Hardin County Board of Developmental Disabilities
POLICY

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Title: Administrative Resolution of Complaints & Due Process		
Regulatory Authority: ODODD OAC 5123:2-1-12		
Effective Date: ~~2/19/19~~; ~~2/16/21~~, 1/21/25		
Reviewer/Job Title: Superintendent or designee		

ADMINISTRATIVE RESOLUTION OF COMPLAINTS AND DUE PROCESS POLICY

(A) ADMNISTRATIVE RESOLUTION OF COMPLAINTS

(1) Any person who receives services from the HCBDD may file a complaint involving the programs, services, policies or administrative practices of the HCBDD *or an entity under contract with the HCBDD*. Filing a complaint using the identified process will not take away rights to services.

(2) The identified process will be used prior to commencing a civil action regarding the complaint.

(3) If the county board is requesting a termination or reduction in services, current services will be provided until a final resolution is made.

(4) This policy DOES NOT apply to:

(a) HCBDD employees;
(b) Individuals placed by the Lead Education Agency (LEA); the Ohio Department of Education (ODE) rules will be followed in these cases;
(c) Medicaid Services including Home and Community Based Waiver Services; if desired, the individual and the HCBDD may attempt to informally resolve the issues related to HCBS services through the HCBDD grievance process; and
(d) Complaints regarding the administration of prescribed medication, performance of health-related activities, and performance of tube feedings by HCBDD personnel; these will be made to the Ohio Department of Developmental Disabilities

(5) If the HCBDD determines that a complaint or appeal filed with the county board is not subject to this policy, the HCBDD will provide information to the person filing the complaint for the appropriate entity, if available, with which to file a complaint.

(6) An individual receiving supported living services through locally funded services, will follow the procedure for complaints.

(7) The HCBDD will post the toll-free number for both Disability Rights Ohio and DODD in a visible place.

(B) DEFINITIONS

(1) "Adverse Action" means any of the following:
   a. Denial of a request for a non-Medicaid service
   b. Reduction in frequency and/or duration of a non-Medicaid service
   c. Suspension of a non-Medicaid service
   d. Termination of a non-Medicaid service
   e. The outcome of an eligibility determination

(2) "Advocate" means any person selected by an individual to act and/or communicate as authorized by the individual.

(3) "Contracting Entity" means an entity under contract with the HCBDD for the provision of services to individuals with developmental disabilities

(4) "Department" means the Ohio Department of Developmental Disabilities

(5) "Director" means the director of the Ohio Department of Developmental Disabilities or his/her designee

(6) "Hearing" means the opportunity to present one's case regarding a complaint or appeal of adverse reaction

(7) "Individual" means a person with a developmental disability who is eligible for services from the HCBDD. This includes a parent of a minor child, a guardian or an adult authorized in writing to make decisions regarding services or programs.

(8) "Notice" means and is deemed to have occurred upon:
   a. Electronic confirmation that an individual has read an email
   b. Personal delivery to an individual
   c. The date of certified mailing to an individual. If the mailing is refused, notice is to have occurred on the date the notice is resent. If the mailing in unclaimed, notice is to have occurred on the date the notice is resent unless the resent notice is returned for failure of delivery within 30 days.

(C) GENERAL PROVISIONS

(1) Complaints and appeals of adverse reactions shall be filed in writing. The HCBDD will, to the extent necessary, assist the individual in filing a complaint or appeal.

(2) At all times through the process, the HCBDD will maintain the confidentiality of the identities of the individual, unless given written permission to share the information.

(3) An advocate may assist an individual at any time during the process.

(4) The HCBDD will make all reasonable efforts to ensure that information is presented in a language and format understandable to the individual(s).

(5) All notices and responses made during this process will include an explanation of the individual's opportunity to file a complaint or appeal with a higher authority, as applicable.

(6) The timelines in this policy may be extended if mutually agreed up in writing by all parties.

