

5.1. J Rights to Due Process in Regard to Grievances

Policy:

Charlotte White Center's clients/guardians have the right to due process with regard to any grievances. Therefore, all clients/guardians are notified of this right and/or the Rights of Recipients of Mental Health Services or the Rights for Individuals with Developments Disabilities or Autism, or individuals with Acquired Brain Injuries, whichever is applicable, when services begin with the Charlotte White Center. The Charlotte White Center allows clients every reasonable opportunity for the informal or formal resolution of any grievance. Documentation of this notification is placed in each client's file. All clients receiving services from CWC receive notification of their rights upon admission to services, when their rights have changed and annually thereafter.

Definition of a Grievance:

A grievance is a complaint. A grievance can be about an action or inaction of DHHS. It can be about a person or agency providing services or supports to a client. A grievance can be about a violation of a client's rights. Or the client/representative can be unsatisfied with current services or supports.

Grievances include the denial of services or supports relating to your annual plan/treatment plan or other planning process. A grievance can be about violations of law, or about rules that DHHS is required to follow.

The client or his/her representative may ask for assistance from an advocate from Disability Rights Maine at any time during the grievance process.

If the client needs an interpreter to help him/her with their grievance, they can tell their case manager or ask their provider for one.

The client/representative can ask for mediation anytime during the grievance process. This process stops the time limits while the client, the mediator and district staff are trying to reach an agreement. CWC staff may also be at the mediation meeting. If the mediation is not successful, the client/representative can continue with his/her grievance.

CWC will try to solve problems with the client informally whenever possible. The issue will be and all efforts to resolve the issue will be documented. If CWC cannot solve the complaint within eight (8) business days, CWC must notify the client's case manager.

There is a Maine law about grievances concerning individuals with developmental disabilities. The law is found in 34-B MRSA Section 5604 (3).

Procedure:

People who may bring grievances include, but are not limited to: the client, the client's guardian or legally-responsible parent; the client's attorney, designated representative, the representative of a state government rights protection, the Office of Advocacy, the advocacy agency, or other persons specifically aggrieved.

Clients or other persons may bring grievances regarding possible violations of basic rights by the Charlotte White Center's services including any rights enumerated in these policies, any questionable or inappropriate treatment or method of treatment, any policy or procedure or action, or lack thereof.

An individual filing a grievance will in no way be subject to disciplinary action or reprisal, including reprisal in the form of denial or termination of services, or loss of privileges or services as a result of filing a grievance. The first priority of the Charlotte White Center is to ensure that the client is safe and that the proper authorities are contacted.

A notice is conspicuously posted in each Charlotte White Center service location informing clients of the following: their right to due process regarding grievances, the Charlotte White Center's interest in being made aware of any grievances, and the process by which grievances are filed. Also available are copies of forms to be used for this purpose. These will be available within each facility and will include the name, address and telephone number of who can be contacted about a grievance.

All client grievances will be directed to one of CWC's Investigators and to the Human Rights Committee. The individual who has a grievance will be informed of his or her due process of rights under the law, the informal and formal grievance processes available, which vary depending upon whether the recipient is a child, adolescent or an adult. A copy of all grievances will be maintained in the Charlotte White Center Administration Office, to include any documents regarding investigation and disposition of the grievance.

Disposition of grievances by the Agency Investigator may be appealed to the Mental Health Program Manager of DHHS. The letter from the Agency Investigator informing the client of the disposition of the grievance must include the name and address of the Mental Health Program Manager, and explain that the disposition can be appealed to that person. Dispositions of grievances by the Mental Health Program Manager can be appealed to the Commissioner of the Department of Health and Human Services.

Grievances Involving Adults Receiving Developmental Services:

There are three levels of grievance. The first two levels are informal. The third level is a formal hearing.

