

ADMINISTRATIVE RESOLUTION OF COMPLAINTS FOR INDIVIDUALS POLICY

It is the policy of the Erie County Board of Developmental Disabilities (Board) to provide an avenue to quickly, fairly, and effectively address and/or resolve grievances or complaints at the lowest step possible. This policy is to be used by individuals to appeal adverse actions proposed or initiated by the Board involving its programs, services, policies, or administrative actions.

The Superintendent shall establish, revise and keep current the procedures to be utilized in the implementation of this policy. The Superintendent/designee shall ensure compliance with these procedures. All revisions and changes will be shared with the Board when made.

Superintendent Signature: Carrie Beice Date: 9/19/19

Implemented: 11/1/04

Board Approval: 11/1/04, 4/20/17, 9/19/19

Revised: 2/21/08, 5/19/11, 4/20/17, 8/12/19, 9/19/19

Reviewed: 8/22/16, 4/9/19, 9/19/19

CROSS REFERENCE: Ohio Administrative Code (OAC): 5123:2-1-07, 5123-4-04, 5123:043, 5101:6-1 to 5101:6-9, 4723-21- 28; Ohio Revised Code (ORC): 5126.036, 5126.06, 5126.45; POLICY: Due Process for Medicaid Covered Services Procedures, Due Process for Medicaid Covered Services, Administrative Resolution of Complaints for Individuals

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I. APPLICATION

- A. Although this procedure outlines a formalized process to resolve complaints, all persons are encouraged to discuss concerns with involved parties to resolve issues as quickly as possible. Any person, other than an employee of the Board, may file a complaint using the administrative resolution process established under this policy, and shall use this process prior to commencing a civil action regarding the complaint. The appeal of any action of the Board or its employees shall begin at the level in which the decision or action was made.
- B. Any request for administrative resolution of a complaint filed in accordance with this policy will not affect any other rights to services. If the Board is requesting a termination, reduction of services or change in services for an individual, the current services shall continue to be provided pending final resolution, unless an entity under contract with the Board for the provision of those services terminates the services it is providing that individual in accordance with the terms of the contract with the Board.
- C. All reasonable efforts will be made to ensure that information regarding resolution of complaints and appeals, including all notices and responses, is presented using language and in a format understandable to affected individuals. All notices and responses shall include an explanation of the individual's opportunity to file a complaint or appeal to a higher authority, as applicable.
- D. The request for administrative resolution shall be in writing and shall be filed with the supervisor of the applicable service component of the Board. If an individual has difficulty in reading or writing, an oral report may be accepted and documented by the supervisor receiving the report. An individual who wishes to seek administrative resolution may be assisted by an advocate who may speak on behalf of the individual at the individual's request.
- E. The Board shall at all times maintain confidentiality concerning the identities of individuals, complainants, witnesses, and other involved parties who provide information unless the individual, in writing, authorizes the release of information.
- F. The provisions of this procedure shall not apply to an individual applying for or enrolled in services provided pursuant to the Medicaid home and community-based services waiver or any Medicaid funded services. All such appeals of decisions of the Board shall be made to the Ohio Department of Job and Family Services (ODJFS) in accordance with applicable rules for appeals promulgated by (ODJFS) under Chapters 5101:6-1 to 5101:6-9 of the Ohio Administrative Code (OAC). Such individuals may appeal other decisions of the Board related to services or administrative practices of the Board other than Home and Community Based Services (HCBS) waiver services using the applicable process under 5123-4-04.
- G. An entity or individual receiving services under contract with the Board for the provision of supported living shall follow the process for resolving complaints established under division (B) of section 5126.45 of the Ohio Revised Code (ORC) prior to initiating an appeal pursuant to 5123-4-04.
- H. If the Board determines that a complaint or appeal of adverse action that has been filed is not subject to OAC 5123-4-04, the Board shall provide to the person the name and contact information of the appropriate entity in which to file the complaint.

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II. REQUIREMENTS TO PROVIDE INFORMATION