(7) Initiation of a formal process in this policy does not preclude resolution at any point, as long as the outcome is mutually agreed upon by all parties.

(D) REQUIREMENTS TO PROVIDE INFORMATION AND NOTICE

(1) General information

a. The HCBDD will give the "Complaint or Appeal of Adverse Action Explanation Form" to an individual at the time of request for services, annually for anyone on a waiting list for non-Medicaid services, and at the time a complaint is received or the HCBDD proposes an adverse action.

b. Upon request, the HCBDD will provide a copy of this policy and OAC 5123:2-1-12.

c. The HCBDD will publicly post the "Complaint or Appeal of Adverse Action Explanation Form"

(2) Specific Notice

a. Except when necessary to suspend an individual's service without delay to ensure the health and safety of the individual or other individuals, the HCBDD will provide written notice to the affected individual of the decision to deny, reduce, suspend or terminate services at least 15 calendar days prior to the effective date of such action. Notice shall include:

i. An explanation of the county board's policy and/or authority for taking the adverse action

ii. A description of the specific adverse reaction being proposed or initiated

iii. The effective date for the adverse action

iv. A clear statement of the reasons for the adverse action including a description of the specific assessments and/or documents that are the basis for the adverse action.

v. An explanation of the steps the individual must take to appeal the adverse action

vi. A statement that the individual must file his or her appeal prior to the effective date of the adverse reaction to keep his or her services in place during the appeal process

vii. The name and contact information for the staff member of the HCBDD who can assist the individual with his or her appeal

viii. The "Complaint or Appeal of Adverse Action Explanation Form"

(3) Specific notice of adverse action when it is necessary to suspend an individual's services without delay to ensure the health and safety of the individual or other individuals.

a. The HCBDD will determine what immediate steps are necessary to ensure the health and safety of the individual and other individuals.

b. The HCBDD will provide written notice to the individual immediately. The notice will include:

i. An explanation of the county board's policy and/or authority for suspending services

ii. A description of the services being suspended

iii. The effective date for the suspension of services

iv. A clear statement of the reasons for the suspension of services including a description of the specific circumstances that jeopardize the health and safety of the individual or other individuals

v. An explanation that the HCBDD will arrange for appropriate alternative services and a description of those services available to the individual

vi. An explanation of the steps that the HCBDD will take in accordance with (3)(d) and (3)(e) of this policy.

vii. The name and contact information for the HCBDD staff member who can answer questions about suspension of services

viii. The "Complaint or Appeal of Adverse Action Explanation Form"

c. The HCBDD will retain written evidence of the date the notice is delivered or sent by certified mail or through electronic confirmation that an email has been received.

d. Within 5 calendar days of the notice, the HCBDD will convene a team meeting to identify measures that can be implemented to eliminate the circumstances that jeopardize the health and safety of the individual or other individuals.

e. Within 5 calendar days of the team meeting, the HCBDD will:

i. With the consent of the individual, implement measures to eliminate the circumstances that jeopardize the health and safety of the individual or other individuals and restore suspended services OR

ii. With the consent of the individual, continue to arrange for appropriate alternative services OR

iii. Provide written notice that includes the components described in this policy of the HCBDD's decision to terminate services at least 15 calendar days prior to the effective date of the termination. The county board shall keep alternative services in place until the appeal process is completed.

(F) FORMAL PROCESS FOR RESOLUTION OF COMPLAINTS AND APPEALS OF ADVERSE ACTION

(1) Step One: File a complaint or appeal of adverse action with the department director responsible for the program, service, policy or administrative practice of the HCBDD. At any time during this process, timeline extensions may be granted if approved in writing by both parties.

a. An individual must file a complaint with the department director within 90 calendar days of becoming aware of the program, service, policy or administrative practice that is the subject of the complaint.

b. If the individual appeals within the time period between the notice and the effective date of the adverse action, the individual's services will not be reduced, suspended, or terminated until the appeal process is completed or the appeal is withdrawn. The individual may voluntarily consent in writing to the reduction, suspension, or termination of services during the appeal process.

c. The department director will conduct an investigation of the complaint or appeal, which will include meeting with the individual who filed the complaint or appeal.

d. Within 15 calendar days of receipt of the complaint or appeal, the department director will provide to the individual who filed the complaint or appeal, and be available to discuss, a written report and decision. It will include a rationale for the decision and a description of the next step in the process if the individual is not satisfied with the outcome.

