3900.*

17. The Manager documents the decision; this includes:
  - a. Updating USTEPS, where applicable:
    - i. Updating the NOAA screen.
    - ii. Uploading the decision letter as an imaged document.
  - b. Updating the Google Sheet (the Hearing Request Sheet) that is used to track hearing requests, where applicable.
18. The Manager notifies DSPD's AAG that the Division resolution process has ended and then sends them a copy of the decision letter.