- A. The Board shall give the *Complaint or Appeal of Adverse Action Explanation* form and the *Request for Administrative Resolution of a Complaint* form to an individual at the time of the individual's initial request for services, at their annual planning meeting, at the time the County Board proposes an adverse action, and at the time the individual is placed on a waiting list for non-Medicaid services.
- B. Upon request, the Board shall provide a copy of the policy and procedure as well as OAC 5123-4-04.
- C. The Board shall publicly post the *Complaint or Appeal of Adverse Action Explanation* form and the toll-free number for Ohio Department of Developmental Disabilities (DODD) and Disability Rights Ohio in a visible place.
- D. The Board shall provide written notice to the affected individual of the County Board's decision to deny, reduce, suspend, or terminate services at least fifteen (15) calendar days prior to the effective date of the action. The notice shall include:
 - 1. An explanation of the Board's policy and/or authority for taking the proposed action;
 - 2. A detailed description of the proposed action;
 - 3. The effective date for the proposed action;
 - 4. A clear statement of the reasons for the proposed action, including the specification of any evaluative instruments or reports upon which such action is proposed;
 - 5. An explanation of the individual's right to appeal the proposed action;
 - 6. An explanation of the steps the individual must take to appeal the proposed action;
 - 7. A statement that the individual has ninety calendar days to appeal the proposed action;
 - 8. A statement that the individual must file his or her appeal prior to the effective date for the adverse action to keep his or her services in place during the appeal process;
 - 9. The name and contact information for the staff member of the County Board who can assist the individual with his or her appeal; and
 - 10. The *Complaint or Appeal of Adverse Action Explanation* form and the *Request for Administrative Resolution of a Complaint* form.
- E. The Board shall have written evidence of the date the notice is personally delivered, sent by certified mail or the electronic confirmation when email has been read.
- F. When it is necessary to suspend an individual's services without delay **to ensure the health and safety of the individual**, the Board shall:
 - 1. Determine what immediate steps are necessary to ensure the health and safety of the individual; and
 - 2. Provide written notice to the affected individual immediately. The notice shall include:
 - a) An explanation of the Board's policy and/or authority for suspending the individual's services;
 - b) A description of the specific services being suspended;
 - c) The effective date for the suspension of services;
 - d) A clear statement of the reasons for the suspension of services including a description of the specific circumstances that jeopardize

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- e) the health and safety of the individual;
An explanation that the Board shall arrange for appropriate alternative services and a description of the specific alternative services available to the individual;
- f) An explanation of the following steps that the Board must take:
 - i. Within **five (5) calendar days** of the notice of suspension of services, the Board shall convene a team meeting to identify measures that may be implemented to eliminate the circumstances that jeopardize the health and safety of the individual; and
 - ii. Within **five (5) calendar days** of the team meeting, the County Board shall with the consent of the individual:
 - a) Implement measures to eliminate the circumstances that jeopardize the health and safety of the individual and restore the suspended services; or
 - b) continue to arrange for appropriate alternative services; or
 - c) Provide written notice that includes the components described in Section II., D. 1-10 of these procedures to the individual of the Board's decision to terminate the individual's services at least fifteen (15) calendar days prior to the effective date of such action.
 - iii. If the individual files an appeal prior to the effective date of the termination of services, the Board shall keep the individual's alternative services in place until the appeal process is completed.
- g) The name and contact information for the staff member of the County Board who can answer questions about the suspension of services; and
- h) The *Complaint or Appeal of Adverse Action Explanation form* and the *Request for Administrative Resolution of a Complaint form*.

III. FORMAL APPEAL PROCESS

- A. **Step One:** The complaint or appeal of a proposed action is filed with the supervisor or designee responsible for the program, service, policy, or administrative practice of the County Board.
 - 1. An individual must file a complaint or appeal with the supervisor or designee within **ninety (90) calendar days** of becoming aware of the program, service, policy, or administrative practice that is the subject of the complaint.
 - 2. If the individual appeals an action within the prior notice period (i.e., the period of time between notice of the intended action and the effective date of the action), the individual's services shall not be reduced, suspended, or terminated until the appeal process is completed or the appeal is withdrawn by the individual in writing.
 - 3. The supervisor or designee will conduct an investigation of the complaint or appeal which will include meeting with the individual who filed the complaint or appeal.
 - 4. Within **fifteen (15) calendar days** of receipt of the complaint or appeal, the

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supervisor or designee shall provide and be available to discuss a written report and decision with the individual. The written report and decision shall include the rationale for the decision and a description of the next step in the process if the individual is not satisfied with the decision.

