

CHAPTER 237

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**HUMAN SERVICES - SOCIAL SERVICES**

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HOUSE BILL 97-1344

BY REPRESENTATIVES Lawrence, Keller, Morrison, Paschall, Schwarz, and Snyder;  
also SENATOR Wham.

**AN ACT**

CONCERNING THE APPEAL PROCESS FOR PUBLICLY FUNDED PROGRAMS FOR NEEDY PERSONS.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 26-2-127, Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

**26-2-127. Appeals.** (1) (a) (I) If an application for assistance payments is not acted upon by the county department within a reasonable time after filing of the same, or if an application is denied in whole or in part, or if a grant of assistance payments is suspended, terminated, or modified, the applicant or recipient, as the case may be, may appeal to the state department in the manner and form prescribed by the rules ~~and regulations~~ of the state department. EVERY COUNTY DEPARTMENT OR SERVICE DELIVERY AGENCY SHALL ADOPT PROCEDURES FOR THE RESOLUTION OF DISPUTES ARISING BETWEEN THE COUNTY DEPARTMENT OR THE SERVICE DELIVERY AGENCY AND ANY APPLICANT FOR OR RECIPIENT OF PUBLIC ASSISTANCE PRIOR TO APPEAL TO THE STATE DEPARTMENT. SUCH PROCEDURES ARE REFERRED TO IN THIS SECTION AS THE "DISPUTE RESOLUTION PROCESS". TWO OR MORE COUNTIES MAY JOINTLY ESTABLISH THE DISPUTE RESOLUTION PROCESS. THE DISPUTE RESOLUTION PROCESS SHALL BE CONSISTENT WITH RULES PROMULGATED BY THE STATE BOARD PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S. THE DISPUTE RESOLUTION PROCESS SHALL INCLUDE AN OPPORTUNITY FOR ALL CLIENTS TO HAVE A COUNTY CONFERENCE, UPON THE CLIENT'S REQUEST, AND SUCH REQUIREMENT MAY BE MET THROUGH A TELEPHONIC CONFERENCE UPON THE AGREEMENT OF THE CLIENT AND THE COUNTY DEPARTMENT. THE DISPUTE RESOLUTION PROCESS NEED NOT CONFORM TO THE REQUIREMENTS OF SECTION 24-4-105, C.R.S., AS LONG AS THE RULES ADOPTED BY THE STATE BOARD

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

INCLUDE PROVISIONS SPECIFICALLY SETTING FORTH EXPEDITIOUS TIME FRAMES, NOTICE, AND AN OPPORTUNITY TO BE HEARD AND TO PRESENT INFORMATION. IF THE DISPUTE IS NOT RESOLVED, THE APPLICANT OR RECIPIENT MAY APPEAL TO THE STATE DEPARTMENT IN THE MANNER AND FORM PRESCRIBED BY THE RULES OF THE STATE DEPARTMENT. WHETHER AT THE COUNTY LEVEL, STATE LEVEL, OR BOTH, DISPUTES RELATED TO THE DELIVERY OF ASSISTANCE UNDER THE SUCCESSOR PROGRAM TO AID TO FAMILIES WITH DEPENDENT CHILDREN SHALL BE DECIDED IN ACCORDANCE WITH THE RULES PROMULGATED BY THE STATE BOARD PURSUANT TO THIS SUBPARAGRAPH (I) AND WITH THE COUNTY'S OFFICIAL WRITTEN POLICIES GOVERNING DELIVERY OF ASSISTANCE UNDER SUCH PROGRAM. THE STATE BOARD SHALL ADOPT RULES SETTING FORTH WHAT OTHER ISSUES, IF ANY, MAY BE APPEALED BY AN APPLICANT OR RECIPIENT TO THE STATE DEPARTMENT. COUNTY NOTICES TO APPLICANTS OR RECIPIENTS SHALL INFORM THEM OF THE BASIS FOR THE COUNTY'S DECISION OR ACTION AND SHALL INFORM THEM OF THEIR RIGHTS TO A COUNTY CONFERENCE UNDER THE DISPUTE RESOLUTION PROCESS AND OF THEIR RIGHTS TO STATE LEVEL APPEAL AND THE PROCESS OF MAKING SUCH APPEAL. A hearing need not be granted when either state or federal law requires or results in an automatic grant adjustment for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

(II) Upon receipt of an appeal, the state department shall give the appellant reasonable notice and an opportunity for a fair hearing in accordance with rules ~~and regulations~~ of the state department. Any such fair hearing shall comply with section 24-4-105, C.R.S., and the state department's administrative law judge shall preside.

