



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower      The Governor Nelson A. Rockefeller Empire State Plaza      Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

**ADMINISTRATIVE DIRECTIVE**

**TRANSMITTAL:** 04 OMM/ADM-1

**TO:** Commissioners of  
Social Services

**DIVISION:** Office of Medicaid  
Management

**DATE:** January 15, 2004

**SUBJECT:** Notice and Fair Hearing Procedures For the Care At Home Medicaid  
Waiver Program

**SUGGESTED  
DISTRIBUTION:**

Directors of Social Services  
Medicaid Staff  
Care At Home Coordinators  
Home Care Staff  
Legal Staff  
Fair Hearing Staff  
Staff Development Coordinators

**CONTACT  
PERSON:**

Any questions concerning this release should be directed  
To Colleen Maloney, Bureau of Maternal & Child Health,  
by calling (518) 486-6562, or e-mail at  
[cam09@health.state.ny.us](mailto:cam09@health.state.ny.us)

**ATTACHMENTS:**

**Attachment IA**, Notice of Decision to Approve or Deny  
Enrollment in the Care At Home Waiver Program  
**Attachment IB**, Notice of Decision to Approve or Deny  
Enrollment in the Care At Home Waiver Program (NYC ONLY)  
**Attachment IIA**, Notice of Decision to Discontinue  
Participation in the Care At Home Waiver Program  
**Attachment IIB**, Notice of Decision to Discontinue  
Participation in the Care At Home Waiver Program (NYC ONLY)

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 505.21	SSL 366.6		

**I. Purpose**

The purpose of this Directive is to advise Local Departments of Social Services (LDSS) of new fair hearing procedures. These procedures relate to Medicaid Care At Home (CAH) I or II waiver participants' and applicants' existing and new fair hearing rights. This Directive includes fair hearing notices that districts must send under the following circumstances:

1. When the application for enrollment in the CAH waiver is denied.
2. When the application for enrollment in CAH waiver is approved.
3. When the CAH enrollee's participation in the CAH waiver program is discontinued.

**II. Background**

All CAH applicants/recipients are entitled, under certain circumstances, to fair hearing notice and rights. Administrative Directive 86 ADM-4 entitled, "Federal Waivers for Home and Community Based Services: Implementation of Chapter 906 of the Laws of 1984," instructed districts to give adequate and timely fair hearing notice when approving or denying a waiver application or terminating benefits under the waiver. Districts were required to develop their own notices. To assure uniformity, the Department has now developed standard notices that districts must send when they approve or deny an application to participate in the CAH waiver, or to discontinue the recipient's participation in the CAH waiver.

**III. Program Implementation**

Fair hearing requirements set forth in 86 ADM-4 required districts to provide CAH applicants/recipients with timely and adequate fair hearing rights when benefits under the waiver were denied or terminated. CAH applicants and recipients are entitled to fair hearing rights under 18 NYCRR §358-3.1(b)(6). These requirements have not changed. However, the LDSS must now use the attached mandated forms to notice CAH recipients and applicants regarding their fair hearing rights:

- CAH I and II applicants when their application to the waiver is denied.
- CAH I and II applicants when their application to the waiver is approved.
- CAH I and II recipients when their enrollment in the waiver is discontinued.

Fair hearing requirements for CAH recipients who have requested home adaptations or vehicle modifications are contained in 00 OMM/ADM-4.

**IV. Required Action**

**A. Notification Requirements for the CAH Program and LDSS**

Prior to issuance of this Directive, the Department did not provide State mandated fair hearing notices to be used when the LDSS denied or approved an application for participation in the Medicaid CAH waiver program, or when the CAH enrollment for the recipient was terminated. To assure statewide uniformity, all fair hearing notices for the CAH applicant/recipient have been prepared and are appended to this Directive as attachments.

Attachment I, A and B, "Notice of Decision to Approve or Deny Enrollment in the Care At Home I or II Waiver Program," is to be used to notify a CAH applicant that a decision has been made to either authorize or deny his or her application to participate in the CAH I or II waiver program.

Attachment II, A and B, "Notice of Decision to Discontinue Participation in the Care At Home I or II Wavier Program," is to be used when a recipient's participation in the CAH waiver program is being discontinued.

**B. New Procedures and Fair Hearing Notices for CAH I and II**

**1. Application Acceptance or Denials**

When a determination has been reached on a CAH I or II application either to deny or approve the application for enrollment, the LDSS CAH coordinator or designee will complete and send the Notice of Decision (Attachment 1), "To Authorize or Deny Participation in the CAH I or II Waiver Program." The determination issued may be:

- Once the applicant's application is reviewed by the LDSS CAH staff and determined that he or she does not meet the minimum eligibility qualifications, or
- Once the application has been reviewed by the State Department of Health (SDOH) and the LDSS has been notified in writing by the SDOH that the application is accepted or denied for enrollment.

Once the appropriate action has been determined, the LDSS CAH Coordinator or designee will fill in the information at the top of the notice and indicate under "Check One" the appropriate decision, and if the application is approved, the effective date. Additional written information may be added by the District.

## 2. Discontinued Cases

When a determination has been reached to discontinue a recipient's participation in the CAH I or II waiver program, the LDSS CAH coordinator or designee will complete and send the Notice of Decision (NOD) (Attachment II, A & B) "To Discontinue Participation in the CAH I or II Waiver Program." This determination may be due to:

- The recipient turning 18 years of age and aging out of the waiver.
- The recipient moving out of the county or state.
- The recipient no longer meeting the eligibility requirements for the CAH waiver.
- The recipient being transferred from the CAH waiver into another waiver program, or even a transfer between CAH I and CAH I.
- The family (on behalf of the recipient) refusing to cooperate with the periodic eligibility requirements.

Once the appropriate reason for disenrollment has been determined, the LDSS CAH Coordinator or designee will fill in the information at the top of the page and indicate under the effective date of termination from the CAH waiver. Additional written information may be added by the District.

## C. Requirements for Fair Hearing Notices

The notices provided with this Directive are mandated and must be reproduced by the LDSS without modification until such time as the notices are printed and become available from the Department. The notices must be on legal size paper and must be reproduced back-to-back. Any LDSS proposed modification to these notices must be submitted for approval in accordance with procedures described in 97 ADM-13, "Procedure for Requesting Approval of Local Equivalent Form."

## V. System Implications

1. When an application for CAH I or II is approved and the NOD is sent, the LDSS staff must enter the appropriate Recipient Restriction/Exemption (R/E) code, either 62 for CAH I or 63 for CAH II to the WMS file. The enrollment date on the NOD will be the begin date for the R/E code.

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2. When the CAH I or II enrollee is being disenrolled from the waiver and the NOD is sent, the staff will remove the appropriate R/E code, either 62 for CAH I or 63 for CAH II from the WMS file. The termination date on the NOD will be the end date for the R/E code.

**VI. Effective Date**

Immediately.

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Kathryn Kuhmerker, Deputy Commissioner  
Office of Medicaid Management

Attachments