Level I: Case Manager

The easiest way for an individual or his/her guardian to file a grievance is on the one page grievance form, which is located in all CWC's sites that serve individuals receiving developmental services. It is also located on the DHHS website at: <http://www.maine.gov/dhhs/oads/home-support/disability-with-autism/grievance-process.html>. Clients can get a copy of the grievance form from his/her case manager or CWC. He/she can complete the grievance form and give it to his/her case manager or provider. All clients also have the right to ask for a grievance form or to get assistance in filling one out. The clients case manager or CWC would then fill out the form to start the grievance process. The client's case manager/provider is required to document a client's grievance, notify Disability Rights Maine, and to work quickly to try to resolve the complaint. If the grievance is resolved at this level, the resolution will be noted in writing.

If the grievance cannot be resolved within eight (8) business days the case manager/CWC will immediately refer the grievance to a DHHS Office of Aging and Disability Services (OADS) Program Administrator. The case manager/CWC will also notify you, your representative and Disability Rights Maine, in writing, that the matter has been referred to Level II.

Level II: OADS Program Administrator

If the issue does not get resolved, then the client's grievance goes to an OADS Program Administrator.

The OADS Program Administrator has eight (8) business days to try to resolve the grievance. The Program Administrator has the right to look at documents or other information about the client in order to understand the grievance. They also have a right to speak to the client and/or his/her representative in order to understand the nature of the problem. The Program Administrator must include the client's representative(s) in all discussions.

The Program Administrator will consult with the Developmental Services Manager of OADS about the client's case and document the discussion. The Program Administrator must give the client a written decision within eight (8) business days after receiving the Level II grievance.

This decision will include:

- What the grievance is about;
- The Program Administrator's understanding of the issue;
- The Program Administrator's decision; and
- The reason for the Program Administrator's decision.

Level III: Formal Administrative Hearing

When the client receives the final decision from the Program Administrator, it will tell the client that he/she have ten (10) business days after receiving the decision to ask for a Level III resolution. If the client or client's representative are unsatisfied with the Program Administrator's decision, the client or his/her representative can write a letter stating he/she wants to file a grievance about the decision.

The client/representative can also ask for a Level III hearing in writing if they do not get a final decision from the Program Administrator about the Level II grievance within eight (8) business days.

The letter should be mailed or faxed to the client's case manager and the OADS Program Administrator in the client's area. The addresses for the local Program Administrator is:

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| <p style="text-align: center;">Penobscot, Piscataquis, Hancock and Washington Counties</p> <p>Program Administrator DHHS-OADS 396 Griffin Road SHS #11 Bangor, ME 04401-3095</p> <p>Fax: 207-561-4396</p> |
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The request for a Level III hearing must be:

- In writing,
- Addressed to the case manager and the OADS Program Administrator in your area; and
- Made within ten (10) business days of receipt of the Level II decision

The DHHS Process of the Client's Grievance:

The Program Administrator will forward the appeal within five (5) business days to OADS Office and that office will forward the appeal to the Administrative Hearings Unit within five (5) business days and shall request that a hearing be set within fifteen (15) business days of receipt of the request. The client/representative is able to tell the Hearing Officer, why they are not satisfied. The Hearing Officer will contact the client, the client's representative, case manager, and OADS Office about where and when the hearing will take place.

The client's hearing is held at a place that is comfortable for them. These hearings are informal. The client can have someone with them to assist them with his/her case.

While a grievance is going on, services the client are receiving will continue unless the client's doctor or planning team suggest otherwise for health or safety reasons. The client and his/her case manager can keep trying to solve the issue during the grievance, to mediate the conflict, or to solve new issues that arise. If something needs to happen right away, the client and his/her case manager can try to find a temporary solution. If a temporary solution cannot be found, then nothing will change until there is a final decision concerning the grievance.

The Hearing Officer's recommended decision gets sent to the Commissioner of DHHS. The Hearing Officer at the same time gives the client and DHHS ten (10) business days to write any last argument which can also be sent to the Commissioner. The Commissioner will make a final decision within thirty (30) business days. If the Commissioner does not send out a decision within thirty (30) business days, then the decision of the Hearing Officer becomes the final decision.

The client/representative has the right to appeal the Commissioner's decision to the Maine Superior Court.

Issues that Cannot be Filed as a Grievance:

A grievance cannot be filed around eligibility for developmental services. If an individual has been denied eligibility for developmental services and he/she disagrees with the decision, he/she can file an appeal.

