

GUIDELINES FOR A CLIENT APPEALS PROCESS FOR SERVICES PROVIDED UNDER THE OLDER AMERICANS ACT

A. BACKGROUND

Section 306(a)(10) of the federal Older Americans Act (as amended) requires each Area Agency on Aging (AAA) to “provide a grievance procedure for older individuals who are dissatisfied with or denied services under this title” [See page 42 of the “green” compilation of the Act]. Section 307(a)(5)(B) of the Act also requires that the State Unit on Aging issue guidelines to AAAs regarding grievance procedures. The requirement that the State Unit provide this guidance first appeared in the 1992 amendments to the Act. At that time, VDA provided “Guidelines for a Model Client Appeals Process for Virginia’s AAAs.” These guidelines were updated and sent again to AAAs in 2002. This version, dated 2004, includes some modifications and clarifications.

Although they represent “best practices”, they are guidelines only and are provided as a tool that AAAs and their governing boards can use in reviewing their current client appeals process. As AAAs conduct this review, they should refer to Section 314 of the Older Americans Act: *Rights Relating to In-Home Services for Frail Older Individuals* [See page 59 of the “green” compilation of the Act].

B. CONCEPT OF DUE PROCESS

These guidelines for a client appeals process are adapted from materials prepared by the National Council on the Aging (NCOA) and are based on the concept of due process. Due process requires the implementation of specific procedures intended to assure maximum fairness in decision making. Due process, as embodied in a AAA client appeals policy, assures older clients and their families that their appeal will be considered fairly and in a timely manner by the AAA, regardless of its ultimate legitimacy. Due process should be assured each time a client is denied a service, or each time services are reduced, suspended, or terminated.

C. ELEMENTS OF A CLIENT APPEALS PROCESS

The denial, reduction, suspension, or termination of services can be a difficult decision for the AAA and may create confusion, fear, and sometimes anger for the client and their family. An appeals process allows for the client and family to have an opportunity to “tell their side of the story” and to feel that their concerns have been heard. To ease the impact of a change in service and to help reduce the number of appeals, AAAs should prepare clients and their families in advance (if at all possible) for a reduction or termination of service.

The following elements should be considered for inclusion in a model AAA client appeals process:

1. **Notification of an Appeal Process** – Clients should be told that the AAA has an appeals process. All clients should be given step-by-step instructions as to how they can initiate an appeal. This should be done when clients initially apply for services and again when an adverse action is taken. AAAs should make this information available in a written format which is concise, uses large print, is in a language the client understands, and is generally “user friendly.” AAA staff should also discuss the appeals process with every client.
2. **Notice of Adverse Action** – The AAA should provide each client with a written notice of the denial of any service, the reduction of any service, the suspension of any service, or the termination of any service. This notice should include step-by-step instructions on how to initiate an appeal. AAA staff should make a follow-up telephone call or visit to see if the client understands the planned adverse action and their right to appeal. Staff should offer to assist clients with initiating an appeal.
3. **Continuation of Services Pending Appeal** – Except in those cases where services are denied, or where services are reduced, suspended, or terminated due to lack of funds, AAAs should continue providing services pending the outcome of the appeal hearing. The Notice of Adverse Action should inform the client that services will continue unchanged until a decision is reached on their appeal. An exception may be made when the health, safety, and welfare of AAA (or contractor) staff is threatened if the services were to continue.
4. **Fair Hearing** – A timely fair hearing is an integral element of a client appeals process. The AAA’s client appeals process should spell out time frames for the client to file an appeal and for the agency to conduct a hearing and issue a decision. The following components will help assure a fair hearing for a client:

Representation: The client should be offered the right to be represented by a friend, an advocate, or attorney [The AAA is under no obligation to find an attorney for the client or to pay for the services of an attorney].

Impartial hearing officer: The client’s appeal should be heard by someone other than the person who made the decision denying, reducing, suspending, or terminating the service. Depending upon the size of the AAA and the number of appeals, the AAA may enlist the services of a knowledgeable person from another organization or agency to act as a hearing officer.

Information: The client, and/or the chosen representative, should have access to information regarding the case prior to the hearing. If requested, the AAA should share the case record, intake evaluation form, eligibility determination form, or other paperwork which was used to make the decision regarding the denial, reduction, suspension, or termination of services. AAAs should also share their policies regarding the eligibility and operation of the service (or services) involved in the adverse action.

[Remember that nothing in the *Virginia Freedom of Information Act* requires any record to be confidential. However, the *Government Data Collection and Dissemination Practices Act* (§2.2-3800-3809) provides guidelines for the collection, maintaining, protecting, and releasing of personal information. This Act specifically states that an organization must have a written procedure for an individual to review, as well as recommend corrections to, the information in his or her record. These guidelines are consistent with the privacy requirements found in *HIPAA*. This may be a good time to have your agency attorney review your privacy guidelines as they relate to these three Acts.]

Face-to-face discussion: The client, and/or the chosen representative, should be present during the hearing. AAA staff who have information or knowledge of the client's case should also be available. Hearings may have to be conducted in the homes of extremely frail or physically impaired clients. Special efforts should be made to assure effective communication with deaf clients or clients who speak a foreign language. Telephone hearings may be used in extreme circumstances when the agency has determined that it is not feasible to conduct a face-to-face hearing.

Written notice of decision: The client should be given written notice of the appeals decision. Hearing decisions should be rendered in a timely manner and written notice provided to the client as quickly as possible.

5. **Further Opportunity for Appeal** – AAAs may want to consider offering clients who remain dissatisfied with their appeal outcome a second level of appeal. This would be an appeal to the AAA Board or, preferably, to some outside entity. Please understand that VDA is not in a position to hear AAA client appeals. You may, however, be able to work out a mutual agreement with another community agency or organization that would act as the final appeal venue for those clients who continued to be dissatisfied with the outcome. This second level of appeal should include the components listed in #4 above.
6. **Review of Hearing Process** – AAAs should conduct an internal review of the fair hearing process for each appeal. This is a review of the process, not the decision. Reviewers will determine if the AAA adhered to their

appeals process and correctly followed the steps outlined therein. This review may also result in changes to the process. The AAA board of directors, perhaps through a standing or ad hoc committee, can serve this purpose. This committee may choose to include members of the AAA advisory council to assure that a broad perspective is brought to the review.