



# STATE OF COLORADO

Governor Bill Ritter, Jr.

**DEPARTMENT OF HEALTH CARE POLICY & FINANCEING**

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**TO:** CCB Executive Directors  
Case Management Directors

**FROM:** Sharon Jacksi, Director, DDD, DHS *SSJ. Sharon Jacksi, Ph.D.*  
Barbara B. Prehmus, Division Director, Long Term Care, HCPF *B.B. Prehmus*

**RE:** Class Action Decision in *Rossart et al. v. Department of Human Services et al.*,  
Denver District Court Case No. 06 CV 4479

**DATE:** May 12, 2008

The purpose of this correspondence is to provide information to the Community Centered Boards (CCBs) regarding the decision in the class action entitled *Rossart et al. v. Colorado Department of Human Services et al.* In that case, the judge found that all persons who were determined ineligible or who were determined no longer eligible for developmental disability services on the basis of not having a developmental disability have the right to a de novo review at the state level.

On March 2, 2008, the Court issued its order of permanent injunction ("Permanent Injunction"). In the Permanent Injunction, the Court ordered that the Departments of Human Services and Health Care Policy and Financing ("State Departments") stop using the hearing procedures set forth in DDD's rules at 2 C.C.R. 503-1, § 16.322 for applications for services for the developmentally disabled. The Permanent Injunction is intended to modify CCBs' actions going forward.

As a result of that Permanent Injunction, each CCB should give notice of the right to a state-level de novo hearing through the use of the LTC 803 form when:

- (1) an applicant for developmental disability services is denied on the basis that the applicant fails to meet the definition of developmentally disabled; and
- (2) an applicant for Medicaid Home and Community Based Waiver Programs, including HCBS-DD, HCBS-SLS and HCBS-CES, is denied enrollment or services.

A copy of the March 2, 2008, Permanent Injunction is attached. (*attachment 1*)

As a reminder, when a CCB terminates any recipient of HCBS-DD, HCBS-SLS and HCBS-CES Medicaid waiver Programs based on the CCBs' determination of continued eligibility, the CCB must give notice of the right to a state-level de novo hearing through the use of the LTC 803 form.

The Court in the *Rossart* case issued a second Order on April 27, 2008. A copy of that Order is attached (*attachment 2*). The Court's April 27, 2008, Order is intended to provide all persons from the period of July 10, 2004, to present who did not receive the appropriate appeal right. The Court has ordered the State Departments to obtain certain information from the CCBs and to provide the proper hearing right to persons during that time period who did not receive the proper notice and right to a state-level de novo hearing.

To implement the Court's Order, the State Departments require the following information and actions from the CCBs:

1. CCBs must identify persons who were deprived of notice and the right to a state-level de novo hearing. To do so, CCBs should identify the following persons by name and address:

a. Every person since July 10, 2004, whose application for developmental disabilities services, was denied on the grounds that he or she did not have a developmental disability and who was not given notice of a right to a de novo hearing at the state level; **and**,

b. Every person since July 10, 2004, whose application for Medicaid waiver programs, including HCBS-DD, HCBS-SLS and HCBS-CES, was initially granted based on a finding that he or she was a person with a developmental disability, and who subsequently received Medicaid services under or was placed on a waitlist for HCBS-DD, HCBS-CES or HCBS-SLS, but whose eligibility was subsequently terminated based on a determination that he or she was not a person with a developmental disability, and who was not given notice of a right to a de novo hearing at the state level.

2. CCBs must provide certified lists of those persons meeting the criteria of Paragraphs 1(a) and 1(b) to the State Departments within 30 days of the receipt of this memorandum.

a. In order to identify those denied applicants who were not provided with notice of the right to a state-level de novo hearing during the period of July 10, 2004 through the present, each CCB must research its own records. DDD and HCPF recommend that each CCB begin by reviewing its eligibility committee minutes to compile a list of all applicants for whom the CCB made a determination that the person was not developmentally disabled. The CCB should then review each denied applicant's file to determine whether the CCB provided notice of the right to a state-level de novo hearing through the issuance of an LTC 803 *Notice of Action*.