Information on the appeal process can be found at:

http://www.maine.gov/dhhs/oms/member/fair_hearing.html

and

<http://www.maine.gov/sos/cec/rules/10/chaps10.htm> See 14-147 CMR Ch. 3,

Disability Rights Maine

Penobscot, Piscataquis, Hancock and Washington Counties

Disability Rights Maine

396 Griffin Road

Bangor, ME 04401

Tel: 561-4113 or 1-800-432-7825

TTY: Maine Relay 711

Grievances Involving Adult Recipients with Behavioral Health Issues:

Procedures:

1. When a grievance is received, the Charlotte White Center employee receiving the grievance will record the grievance into a written document, if not already in written form, and have the client read and sign it. The employee will then forward the grievance to his or her Supervisor or an Agency Investigator. The client may forward the grievance independently to the Agency Investigator.
2. When a grievance has been filed with a Supervisor or an Agency Investigator, a formal written claim that a provision of client rights as stipulated by CWC's policies and procedures or as outlined in the "Rights of Recipients of Mental Health Services," or the "Rights of Recipients of Mental Retardation Services" has been violated by the Charlotte White Center. The grievance may be appealed through sequential levels, starting with the Supervisor to the Agency Investigator, to the Chief Executive Officer, to DHHS.

At each level of the formal grievance procedure, the client or his or her representative will have the following rights:

- Assistance by a representative of the client's choice.
- Representation by the Rights Protection and Advocacy Services of DHHS.
- Review of any information obtained in the processing of the grievance, except that which would violate the confidentiality or privacy of another person.
- Presentation of evidence or witnesses pertinent to the grievance.
- Receipt of complete findings and recommendations, except that which would violate the confidentiality or privacy of another person.

A written record will be made of all of the proceedings associated with formal grievances. In all grievances, burden of proof will be on the Charlotte White Center to show compliance or remedial action taken to comply with policies and procedures established to assure the rights of clients under these policies. Findings of formal grievances include:

- A finding of facts, consistent with the terms of the Maine Administrative Procedures Act.
- Determination of adherence or failure to adhere to specific policies and procedures designed to assure client rights.
- Facts upon which the findings were based.
- Specific remedial steps, where required, to be followed to assure compliance with such policies and procedures.

Upon appeal of the disposition of the Agency Investigator, information gathered regarding a formal grievance will be forwarded to DHHS by the person to whom the grievance was addressed.

Stages of a formal grievance include the following:

Level I: (Is within CWC)

- The formal grievance is filed with the appropriate Charlotte White Center Supervisor in the program where the grievance occurs.

- A copy of the grievance will be forwarded by the Supervisor to the Program Manager of the Division of Mental Health or DHHS, as applicable and, upon the request of the individual filing the grievance, to the Office of Advocacy.
- A formal written response will be made within 5 days, excluding weekends and holidays. This response will be completed by an Agency Investigator. If the client would like to appeal this decision to CWC's CEO, he or she may do so.
- An extension of 5 days can be made if needed.
- A copy of the appeal will be forwarded to the Office of Advocacy by an Agency Investigator or the Mental Health Program Manager at DHHS.
- If the grievance cannot be resolved at this level, a Level II grievance can be filed with the state by contacting Don Beckwith at 557-5234.

Level II:

- The Agency Investigator or the Mental Health Program Manager at DHHS, as applicable, will respond to a Level II grievance within 5 days, excluding holidays and weekends, from the day of receipt of the appeal.
- If a longer period is needed for the investigation, a five day extension may be made if all parties are in agreement.
- The Agency Investigator or the Mental Health Program Manager at DHHS, as applicable, may hold a hearing before an impartial hearing officer, who will be an individual free from bias, personal or financial interest, with all parties involved.
- If the client is not satisfied with the findings at Level II, he or she may appeal the decision to Level III, to the Commissioner, DHHS or to his or her designee as appropriate. Appeals must be made within ten days, excluding weekends and holidays.
- If the client/guardian remains dissatisfied with the Level II findings, an appeal can be made to the Commissioner of DHHS (Level III).