(III) The appellant shall have an opportunity to examine all applications and pertinent records concerning said appellant ~~which~~ THAT constitute a basis for the denial, suspension, termination, or modification of assistance payments.

(IV) The appellant may represent himself OR HERSELF or he OR SHE may be represented by legal counsel, or by a relative, friend, or other spokesman, and such representation by nonlawyers shall not be considered to be the practice of law.

(b) The state department, by its rules, ~~and regulations~~, may provide for fair hearings and appeals for applicants for and recipients of social services.

~~(c) Upon its own motion, the state department may review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigation as it deems necessary and shall make such decision as to the granting of assistance payments and the amount thereof as in its opinion is justifiable pursuant to the provisions of this article and the rules and regulations of the state department. Applicants or recipients affected by such decisions of the state department, upon request, shall be given reasonable notice and opportunity for a fair hearing by the state department.~~

(2) All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

(3) THE STATE DEPARTMENT, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AND THE DIVISION OF ADMINISTRATIVE HEARINGS IN THE DEPARTMENT OF

PERSONNEL SHALL WORK TOGETHER TO STREAMLINE THE PROCESS FOR THE APPEAL OF DISPUTES THAT ARE NOT RESOLVED AT THE COUNTY LEVEL AND SHALL CONSIDER PROPOSED LEGISLATIVE CHANGES OR FEDERAL WAIVERS FOR THE SUCCESSOR PROGRAM TO AID TO FAMILIES WITH DEPENDENT CHILDREN IN ORDER TO ADDRESS CHANGES IN THE APPEALS PROCESS TO AVOID OR MITIGATE EXPENSES TO COUNTIES OF MAINTAINING BENEFITS DURING THE PENDENCY OF STATE-LEVEL APPEALS.

(4) THE STATE DEPARTMENT IS AUTHORIZED TO APPLY TO THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE HEALTH CARE FINANCING ADMINISTRATION FOR WAIVERS TO DEVELOP A PROCESS FOR APPEALS THAT ENSURES THAT ISSUES MAY BE CONSOLIDATED AT THE LOCAL AND STATE LEVELS. IN APPLYING FOR THE WAIVER, THE STATE DEPARTMENT SHALL DEMONSTRATE THAT DUE PROCESS CONSIDERATIONS ARE ADDRESSED THROUGH OTHER APPEAL MECHANISMS.

**SECTION 2.** 26-4-402, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**26-4-402. Appeals.** (1) (a) (I) If an application for medical benefits is not acted upon by the county department within a reasonable time after filing of the same, or if an application is denied in whole or in part, or if medical benefits are suspended, terminated, or modified, the applicant or recipient, as the case may be, may appeal to the state department in the manner and form prescribed by the rules ~~and regulations~~ of the state department. EVERY COUNTY DEPARTMENT OR SERVICE DELIVERY AGENCY SHALL ADOPT PROCEDURES FOR THE RESOLUTION OF DISPUTES ARISING BETWEEN THE COUNTY DEPARTMENT OR THE SERVICE DELIVERY AGENCY AND ANY APPLICANT FOR OR RECIPIENT OF MEDICAL ASSISTANCE PRIOR TO APPEAL TO THE STATE DEPARTMENT. SUCH PROCEDURES ARE REFERRED TO IN THIS SECTION AS THE "DISPUTE RESOLUTION PROCESS". TWO OR MORE COUNTIES MAY JOINTLY ESTABLISH THE DISPUTE RESOLUTION PROCESS. THE DISPUTE RESOLUTION PROCESS SHALL BE CONSISTENT WITH RULES PROMULGATED BY THE STATE BOARD PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S. THE DISPUTE RESOLUTION PROCESS SHALL INCLUDE AN OPPORTUNITY FOR ALL CLIENTS TO HAVE A COUNTY CONFERENCE, UPON THE CLIENT'S REQUEST, AND SUCH REQUIREMENT MAY BE MET THROUGH A TELEPHONIC CONFERENCE UPON THE AGREEMENT OF THE CLIENT AND THE COUNTY DEPARTMENT. THE DISPUTE RESOLUTION PROCESS NEED NOT CONFORM TO THE REQUIREMENTS OF SECTION 24-4-105, C.R.S., AS LONG AS THE RULES ADOPTED BY THE STATE BOARD INCLUDE PROVISIONS SPECIFICALLY SETTING FORTH EXPEDITIOUS TIME FRAMES, NOTICE, AND AN OPPORTUNITY TO BE HEARD AND TO PRESENT INFORMATION. IF THE DISPUTE IS NOT RESOLVED, THE APPLICANT OR RECIPIENT MAY APPEAL TO THE STATE DEPARTMENT IN THE MANNER AND FORM PRESCRIBED BY THE RULES OF THE STATE DEPARTMENT. COUNTY NOTICES TO APPLICANTS OR RECIPIENTS SHALL INFORM THEM OF THE BASIS FOR THE COUNTY'S DECISION OR ACTION AND SHALL INFORM THEM OF THEIR RIGHTS TO A COUNTY CONFERENCE UNDER THE DISPUTE RESOLUTION PROCESS AND OF THEIR RIGHTS TO STATE LEVEL APPEAL AND THE PROCESS OF MAKING SUCH APPEAL. THE STATE BOARD SHALL ADOPT RULES SETTING FORTH WHAT OTHER ISSUES, IF ANY, MAY BE APPEALED BY AN APPLICANT OR RECIPIENT TO THE STATE DEPARTMENT. A hearing need not be granted when either state or federal law requires or results in a reduction or deletion of a medical benefit UNLESS THE APPLICANT OR RECIPIENT IS ARGUING THAT HIS OR HER CASE DOES NOT FIT WITHIN THE PARAMETERS SET FORTH BY THE CHANGE IN THE LAW. IN NOTIFYING THE APPLICANT OR RECIPIENT THAT AN APPEAL IS BEING DENIED BECAUSE OF A CHANGE IN STATE OR

