

REPRESENTATION BEFORE ADMINISTRATIVE HEARINGS
HB 455

When the states receive funding for their welfare programs the federal government requires them to allow those who appeal department decisions to have recourse to administrative proceedings where they are allowed to be represented by "**legal counsel, a relative, a friend, or other spokesman**".

Title 42 of the Code of Federal Regulations, section 431.206, states that at the time of any action affecting an individual's claim, he or she is entitled to receive notice of the right to a hearing or method by which to obtain a hearing and that he or she **may represent himself or use legal counsel, a relative, a friend, or other spokesman**. 42 C.F.R. §§ 431.206(b)-(c), 431.210. [see: Cota v. Maxwell-Jolly, 688 F.Supp.2d 980 (2010).

This requirement has already been incorporated into the Administrative Rules of Montana as ARM 37.5.505 NOTICE UPON ADVERSE PUBLIC ASSISTANCE ACTION and is included in Montana's TANF [Temporary Assistance for Needy Families] Manual as rule TANF 1506-2.

CLAIMANT REPRESENTATION

The claimant may be represented by:

1. Him/herself; or
2. An authorized representative, such as:
 - a. Legal counsel; or
 - b. **A relative, friend, or other spokesperson.**

It is the intention of HB 455 to make Montana's Administrative Procedures Act [MCA 2-4-101, et seq.] conform to what our administrative practices presently are.

According to *Sperry v. Florida ex rel. Florida Bar*, 373 US 379 (1963),
- - - despite protests of the bar, Congress in enacting the [Federal]
Administrative Procedure Act refused to limit the right to practice before
the administrative agencies to lawyers. . .

According to *Title IV-E Adoption Assistance State Self-Assessment* developed by the Department of Health and Human Services, Administration for Children and Families, Children's Bureau, pg 45

The State is required to inform prospective adoptive parent(s) in writing

at the time of the application, and at the time of any action affecting their claim, of the right to a fair hearing; the method by which they may obtain a hearing; and that **they may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman**, or may represent themselves.

Pursuant to federal directive, the privilege of being represented in administrative hearings by a "**relative, friend or other spokesperson**" is followed in many of the state and federal agencies, including:

Social Security under §404.1705 Who may be your representative:

- (a) *Attorney* - - -
- (b) *Person other than attorney.* **You may appoint any person who is not an attorney to be your representative in dealings with us** if he or she—
 - (1) Is generally known to have a good character and reputation;
 - (2) Is capable of giving valuable help to you in connection with your claim;
 - (3) Is not disqualified or suspended from acting as a representative in dealings with us; and
 - (4) Is not prohibited by any law from acting as a representative.

Other states also allow such representation in administrative hearings.

Florida KidCare Program, CF-ES 1056, PDF 10/2005 (65A-1.400, F.A.C.):

If you think this action is incorrect, we will be glad to discuss it with you. You may also ask to speak to a supervisor. If you are still not satisfied, you have the right to request a fair hearing before a State Hearings officer. A request for hearing may be made verbally or in writing. Your request must be made 90 days from the date at the top of this Notice of Case Action. **At the hearing you may represent yourself, or be represented by legal counsel, a friend, relative or other spokesperson.** - - .

Texas under Chapter 419 (proposed). Medicaid State Operating Agency Responsibilities

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Content of Notice. The notice shall contain:

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- (5) a statement that **the individual may represent himself or herself or**

use legal counsel, a relative, a friend, or other spokesperson; - - -

California under County Medical Services program (CMSP), Benefit Appeals and Request for Medical Benefit Hearing by CMSP Governing Board

Medical Benefit Hearing with the CMSP Governing Board

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You have the right to be represented at the hearing by another person of your choice (an attorney, a friend, a relative, or other spokesperson). You may be able to receive legal advice by calling the nearest legal assistance/services agency. You may have witnesses at the hearing and you may present evidence.

North Carolina under General Information About the Hearing Process (DMA 2003)

UNDERSTANDING THE APPEAL PROCESS: If you choose to appeal, you may represent yourself during the appeal process, hire an attorney, or ask a relative, friend, or other spokesperson to speak for you. - - -

Georgia - Notice Denial of Level of Care Community Care Services Program

- - - At that hearing, you may represent yourself or use legal counsel, a friend, a relative or any other spokesperson to represent you.

New Mexico Register / volume XIII, Number 24 / December 30, 2002

8.100.970.8 FAIR HEARINGS:

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D. Representation, Hearing and Appeals Costs: HSD does not provide representation or pay for any costs incurred by the claimant in program participation hearings or in judicial appeals.

E. Notice of Rights: (1) At the time of application for assistance, an applicant shall be informed in writing of the right to request a hearing and the method by which a hearing may be requested (either orally or in writing) if the applicant disagrees with an action taken by the Department.

(2) An applicant shall be informed that **the claimant's presentation may be made by the claimant, a household member or authorized representative, such as legal counsel, a relative, friend or other spokesperson.**

Kansas Department on Aging Customer Rights and Responsibilities (Regulatory Reference(s): KDOA FSM 3.4.1.D & 3.4.1.1

Right to Appeal: You have the right to request a fair hearing if you disagree with the outcome of a grievance (for Older Americans Act customers), this notice of action, or any agency decision concerning your case. If you want a fair hearing, you must submit a written request within 33 days of this notice. At the hearing, you will be given the opportunity to explain why you disagree with this notice of action. **You may represent yourself or a household member, legal counsel, friend, relative, or other spokesperson may represent you. - - -**

Utah, Health, Children's Health Insurance Program (proposed) Rule R382-10

R382-10-21. Termination and Notice.

- (1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.
- (2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.
- (3) Notices under this section shall provide the following information:
 - (a) the action to be taken;
 - (b) the reason for the action;
 - (c) the regulations or policy that support the action;
 - (d) the applicant's or enrollee's right to a hearing;
 - (e) how an applicant or enrollee may request a hearing; and
 - (f) **the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.**

Pennsylvania, 870.2 REQUESTING A FAIR HEARING

Explain the procedure.

Help write the request or fill out forms.

Advise the client that a friend, relative, attorney, legal services, or other spokesperson may represent him and include this individual in all discussions related to the appeal.

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