Level III:

- The Commissioner or designee will make a formal written reply within 5 days, excluding weekends and holidays.
- If no hearing was held at Level II, a hearing will be held at Level III.
- A 5 day continuance may occur if a hearing is to be held or if the parties to such a grievance concur.
- The Commissioner's or designee's findings will constitute the final action by the Department regarding the grievance.

The decision at each level of the grievance procedure will be final and binding unless the individual with the grievance appeals within the indicated time frame.

The Commissioner's decision will constitute final agency action. The individual that filed the grievance may appeal the decision to the Superior Court pursuant to the Maine Administrative Procedures Act, 5 MRSA s 11001 et seq.

Under no circumstances will the remedies requested in a grievance be denied, nor will the processing of a grievance be refused because of the availability of the complaint procedure.

Exceptions to the above policies and procedures include grievances regarding abuse, mistreatment or exploitation, and urgent grievances.

Any allegation of abuse, mistreatment or exploitation will be immediately reported to a Charlotte White Center Investigator, the Chair of the Human Rights Committee, the Office of Advocacy, and DHHS' Mental Health Regional Systems Director, as appropriate. Any disciplinary actions or findings of fact in these instances will be consistent with personnel rules and labor agreements.

Investigation of any such allegation will be conducted pursuant to statutory and regulatory standards, including those relating to the Child and Family Services Protection Act (22 MRSA, Chapter 1071, Section 4001 et seq.), DHHS regulations and the Adult Protective Act (22 MRSA, Chapter 958-A), and Charlotte White Center's policies.

Urgent Grievances:

Any grievance which the client considers urgent will be forwarded by the Charlotte White Center employee to an Agency Investigator within 1 working day, and to the Office of Advocacy. Such grievances will be reviewed by the Agency Investigator, who will either arrange to hear the grievance within 3 working days or refer to the involved Charlotte White Center employee for a Level I response. If so referred, the Agency Investigator will stipulate the reasons why the grievance was not determined to warrant urgent consideration.

All grievances concerning the development, substantive terms or implementation of Individual Service Plans or hospital treatment and discharge plans will be considered urgent grievances.

Grievances Without Apparent Merit:

A grievance may be found to be without apparent merit, upon Level II review, by an Agency Investigator and with the concurrence of DHHS' Mental Health Program Manager, as applicable. Such decisions are forwarded to the client in writing and will include notice of other avenues of redress. Grievances without apparent merit may not be appealed beyond Level II.

Level II grievances are to be submitted to:

**DHHS/SAMHS
41 Anthony Ave., SHS # 11
Augusta, ME 04333**

Any individual with a grievance against the Charlotte White Center may appeal to agencies as follows:

1. Individuals who meet DHHS' Division of Mental Health eligibility may appeal to the:

DHHS Office of Advocacy
Chief Advocate
11 SHS, Greenlaw Bldg. (3rd Floor?)
Augusta, ME 04333-0011
Phone: (207) 287-4228

OR

Disability Rights Center of Maine (formerly Maine Advocacy Services)

Disability Rights Center of Maine
24 Stone Street
P. O. Box 2007
Augusta, ME 04338-2007
Phone and TTY: (207) 626-2774 or 1-800-452-1948 Fax: (207) 621-1419

All formal grievances involving child or adolescent recipients must be submitted on the attached DHHS Grievance Form to:

Children's Services Grievance Coordinator
DHHS
Office of Child and Family Services, Children's Behavioral Health Division
11 State House Station, 2 Anthony Avenue, 2nd Floor
Augusta, ME 04333-0011
Phone: (207) 624-7960; Fax: (207) 287-6156; TTY: 1-800-606-0215

If you don't agree with the decision made at Level 2, you can appeal to the Commissioner of the Department of Health and Human Services. A Level 3 appeal must:

- Be made within ten (10) working days after you received a Level 2 decision;
- Be in writing;
- Be sent to:

Commissioner
DHHS
11 State House Station - 221 State St.
Augusta, ME 04333-0011

Grievances Involving Children:

Policy:

Charlotte White Center's clients have the right to due process with regard to any grievances. Therefore, the Charlotte White Center will allow clients every reasonable opportunity for the informal or formal resolution of any grievance.