FEDERAL LAW, THE STATE'S NOTICE SHALL INFORM THE APPLICANT OR RECIPIENT THAT FURTHER APPEAL SHOULD BE DIRECTED TO THE APPROPRIATE STATE OR FEDERAL COURT.

(II) Upon receipt of an appeal, the state department shall give the appellant at least ten days' notice and an opportunity for a fair hearing in accordance with the rules ~~and regulations~~ of the state department. Any such fair hearing shall comply with section 24-4-105, C.R.S., and the state department's administrative law judge shall preside.

(III) The appellant shall have an opportunity to examine all applications and pertinent records concerning said appellant ~~which~~ THAT constitute a basis for the denial, suspension, termination, or modification of medical benefits.

~~(b) Upon its own motion, the state department may review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time. The state department may make such additional investigation as it deems necessary and shall make such decision as to the granting of medical benefits and the amount thereof as in its opinion is justifiable pursuant to the provisions of this article and the rules and regulations of the state department. Applicants or recipients affected by such decisions of the state department, upon request, shall be given reasonable notice and opportunity for a fair hearing by the state department.~~

(2) All decisions of the state department shall be binding upon the county department involved and shall be complied with by such county department.

**SECTION 3.** 26-2-104 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**26-2-104. Public assistance programs - electronic benefits transfer service - rules.** (1) (a) The state department is hereby designated as the single state agency to administer or supervise the administration of public assistance programs in this state in cooperation with the federal government pursuant to the social security act and this article. The state department shall establish public assistance programs consisting of assistance payments and social services to be made available to eligible individuals, including but not limited to old age pensions, aid to families with dependent children, aid to the needy disabled, and aid to the blind.

(b) THE STATE DEPARTMENT MAY REVIEW ANY DECISION OF A COUNTY DEPARTMENT AND MAY CONSIDER ANY APPLICATION UPON WHICH A DECISION HAS NOT BEEN MADE BY THE COUNTY DEPARTMENT WITHIN A REASONABLE TIME TO DETERMINE THE PROPRIETY OF THE ACTION OR FAILURE TO TAKE TIMELY ACTION ON AN APPLICATION FOR PUBLIC ASSISTANCE. THE STATE DEPARTMENT SHALL MAKE SUCH ADDITIONAL INVESTIGATION AS IT DEEMS NECESSARY AND SHALL, AFTER GIVING THE COUNTY DEPARTMENT AN OPPORTUNITY TO REBUT ANY FINDINGS OR CONCLUSIONS OF THE STATE DEPARTMENT THAT THE ACTION OR DELAY IN TAKING ACTION WAS A VIOLATION OF OR CONTRARY TO STATE DEPARTMENT RULES, MAKE SUCH DECISION AS TO THE GRANTING OF ASSISTANCE PAYMENTS AND THE AMOUNT THEREOF AS IN ITS OPINION IS JUSTIFIABLE PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND THE RULES OF THE STATE DEPARTMENT. APPLICANTS OR RECIPIENTS AFFECTED BY SUCH DECISIONS OF THE STATE DEPARTMENT, UPON REQUEST, SHALL BE

GIVEN REASONABLE NOTICE AND OPPORTUNITY FOR A FAIR HEARING BY THE STATE DEPARTMENT.