5. Timelines may be extended if mutually agreeable to all involved parties. However, if no timelines are extended and no decision is provided by the supervisor or designee within fifteen (15) calendar days, the complaint or appeal must be filed with the superintendent of the Board within **twenty-five (25) calendar days** of filing the complaint or appeal with the supervisor or designee.
- B. **Step two:** Filing a complaint or appeal of adverse action with the Superintendent of the Board.
1. If the individual filing the complaint or appeal is not satisfied with the outcome of the process, the individual may file a complaint or appeal with the superintendent within **ten (10) calendar days** of the decision of the supervisor or designee.
 2. Within **ten (10) calendar days** of receipt of the complaint or appeal, the Superintendent or her designee will meet with the individual or person and conduct an administrative review.
 3. As part of the review, the superintendent or her designee may ask questions to clarify and review the circumstances and facts related to the supervisor's decision and provide the individual the opportunity to present reasons why the supervisor's decision should be reconsidered.
 4. Within **fifteen (15) calendar days** of receipt of the complaint or appeal, the Superintendent will send a copy of her decision to the individual by certified mail. It will include the rationale for the decision and a description of the next step in the process if the individual or person is not satisfied with the decision.
 5. Timelines may be extended if mutually agreeable to all involved parties. However, if no timelines are extended and no decision is provided by the Superintendent within fifteen (15) calendar days the complaint or appeal must be filed with the President of the County Board within **ten (10) calendar days** of filing the complaint or appeal with the Superintendent.
- C. **Step three:** Filing a complaint or appeal with the President of the County Board.
1. If the individual filing the complaint or appeal is not satisfied with the outcome of the process, the individual may file a complaint or appeal with the Board President within **ten (10) calendar days** of the decision of the Superintendent or designee.
 2. The Board President will ensure that a hearing is conducted within **twenty (20) calendar days** of receipt of the complaint or appeal at a time and place convenient to all parties.
 - a) The full Board may hear the case, or the Board President, with agreement of the full Board, may establish a committee of two (2) or more Board Members to hear the appeal. If done by committee, it will issue a report and recommendation to the full Board within **ten (10) calendar days** of the conclusion of the hearing; or
 - b) The Board may appoint a hearing officer to hear the complaint or appeal. The hearing officer will have the same powers and authority

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in conducting the hearing as granted to the County Board. The hearing officer cannot be an employee or contractor of the County Board providing any service other than that of hearing officer. The hearing officer does need to be an attorney, but possess qualifications to be able to make neutral and informed decisions about the complaint or appeal. The hearing officer shall issue a report and recommendation to the Board within **ten (10) calendar days** of the conclusion of the hearing.

3. Upon request, the individual filing the appeal shall be provided access to all records and materials related to the appeal no less than **ten (10) calendar days** before the hearing.
 4. The hearing shall be a closed meeting unless the complainant or individual requests an open meeting. During the hearing, evidence shall be presented by both parties to support their positions.
 5. The individual shall be afforded the right to be represented by legal counsel. An individual shall further have the right to be represented by such other representative of the party's choice and at the expense of the individual.
 6. The complainant or individual shall be afforded the right to have in attendance and question any official, employee or agent of the Board who may have evidence upon which the appeal is based.
 7. Evidence presented at the hearing shall be recorded by stenographic means or by use of audio-electronic recording devices as the Board determines at the time of the hearing. Such record shall be made at the expense of the Board and, upon request, one copy of the verbatim transcript shall be provided to the individual at no cost.
 8. The Board may request or consider additional information with notice to all affected parties. They may also request a presentation in writing and/or in person from each party, or take other action necessary to make a determination.
 9. Within **fifteen (15) calendar days** of conclusion of a County Board hearing or the County Board's receipt of the report and recommendation from a County Board-appointed committee or a hearing officer, the president of the County Board or designee shall send by certified mail, a copy of the County Board's decision to the individual. The decision will include the rationale for the decision and a description of the next step in the process.
 10. Timelines may be extended if mutually agreeable to all involved parties. However, if no timelines are extended and no decision is provided by the Board President within fifteen (15) calendar days the complaint or appeal must be filed with the Director of DODD within **fifty-five (55) calendar days** of filing the complaint with the President of the County Board.
- D. **Step four:** Filing a complaint or appeal with the Director of DODD.
1. If the individual is not satisfied with the outcome of the process, the individual may file a complaint or appeal with the Director of DODD within **fifteen (15) calendar days** of notice of the decision of the County Board.
 2. The Director shall send a copy of the complaint or appeal of adverse action to the Superintendent and President of the County Board.
 3. The President of the Board will send the Director the written transcript of the County Board hearing, copies of any exhibits, and a copy of the County

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- Board's decision within **fifteen (15) calendar days** of receiving the copy of the appeal from the Director.
4. The Director may request or consider additional information, such as, a presentation in writing and/or in person from each party or take other action necessary to make a determination.
 5. Within **thirty (30) calendar days** of receipt of the written transcript of the County Board hearing, copies of any exhibits, and a copy of the County Board's decision from the President of the County Board, the Director will send by certified mail, a copy of his or her decision to all affected parties. The Director shall uphold the decision of the County Board if the Director determines that the decision is in accordance with applicable statute and administrative rule. The Director's decision will include the rationale for the decision.
 6. Timelines may be extended if mutually agreeable to all involved parties.
- E. After exhausting the administrative remedies listed above, an individual may commence a civil action if the complaint is not settled to his/her satisfaction.