Clients or other persons acting on behalf of the client may bring grievances regarding possible violations of basic rights, including any rights enumerated in these rules and the Settlement Agreement in *Bates v. Peet*, any questionable or inappropriate treatment or method of treatment, any policy or procedure or action, or lack thereof, of the Charlotte White Center's services. Grievances may be brought by, or on behalf of, one client or a group of clients.

People who may bring and file grievances include, but are not limited to: the client, the client's guardian or legally-responsible parent, the client's attorney, designated representative, or representative of a state government rights protection or the Office of Advocacy or the advocacy agency, or other persons

specifically aggrieved. If a client files a grievance, his or her legally responsible parent(s), guardian or custodian is notified.

An individual filing a grievance will in no way be subject to disciplinary action, reprisal, including reprisal in the form of denial or termination of services, or loss of privileges or services. The first priority of the Charlotte White Center is to ensure that the client is safe and that the proper authorities are contacted.

A notice is conspicuously posted in each Charlotte White Center's service location informing clients of their right to due process in regard to grievances. The process, by which grievances are filed, as well as copies of forms to be used for this purpose, will be available within each facility. The name, address and telephone number of employee who can be contacted about a grievance will also be available.

All notices created by the Department or designee concerning the grievance procedure will be provided to all families, clients and guardians served by the Department annually. This also includes information on the right to be assisted in the grievance process by the representative of his or her choice in a manner designed to be comprehensible to the client and to CWC employee of that facility.

All client grievances will be directed to their Supervisor, the Chair of the Human Rights Committee and an Agency Investigator, as applicable. A copy of all grievances will be maintained in the Charlotte White Center's Administration Office, to include any documents regarding investigation and disposition of the grievance.

When a grievance is received by one of CWC's employee, that employee will record the grievance into a written document, if not already in written form. The employee will have the client/guardian read and sign the document. The employee will then forward the grievance to his or her Supervisor or the Agency Investigator. The client may forward the grievance independently to CWC's CEO.

Grievances regarding the actions of CWC's employee are handled in accordance with CWC's personnel rules and contract provisions. No disciplinary action may be taken nor facts found, with regard to any alleged employee misconduct except in accordance with applicable personnel rules and labor contract provisions. At no time will CWC interfere with the licensure agency's procedures or the State of Maine's legal system. The filing of a grievance stays any action to reduce, terminate or suspend any service.

The department has two grievance processes for children: mediation and administrative hearings. The Commissioner appoints a Grievance Coordinator to oversee the mediation and hearing processes.

Initiating the grievance process:

Prior to any filing of a grievance, a grievance form must be obtained. Grievance forms are readily available at every CWC site and from the Department's regional offices and are provided as soon as possible upon request.

The grievance form states that the individual(s) with a grievance may request mediation or an administrative hearing, and must choose one of the actions. The grievance form also requests the individual(s) with a grievance to provide information about the nature of the complaint, as well as the names, addresses and phone numbers of the child, the grievant and relevant providers.

Individual(s) with a grievance must file a grievance form with the Grievance Coordinator. The Coordinator's name and address are provided on the grievance form.

Mediation:

When an individual with a grievance chooses mediation, the Grievance Coordinator must schedule mediation to be held within five to ten days of the receipt of a properly completed grievance form. The individual(s) with a grievance, in consultation with the Grievance Coordinator and/or the mediator, will determine a location and time for the mediation.

If an agreement has not been reached at the conclusion of the mediation, the individual(s) with a grievance may request a subsequent administrative hearing by notifying the Department representative present at the mediation, or the mediator if no one is present from the Department, before ending the mediation. If the individual(s) with a grievance does not request an administrative hearing at any time thereafter, such a request starts the administrative hearing process as if it were chosen initially.

The individual(s) with a grievance may waive the requirement that mediation be held within five to ten days of the filing of the Grievance Form and will be deemed to have waived that requirement, if the individual(s) with a grievance is unwilling or unable to attend on any mediation date offered within the five to ten day period. Due to that fact, the mediation would be held as soon as possible.

All parties participating in the mediation will do so in good faith.