The State Departments anticipate that most, if not all, of the denied applicants would not have received notice of a right to a state-level de novo hearing through an LTC 803 *Notice of Action*. All persons who were not given an LTC 803 *Notice of Action* are members of the class and must be given an appropriate LTC 803 *Notice of Action*.

b. In order to identify those terminated recipients who were not provided with notice of the right to a state-level de novo hearing

during the period of July 10, 2004, through the present, each CCB must research its own records. DDD and HCPF recommend that each CCB begin by reviewing its eligibility committee minutes to compile a list of all persons for whom the CCB terminated Medicaid waiver benefits as a result of a determination that the person is not developmentally disabled. The CCB should then review each terminated person's file to determine whether the CCB provided notice of the right to a state-level de novo hearing through the issuance of an LTC 803 *Notice of Action*.

CCBs have already conducted some research, which may assist in this determination. Each CCB provided to DDD a spreadsheet in May 2007 (*attachment 3*). That spreadsheet compiled certain data and identified a list of persons that the CCB terminated from the three Medicaid waiver programs at issue during the period of July 1, 2004, to May 17, 2007. CCBs may use the information from their spreadsheets as a starting point to determine those persons who were terminated from a Medicaid waiver program – HCBS-DD, HCBS-CES or HCBS-SLS – as the result of a determination of a finding that the recipient was not developmentally disabled.

Please be mindful, however, that the spreadsheets do not contain information to specifically categorize persons who were terminated based on a finding that the person no longer met the definition of developmentally disabled, nor do the spreadsheets cover the period from May 17, 2007, to present. As a result, CCBs will not be able to rely solely on their spreadsheets.

Once the CCB has identified all persons who it terminated from one of the three Medicaid waiver programs during the period of July 10, 2004 to present, the CCB must review each client's file to determine whether any of those persons was not provided with an LTC 803 *Notice of Action* that provided a right to a state-level de novo hearing. All persons who were not given an LTC 803 *Notice of Action* that provided a right to a state-level de novo hearing are members of the class certified by the court, and must be given an appropriate LTC 803 *Notice of Action*.

Each CCB must submit information regarding the two groups of persons identified in Paragraphs 2(a) and 2(b) to the State Departments through the use of a spreadsheet. The spreadsheet should contain the following information: identification of the person as a recipient or applicant; for recipients, their Medicaid identification number; for all, the client's first and last name, full mailing address and any alternate addresses; for recipients, the waiver program in which the client was enrolled and the date of enrollment in the waiver program (or placement onto the waitlist); for all, the date of termination or determination that the client was not developmentally disabled; for all, the exact reason for termination or denial; for all, the type of hearing notice provided to the client, whether the client exercised that hearing right and the result of the hearing; and for all, any information regarding whether the client was later found to be developmentally disabled (in the case of an applicant) or was reinstated to a Medicaid waiver program or waitlist, including date of reinstatement, an identification of the waiver program and the client's status as receiving benefits or waitlisted.

Each CCB must send the completed spreadsheet as an email attachment, together with your certification that your research is complete and accurate, to [candie.dalton@state.co.us](mailto:candie.dalton@state.co.us) by June 11, 2008.

After class members have been identified by the CCB, DDD will compare each CCB's list to a list pulled from CCMS.

3. CCBs must send an LTC 803 *Notice of Action* to each class member who was not previously notified of his or her right to a state-level de novo review. Included with this memorandum is a form letter to use when issuing the LTC 803 *Notice of Action* (**attachment 4**). In addition to the LTC 803 *Notice of Action*, the CCB must also provide to each person a copy of the *Notice of Class Action Decision* (**attachment 5**). Instructions regarding how the LTC 803 *Notice of Action* should be completed are attached (**attachment 6**). A blank LTC 803 *Notice of Action* is attached as **attachment 7**. This information must be sent to the last known address of the identified class member. In order to provide evidence of mailing, CCBs should purchase a certificate of mailing. After mailing the required LTC 803 *Notices of Action*, CCBs must certify to the State Departments that the CCB sent the required notice to each person.

