Appendix 1 ▪ Right to State Medi-Cal Fair Hearing: Welfare and Institutions Code Sections 10950 – 10967

Note: Citations are only partial quotes from relevant code sections.

10950. (a) If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefore, and is dissatisfied with that refusal, he or she shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Care Services, whichever department administers the public social service, be accorded an opportunity for a state hearing.

(c) Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

(d) Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

(e) For the purposes of administering health care services and medical assistance, the Director of Health Care Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

(f) The Director of Health Care Services may contract with the State Department of Social Services for the provisions of state hearings in accordance with this chapter.

(3) "Recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Article 1 (commencing with Section 12000) to Article 6 (commencing with Section 12250), inclusive, of Chapter 3 of Part 3, and under Article 8 (commencing with Section 12350) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6, and shall include any individual who is an approved adoptive parent, as described in paragraph (3) of subdivision (a) of Section 8708 of the Family Code, and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.

10951. (a)(1) A person is not entitled to a hearing pursuant to this chapter unless he or she files his or her request for the same within 90 days after the order or action complained of.

10952. (a) The department shall set the hearing to commence within 30 working days after the request is filed, and, at least 10 days prior to the hearing, shall give all parties concerned written notice of the time and place of the hearing.

10952.5. (a) If regulations require a public or private agency to write a position statement concerning the issues in question in a fair hearing, or if the public or private agency chooses to develop such a statement, not less than two working days prior to the date of a hearing provided for pursuant to this chapter, the public or private agency shall make available to the applicant for, or recipient of, public social services requesting a fair hearing, a copy of the public or private agency's position statement on the forthcoming hearing. The public or private agency shall make the copy available to the applicant or recipient at the county welfare department. A public or private agency shall be required to comply with the provisions of this section only if the public or private agency has received a 10-day prior notice of the date and time of the scheduled hearing.

(c) If the public or private agency does not make the position statement available not less than two working days prior to the hearing or if the public or private agency decides to modify the position statement, the hearing shall be postponed upon the request of the applicant or recipient, provided an applicant or recipient agrees to waive the right to obtain a decision on the hearing within the deadline that would otherwise be applicable under regulations. A postponement for reason of the public or private agency not making the position statement available within not less than two working days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing.

For purposes of this section "public or private agency" shall not include the State Department of Health Care Services.

10953. A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by him or herself. However, the director may contract with the Office of Administrative Hearings to conduct hearings.

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.

10953.5. (a) The director has authority to appoint the department's administrative law judge as provided in Section 10555.

(b) Each administrative law judge shall have been admitted to practice law in this state and shall possess any other qualifications prescribed by the State Personnel Board. All persons in the office of the chief referee employed as hearing officers by the department prior to the effective date of this section shall be deemed to be administrative law judges.

10954. The director or administrative law judge conducting the hearing, shall have all of the powers and authority conferred upon the head of a department in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

10955. The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. All testimony shall be submitted under oath or affirmation. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings. At the hearing the applicant or recipient may appear in person with counsel of his own choosing, or in person and without such counsel.

10956. The proceedings at the hearing shall be reported by a phonographic reporter or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

10957. The person conducting the hearing, upon good cause shown, may continue the hearing for a period of not to exceed 30 days. When the refusal of a county to accept a signed application for aid or services is an issue, the director may require the county to accept the application and may continue the case until the results of the investigation have been reported to him or her. In any such case in which aid is awarded by the director or his or her designee, the payments shall commence at the time indicated by the director or his or her designee.

10958. If the hearing is conducted by an administrative law judge, he or she shall prepare a fair, impartial, and independent proposed decision, in writing and in such format that it may be adopted as the director's decision and, after approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director.

10958.1. The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions.

10959. (a) After an administrative law judge has held a hearing and issued a proposed decision, within 30 days after the department has received a copy of the administrative law judge's proposed decision, or within the three business days for an expedited resolution of an appeal of an adverse benefit determination described in Section 10951.5 after any extensions that may apply under subdivision (c) of Section 10951.5, the director may take any of the following actions:

(1) Adopt the decision in its entirety.

(2) Decide the matter themselves on the record after reviewing the transcript or recording of the hearing without taking additional evidence.