**SECTION 4.** 26-2-126, Colorado Revised Statutes, 1989 Repl. Vol., is repealed as follows:

~~**26-2-126. Evidentiary conference.** The county department, prior to making any decision to deny, terminate, suspend, or modify assistance payments to a recipient, shall provide said recipient opportunity for an evidentiary conference in the county department in accordance with the rules and regulations of the state department.~~

**SECTION 5.** 26-2-303, Colorado Revised Statutes, 1989 Repl. Vol., is repealed as follows:

~~**26-2-303. Evidentiary conference.** Prior to making any decision to deny, terminate, suspend, or modify food stamp benefits of a recipient, the county department, or the state department in food stamp districts administered by the state department, shall provide said recipient opportunity for an evidentiary conference in the county in accordance with the rules and regulations of the state department.~~

**SECTION 6.** 26-2-133 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**26-2-133. State income tax refund offset.** (2) As a condition of certifying an overpayment to the department of revenue as provided in subsection (1) of this section, the state department shall ensure that the obligated person has been afforded the opportunity for ~~an evidentiary~~ A conference at the county department level pursuant to ~~section 26-2-126 or 26-2-303~~ SECTION 26-2-127 OR 26-4-402 and the opportunity for an appeal to the state department pursuant to section 26-2-127 or 26-2-304. In addition, the state department, prior to final certification of the information specified in subsection (1) of this section to the department of revenue, shall notify the obligated person, in writing, at his last known address, that the state intends to refer the person's name to the department of revenue in an attempt to offset the obligation against the person's state income tax refund. Such notification shall inform the obligated person of the opportunity for ~~an evidentiary~~ A conference with the county department pursuant to ~~section 26-2-126 or 26-2-303~~ SECTION 26-2-127 OR 26-4-402 and of the opportunity for an appeal to the state department pursuant to section 26-2-127 or 26-2-304. In addition, the notice shall specify issues that may be raised at an evidentiary conference or on appeal, as provided by this subsection (2), by the obligated person in objecting to the offset and shall specify that the obligated person may not object to the fact that an overpayment occurred. A person who has received a notice pursuant to this subsection (2) shall request, within thirty days from the date such notice was mailed, an administrative review or evidentiary conference, as provided in this subsection (2).

**SECTION 7.** 26-4-104 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**26-4-104. Program of medical assistance - single state agency.** (1) (a) The state department, by rules and regulations, shall establish a program of medical assistance to provide necessary medical care for the categorically needy. The state

department is hereby designated as the single state agency to administer such program in accordance with Title XIX and this article. Such program shall not be required to furnish recipients under sixty-five years of age the benefits that are provided to recipients sixty-five years of age and over under Title XVIII of the social security act; but said program shall otherwise be uniform to the extent required by Title XIX of the social security act.

(b) THE STATE DEPARTMENT MAY REVIEW ANY DECISION OF A COUNTY DEPARTMENT AND MAY CONSIDER ANY APPLICATION UPON WHICH A DECISION HAS NOT BEEN MADE BY THE COUNTY DEPARTMENT WITHIN A REASONABLE TIME TO DETERMINE THE PROPRIETY OF THE ACTION OR FAILURE TO TAKE TIMELY ACTION ON AN APPLICATION FOR MEDICAL ASSISTANCE. THE STATE DEPARTMENT SHALL MAKE SUCH ADDITIONAL INVESTIGATION AS IT DEEMS NECESSARY AND SHALL, AFTER GIVING THE COUNTY DEPARTMENT AN OPPORTUNITY TO REBUT ANY FINDINGS OR CONCLUSIONS OF THE STATE DEPARTMENT THAT THE ACTION OR DELAY IN TAKING ACTION WAS A VIOLATION OF OR CONTRARY TO STATE DEPARTMENT RULES, MAKE SUCH DECISION AS TO THE GRANTING OF MEDICAL BENEFITS AND THE AMOUNT THEREOF AS IN ITS OPINION IS JUSTIFIABLE PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND THE RULES OF THE STATE DEPARTMENT. APPLICANTS OR RECIPIENTS AFFECTED BY SUCH DECISIONS OF THE STATE DEPARTMENT, UPON REQUEST, SHALL BE GIVEN REASONABLE NOTICE AND OPPORTUNITY FOR A FAIR HEARING BY THE STATE DEPARTMENT.

**SECTION 8.** 26-4-401, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

~~**26-4-401. Evidentiary conference.** The county department, prior to making any decision to deny, terminate, suspend, or modify medical benefits to a recipient, shall provide said recipient opportunity for an evidentiary conference in the county department in accordance with the rules and regulations of the state department.~~

**SECTION 9. Effective date.** This act shall take effect July 1, 1997.

**SECTION 10. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1997