CCBs should send the following documents to each class member:

- Attachment 4: Form letter to class member (personalized to each class member);
- Attachment 5: Notice of Class Action Decision; and
- Attachment 7: LTC 803 Notice of Action (personalized to each class member).

**DEADLINES – June 11, 2008** – CCBs to have researched and identified all persons referenced above and created the spreadsheet identifying all persons. CCBs must submit the spreadsheet and required certification pages to DDD by close of business.

**July 11, 2008** – CCBs start issuing notices to persons identified by the CCB and DDD.

The table set forth below lists timelines for each CCB to finish sending notices and to certify to DDD that each CCB has sent the required notices. **Timelines are per the court order.**

Once you have issued notices to all persons you identified, each CCB must submit a certification to DDD that you have mailed all of the required notices. The CCB must submit the certification to DDD no later than one week after the deadline by which all of your CCB's notices must be sent, according to the chart above.

In addition to the notices each CCB sends to its identified individuals, DDD will send correspondence to advocacy organizations announcing this class action decision. These organizations are being asked to post the court's decision in a prominent location through July 2010. Persons who receive notice of the decision by means of the advocacy organizations will be instructed to contact their CCB to have their record reviewed to determine whether or not the person is a class member. If a person contacts the CCB to determine whether they should be a part of the class, the CCB must review their file to determine whether they meet one of the criteria set out in Paragraphs 1(a) or 1(b), above. In the event that such person is a class member, the CCB shall issue an LTC 803 *Notice of Action* and a copy of the *Notice of Class Action Decision*.

Please note: The Court issued its Permanent Injunction on March 2, 2008. That order requires CCBs to provide all applicants who are determined ineligible or all Medicaid waiver program recipients who are found to be no longer eligible as the result of a finding that the person is not developmentally disabled to be given notice of the right to a state-level de novo hearing through issuance of an LTC 803 *Notice of Action* at the time of the determination. *As a result, every CCB should implement appropriate procedures to comply with the Court's Permanent Injunction.*

As a reminder, any time a CCB takes action to terminate a client from a Medicaid waiver program, other than when a county department of social services solely acts to terminate the client, the CCB should already provide the client with notice of the right to a state-level de novo hearing through the use of the LTC 803 *Notice of Action* form.

	CCB	Begin Issuing Notices:	Date by Which All Notices Must Be Sent
Group 1	Developmental Pathways	7/11/08	8/10/08
Group 2	Denver Options	8/10/08	9/9/08
Group 3	Arkansas Valley	9/9/08	10/9/08
	Blue Peaks	9/9/08	10/9/08
	Colorado Bluesky Enterprises	9/9/08	10/9/08
	Community Connections	9/9/08	10/9/08
	Community Options	9/9/08	10/9/08
	DDRC	9/9/08	10/9/08
	Developmental Opportunities	9/9/08	10/9/08
	Eastern Colorado Services	9/9/08	10/9/08
	Envision	9/9/08	10/9/08
	Horizons	9/9/08	10/9/08
	Mesa Developmental Services	9/9/08	10/9/08
	Mountain Valley Developmental Services	9/9/08	10/9/08
	North Metro Community Services	9/9/08	10/9/08
Group 4	Southeastern	9/9/08	10/9/08
	Southern	9/9/08	10/9/08
Group 4	Imagine	10/9/08	11/8/08
	TRE	10/9/08	11/8/08

If you have any questions please contact Candie Dalton via e-mail ([candie.dalton@state.co.us](mailto:candie.dalton@state.co.us)) or telephone (303-866-7904).

cc: Mr. Jay Kauffman, DDD

Mr. Matthew Solano, DDD  
Mr. Wade Livingston, Office of the Attorney General  
Ms. Ashley Moller Klein, Office of the Attorney General  
File

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