(3) Order a further hearing to be conducted by the director or another administrative law judge on their behalf that affords the parties the opportunity to present and respond to additional evidence.

(b) A proposed decision shall be deemed affirmed and adopted if the director fails to adopt the proposed decision, decide the matter on the record after reviewing the transcript or recording of the hearing without taking additional evidence, or order a further hearing within the 30 days or within the three business days for an expedited resolution of an appeal of an adverse benefit determination described in Section 10951.5 after any extensions that may apply under subdivision (c) of Section 10951.5. If the director decides the matter, a copy of the director's alternated decision shall be served on the applicant or recipient and on the affected county, and, if the director's decision differs materially from the proposed decision of the administrative law judge, a copy of that proposed decision shall also be served on the applicant or recipient and on the affected county. The director's alternated decision shall contain a statement of the facts and evidence, including references to the applicable sections of law and regulations, and the analysis that supports the director's decision. If a further hearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.

10960. (a) Within 30 days after receiving the proposed decision of an administrative law judge adopted by the director, a final decision rendered by an administrative law judge or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and such other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no earlier than the 35th working day after the request is made to ensure the prompt and efficient administration of the hearing process. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing.

10961. The decision of the director need not specify the amount of the award to be paid unless the amount of the award is an issue. If the decision is in favor of the applicant or recipient, the county department shall pay to the applicant or recipient, without the necessity of establishing his or her present need, the amount of aid the director finds he or she is entitled to receive pursuant to the director's decision, payment to commence as of the date the person was first entitled thereto, or grant to him or her the services to which he or she is entitled.

The award shall be determined no later than 30 days following the date that the hearing decision is received by the county, or 30 days from the date the additional information needed for compliance with the decision is provided to the county. After the award is made, the county and the claimant shall be notified by the department of its determination regarding the county's compliance with the decision.

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the

provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, or in any appeal there from. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

10963. The county director shall comply with and execute every decision of the director rendered pursuant to this chapter.

10964. The department shall compile and distribute to each county department a current digest of decisions, properly indexed, rendered under this chapter, and each such digest shall be open to public inspection, subject, however, to the confidentiality requirements set forth in federal and state laws and regulations.

10965. Nothing in this chapter shall prevent the filing of the request for a hearing by the legal representative, or, if there is no authorized legal representative, by an heir of a deceased applicant or recipient, in behalf of the decedent's estate, to the end that rights not determined at the time of death shall accrue to the estate of the applicant or recipient.

10966. (a) In addition to any other delegation powers granted to the director under law, the director may delegate his or her powers to adopt final decisions under this chapter to all administrative law judges within specified ranges in the department, in the types of cases deemed appropriate by the director. The authority to adopt final decisions shall not be contingent upon the outcome of the judge's resolution of the case or issue, nor upon the identity of a particular administrative law judge. The defined areas of delegation shall be published by the department after interested groups such as the Coalition of California Welfare Rights Organizations, legal aid societies, and the County Welfare Directors Association have had a reasonable amount of time to review and comment.

(b) Notwithstanding any other provisions of this chapter, decisions rendered by the administrative law judges under the authority of this section shall be treated, for all purposes, as the decision of the director. The affected county, recipient, or applicant has the right to request a rehearing pursuant to Section 10960, and the right to petition for judicial review pursuant to Section 10962.

(c) If the director chooses to exercise the authority to delegate his or her powers to adopt final decisions to administrative law judges, the delegation shall be in writing. Any such delegation instrument shall be a public record available at all times, including the time of hearing, from each administrative law judge to whom that authority has been delegated.

The written delegation instrument shall include paragraphs (1) and (2) of the following, and may include paragraph (3) of the following:

(1) It shall specify the administrative law judges that are authorized to render final decisions on his or her behalf, including the effective date of the authorization.

(2) It shall specify the types of cases or issues that are subject to his or her delegation of final authority.

(3) It may include any other implementation instructions which he or she determines are necessary for the effective implementation of this section.

(d) Decisions rendered by administrative law judges pursuant to the provisions of this section shall be fair, impartial, independent, in writing, and in the format prescribed by the Chief Administrative Law Judge.

10967. At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the administrative law judge determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue or issues, or the case shall be dismissed. If the administrative law judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending.