



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

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ALL COUNTY LETTER (ACL) NO. 17-21

REASON FOR THIS TRANSMITTAL

- ☒ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☒ Clarification Requested by
One or More Counties
- ☐ Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHILD WELFARE DIRECTORS
ALL ADMINISTRATIVE LAW JUDGES
ALL COUNTY STATE HEARING REPRESENTATIVES
ALL COVERED CALIFORNIA HEARING REPRESENTATIVES

SUBJECT: NEW LAW: PROVIDING STATEMENTS OF POSITION TO
CLAIMANTS BEFORE A STATE HEARING

REFERENCE: Welfare and Institutions Code, section 10952.5 (as amended by
Stats. 2016, ch. 522 (A.B. 2346), §1, eff. Jan. 1, 2017); Manual of
Policies and Procedures (MPP), section 22-073.25

This ACL instructs counties, and other agencies whose actions or inactions are subject to a state hearing, on how to comply with Welfare and Institutions Code, section 10952.5, as amended by [Assembly Bill No. 2346](#) (Stats. 2016, ch. 522), by making the position statement available to the claimant at least two business days before a state hearing. The amendments were effective on January 1, 2017.

Section 22-073.25 of the Department of Social Services Manual of Policies and Procedures (MPP) will be updated to conform to AB 2346 and these instructions.

BACKGROUND

When an applicant or recipient of public social services disputes an action or inaction of a public or private agency related to the applicant's or recipient's benefits, the applicant or recipient has a right to a state hearing. Public and private agencies with actions subject to state hearing include, but are not limited to, county welfare departments, the Department of Social Services, the Department of Health Care Services, Medi-Cal managed care health plans, the state Health Benefit Exchange (Covered California), and state- or federally-funded alcohol and drug treatment programs and county mental health programs.

An applicant for or recipient of public social services (including but not limited to CalWORKs, CalFresh, or Medi-Cal) who requests a hearing is known as a “claimant.” Applicants for Resource Family Approval or Resource Families who request a hearing are known as “respondents,” with similar rights afforded to claimants under Division 22 of the MPP. Those who request a hearing to dispute an eligibility determination by Covered California are known as “appellants.” This letter uses the term “claimants” to include all persons who request a state hearing, including Resource Family Approval “respondents,” Covered California “appellants,” and all claimants.

Ordinarily, the public or private agency receives a notice at least 10 days before the hearing, stating the time and place of the hearing. The hearing usually takes place at a county office or by telephone.

When the public or private agency receives at least 10 days’ notice of the hearing, the agency must prepare a written statement of the agency’s position on the disputed action. The Department’s Manual of Policies and Procedures, Section 22-073.251, requires each position statement to “summarize the facts of the case and set forth the regulatory justification” for the agency’s action. The position statement must include a list of witnesses and an itemized list of all relevant documents. The documents must be attached to the position statement. The position statement must include all relevant facts and documents, including those that are helpful to the claimant. The position statement must include an individualized statement of facts specific to the claimant’s case, a statement of the specific regulations or policies that underlay the agency’s action, and an explanation of how the rules apply to the particular facts of the claimant’s case.

Prior law required public and private agencies other than the Department of Health Care Services to make the position statement available to the claimant by having a paper copy at the appropriate county welfare department at least two business days before the hearing. (A [list of county welfare department offices](http://www.cdss.ca.gov/inforesources/State-Hearings) is available online at <http://www.cdss.ca.gov/inforesources/State-Hearings>. See page 4, below.)

Effective January 1, 2017, AB 2346 adds the Department of Health Care Services as an agency required to make the position statement available two business days before the hearing. AB 2346 also gives agencies and claimants more options for making the position statement available to the claimant.

IMPLEMENTING CHANGE IN LAW

The claimant’s opportunity to review the position statement before the hearing is vital to the claimant’s constitutional due process rights. The position statement must explain the agency’s action, and the specific facts and laws underlying that action, so that the claimant can prepare her or his case for hearing. The claimant must be provided with the complete position statement, including all supporting evidence and attachments, at least two business days before the hearing.

If the position statement is not made available to the claimant at least two business days before the hearing, or the agency decides to modify the position statement after providing it to the claimant, the claimant will have good cause to postpone the hearing. If the claimant requests a postponement for good cause, the claimant must waive the 90-day deadline for deciding the claimant's issue (or 60 days for CalFresh). However, the claimant is entitled to continue receiving any aid paid pending the hearing. Since the postponement will be because of the agency's failure to send the position statement as required, it will not count as the claimant's "first postponement" for purposes of the [SHD Postponement Protocol](#), Section C, which would otherwise require more verification for subsequent postponement requests. Example: a claimant requests a postponement because the SOP is not provided. Later, the claimant requests a further postponement because of illness. The claimant must waive time for both postponement requests, but the postponement request because of illness counts as the claimant's "first" postponement request under the Postponement Protocol. The additional verification required for a second postponement is not required.

Making the position statement available to the claimant at least two business days before the hearing is just one of the agencies' pre-hearing responsibilities to claimants. For additional pre-hearing responsibilities, which include but are not limited to providing access at the claimant's request to the case record, agencies should consult the Department of Social Services MPP, Division 22, and particularly MPP sections 22-051, 22-069, 22-070, 22-071, 22-072, and 22-073. Federal regulations may also apply, including but not limited to 7 C.F.R. section 273.15, 42 C.F.R. Part 431, Subpart E (§§ 431.200 – 431.206), and 45 C.F.R. section 400.54.

HOW TO MAKE A POSITION STATEMENT AVAILABLE BEFORE A STATE HEARING

AB 2346 mentions three ways to make a position statement available to the claimant.

1. Secure Electronic Transmission, with the Claimant's Authorization.

If:

- The claimant has authorized electronic transmission of the position statement, *and*
- The agency is able to comply with all state and federal privacy laws in transmitting the position statement electronically,

Then:

- The agency must *electronically* transmit the position statement *at least two business days before the hearing*.

AB 2346 allows for secure electronic transmission, with the claimant's authorization. The agency must have the claimant's permission to transmit the position statement electronically. AB 2346 does not specifically require written authorization.

Agencies may not unilaterally decide to make the position statement available electronically instead of on paper; they must consult with the claimant and secure the claimant's authorization for electronic transmission. Some claimants lack access to a secure computer, or to the internet. A claimant may need a paper copy and lack the resources to print the position statement.

Agencies that cannot electronically transmit position statements in compliance with all applicable privacy laws are not required to transmit position statements electronically. Under AB 2346, agencies that cannot comply with privacy laws while transmitting electronically must file a report with the Department of Social Services each year, by December 31 of the preceding year. The report must include:

- Barriers the agency has identified that substantially impede or prohibit the electronic provision of documents, and
- Steps the agency is taking to address these barriers.

Agencies may send these reports electronically to SHDAgencyReports@dss.ca.gov. The first report will be due in December 2017. Under AB 2346, the reporting requirement will end when "a statewide electronic case management system administered by the State Department of Social Services becomes operational and has the capacity to provide position statements to claimants through secure electronic means."

2. First-Class Mail

If the claimant does not authorize electronic transmission, or the agency cannot transmit the position statement electronically in compliance with applicable privacy laws, then the agency may send the position statement by first-class mail through the U.S. Postal Service.

If the agency chooses to mail the position statement, it must be sure to mail it early enough for the claimant to *receive* the position statement at least two business days before the hearing.

3. Paper Copy at County Welfare Department

If the claimant does not authorize electronic transmission, or if the agency cannot transmit the position statement electronically in compliance with applicable privacy laws, then the agency may make the position statement available at the appropriate office of the county welfare department. The Department's PUB 412, which is mailed to every claimant in a state hearing, informs claimants that they may pick up the position statement "any time during business hours up to two working days before [the] hearing date."

Public or private agencies that choose this method but are not part of the county welfare department must mail a paper copy of the position statement to the county of the

claimant's residence. A list of contacts, including mailing addresses, for county welfare departments is available online at <http://www.cdss.ca.gov/inforesources/State-Hearings>. The position statement must be mailed early enough for the county welfare department to make it available at least two business days before the hearing.

If electronic transfer does not apply, either because the claimant has not authorized it or because the agency cannot transmit in compliance with privacy law, then Welfare & Institutions Code section 10952.5 allows the agency to choose whether to mail the position statement or make it available at the appropriate county welfare department. However, agency representatives are encouraged to discuss with claimants, in their pre-hearing contacts, how the claimant prefers to receive the position statement. This is particularly important when the agency chooses to make the position statement available at the county welfare department. Claimants may have to travel long distances to reach a county hearing office, and some county offices have multiple branches.

For additional information, please contact Lisa Halko, Administrative Law Judge II, at lisa.halko@dss.ca.gov.

Sincerely,

Original Document Signed By:

MANUEL A. ROMERO
Deputy Director and Chief Administrative Law Judge
State Hearings Division