Neither mediation, nor any agreement or decision reached as a result of mediation constitutes CWC's final action for judicial review purposes.

Administrative hearings:

When an individual(s) with a grievance chooses an administrative hearing, the Grievance Coordinator will schedule an administrative hearing to be held within five to ten days of the receipt of a properly completed Grievance Form.

Every administrative hearing must be presided over by an impartial hearing officer designated by the Commissioner.

All employee and advocates for the child may be heard at the administrative hearing.

Administrative hearing procedures must be in accordance with the Maine Administrative Procedures Act, 5 M.R.S.A. & 9051 et seq. Electronic recordings must be made at all administrative hearings held pursuant to this section. Unless otherwise agreed to by the parties, the hearing officer must issue a written recommended decision with findings of fact within one week from the Grievance Coordinator's receipt of the Grievance Form, or, if the administrative hearing was requested at the conclusion of a mediation, within two weeks from the Grievance Coordinator's receipt of the Grievance Form.

Individual(s) with a grievance may waive the requirement that an administrative hearing be held within five to ten days of the filing of a Grievance Form and will be deemed to have waived that requirement if unwilling or unable to attend any administrative hearing date offered within the five to ten day period. In that case, the administrative hearing will be held as soon as possible.

Individual(s) with a grievance may also waive the deadline for a recommended decision and will be deemed to have waived any applicable deadline if the hearing is held outside the five to ten day period at the request of, or due to the unavailability of the individual(s) with a grievance, or any person that the individual(s) with a grievance seeks to have present at the hearing, in which event the recommended decision will be rendered as soon as practicable.

The individual(s) with a grievance may elect mediation at any point after requesting an administrative hearing. When the alternate “election” is chosen, it suspends the deadline for scheduling the administrative hearing and the hearing officer’s deadline for issuing a written recommended decision.

Each hearing officer’s recommended decisions are subject to further review by the Commissioner, who must issue a final decision adopting, modifying or rejecting the hearing officer’s recommended decision no later than seven business days from the date of the hearing officer’s recommended decision. Parties may submit written memoranda to the commissioner within five to ten business days of the hearing officer’s recommended decision.

The Commissioner’s decision is CWC’s final action for judicial review purposes under the Maine Administrative Procedures Act. All decisions of the Commissioner include a notice of the aggrieved party’s right to judicial review, including the requisite time frame for filing an appeal.

The burden of proof with all grievances to show compliance, or remedial action taken to comply with policies and procedures established to assure the rights of recipients under these rules is the responsibility of the Charlotte White Center.

Access to files:

Individual(s) with a grievance will have reasonable access prior to a mediation or administrative hearing in either proceeding to examine the contents of his or her file and may request copies of documents within the file to be reproduced at CWC’s expense.

Grievances regarding abuse, neglect or exploitation:

Any allegation of abuse, neglect or exploitation will be immediately reported to CWC’s Investigator, to the Office of Advocacy and the required investigatory agency pursuant to the Child and Family services and Child Protection Act (22 M.R.S.A. Chapter 1071 s 4001 et seq.), and CWC’s policies, which have been approved by the Department.

Investigation of any such allegations will be conducted pursuant to statutory and regulatory standards including those relating to the Child and Family Services and Child Protection Act (22 M.R.S.A. Chapter 1071 s 4001 et seq.) and CWC’s policies, which have been approved by the Department.

The person notified/mandated reporter of the allegation of suspected child abuse or neglect must acknowledge in writing that he/she has received confirmation that the report has been made by the Charlotte White Center. If the mandated reporter does not receive that confirmation within 24 hours of notifying the Charlotte White Center, the mandated reporter is required to report the issue directly to DHHS.

The confirmation received by the mandated reporter must include, at a minimum, the name of the individual making the report to DHHS, the date and time of the report and a summary of the information conveyed to DHHS.

The Charlotte White Center will not take any action to prevent or discourage an employee from making a report either to DHHS or to the appropriate DA’s office. All Allegations of Abuse or Neglect are completed on a DHHS Reportable Events Form and entered into DHHS’ EIS and these reports are reported to DHHS within 4 working hours.