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REQUEST FOR ADMINISTRATIVE RESOLUTION OF A COMPLAINT

To: _____

From: _____ Date: _____

Briefly state your complaint and related justifications:

Signature: _____ Date: _____

cc: Superintendent

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COMPLAINT OR APPEAL OF ADVERSE ACTION EXPLANATION FORM

Why would I file a complaint or appeal?

- You may file a complaint if you are dissatisfied with a program, service, policy, or practice of the County Board of Developmental Disabilities.
- You may file an appeal of adverse action ("appeal") if your request for services is denied or if services you have been receiving are being taken away.

Do I have to file a formal complaint or appeal?

No, if you choose, you may start by trying to resolve your complaint or appeal informally with a supervisor or manager at the County Board of Developmental Disabilities. You and the supervisor or manager can agree to work together to try and resolve your complaint or appeal. The informal process shall take no longer than 30 days.

Should I try to resolve my complaint or appeal informally before filing a formal complaint or appeal?

That is entirely up to you. Trying to resolve your complaint or appeal informally does not prevent you from filing a formal complaint or appeal.

When should I file a complaint or appeal?

- A complaint must be filed within 90 days of becoming aware of the program, service, policy, or practice that is the subject of your complaint.
- An appeal must be filed within 90 days of receiving notice that your services are being denied or taken away.

Important!

In most cases, the County Board must notify you at least 15 days prior to the date it plans to take away your services. **If you file an appeal before the date your services are scheduled to be taken away, your services will stay in place during the appeal process.**

How do I file a formal complaint or appeal?

The complaint or appeal must be filed in writing with the supervisor or manager responsible for the program, service, policy, or practice of the County Board. Staff of the County Board will assist you if you need help.

How will I be notified about my complaint or appeal?

The County Board will respond to you in writing. Each response will explain the next step and the time line for completing it.

What will happen after I file a formal complaint or appeal?

The supervisor or manager will meet with you to discuss your complaint or appeal and will investigate your complaint or appeal. Within 15 days, the supervisor or manager will provide you with a written response to your complaint or appeal. If you make a request, the supervisor or manager will discuss the written response with you.

What if I am not satisfied with the supervisor's or manager's decision?

You may file your complaint or appeal with the Superintendent of the County Board. Your complaint or appeal must be filed in writing within 10 days of receiving the supervisor's or manager's written response. Staff of the County Board will assist you if you need help. The

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Superintendent or his or her designee will meet with you within 10 days of receipt of your complaint or appeal and provide you with a written response within 15 days of receipt of your complaint or appeal.

What if I am not satisfied with the Superintendent's decision?

You may file your complaint or appeal with the President of the County Board. Your complaint or appeal must be filed in writing within 10 days of receiving the Superintendent's written response. Staff of the County Board will assist you if you need help. A hearing will be conducted within 20 days of receipt of your complaint or appeal.

What will happen at the hearing?

The hearing may be conducted by the full County Board, by a committee of two or more members of the County Board appointed by the President of the County Board, or by a hearing officer appointed by the President of the County Board. You will have an opportunity to explain your complaint or appeal. You may be represented by an attorney. You have the right to question officials or employees of the County Board who have information related to your complaint or appeal. You may be asked questions about your complaint or appeal.

What will happen after the hearing?

You are entitled to receive, at no cost, a written transcript of the hearing. Within 15 days of a hearing conducted by the County Board or the County Board's receipt of the report and recommendation from a hearing officer, the President of the County Board or designee will send you by certified mail, the County Board's decision regarding your complaint or appeal. The decision must include a rationale and a description of what you should do if you are still dissatisfied.

What if I am not satisfied with the County Board's decision?

You may file your complaint or appeal with the Director of the Ohio Department of Developmental Disabilities. Your complaint or appeal must be filed in writing within 15 days of receiving the County Board's decision. Staff of the County Board will assist you if you need help. The Director or his or her designee may request additional information from you. Within -30 days of receipt of necessary documents related to your complaint or appeal, the Director or his or her designee will send you by certified mail, his or her decision regarding your complaint or appeal.

What if I am not satisfied with the Director's decision?

You may file a claim through the court system.

Who else can help me with my complaint or appeal?

Arc of Ohio at 1-800-875-2723

Disability Rights Ohio at 1-800-282-9181

Ohio Department of Developmental Disabilities at 1-800-617-6733.