(2) Step Two: File a complaint or appeal with the Superintendent of the HCBDD.

a. If the individual filing the complaint or appeal is not satisfied with the outcome of the process, he or she may file a complaint or appeal with the superintendent of the HCBDD within 10 calendar days of notice of the decision of the department director.

b. If no decision is provided by department director within 15 calendar days, the complaint or appeal must be filed with the superintendent within 25 calendar days of filing the complaint with the department director.

c. Within 10 calendar days of receipt of the complaint or appeal, the superintendent or his/her designee will meet with the individual and conduct an administrative review.

d. As part of the administrative review, the superintendent or designee may ask questions to clarify and review the circumstances and facts related to the department director's decision and will provide the individual the opportunity to present reasons why the department director's decision should be reconsidered.

e. Within 15 calendar days of receipt of the complaint or appeal, the superintendent or designee shall send by certified mail, a copy of his or her decision to the individual who filed the complaint or appeal. Such decision will 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 of the superintendent or designee.

(3) Step Three: Filing a complaint or appeal with the president of the HCBDD

a. 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 president of the HCBDD within 10 calendar days of notice of the decision of the superintendent or designee Appeals shall be sent to HCBDD, 1280 Charles Lane, Marysville, Ohio 43040.

b. If no decision is provided by the superintendent or designee within 15 calendar days, the complaint or appeal must be filed with the president of the HCBDD within 25 calendar days of filing with the superintendent.

c. The president of the HCBDD will ensure that a hearing is conducted within 25 calendar days of receipt of the complaint or appeal, at a time and place that is convenient to all parties. At the hearing:

i. The HCBDD may hear the complaint or appeal;

ii. A committee of two or more HCBDD board members appointed by the president, with agreement of the HCBDD, may hear the complaint or appeal;

iii. A hearing officer appointed by the HCBDD may hear the complaint or appeal. The hearing officer will have the same powers and authority in conducting the hearing as granted to the HCBDD. The hearing officer shall not be an employee or contractor of the HCBDD providing any service other than that of hearing officer. The hearing officer need not be an attorney, but shall possess qualifications to be able to make neutral and informed decisions about the complaint or appeal. The HCBDD may ask the Department to decide if a person is qualified to be a hearing officer. The hearing officer will issue a report and recommendation to the HCBDD within 10 calendar days of the conclusion of the hearing.

d. Upon request, the individual filing the complaint or appeal will be provided access to all records and materials related to the complaint or appeal, no less than 10 calendar days before the hearing.

e. To the extent permitted by law, the hearing will be private unless the individual requesting the hearing wants it to be open to the public.

f. During the hearing, both parties may present evidence to support their positions.

g. The individual and the HCBDD have the right to be represented by an attorney.

h. The individual has the right to have in attendance at the hearing and question any official, employee or agent of the HCBDD who may have evidence upon which the complaint or appeal is based.

i. Evidence presented at the hearing will be recorded by stenographic means or by use of an audio recorder at the option of the HCBDD. The record shall be made at the expense of the HCBDD and, upon request, one copy of a written transcript will be provided, at no cost, to the individual requesting the hearing.

j. In making its decision, the HCBDD may request or consider additional information with notice to all affected parties, may request a presentation in writing and/or in person from each party or take another action necessary to make a determination.

k. Within 15 calendar days of the conclusion of the hearing or the HCBDD's receipt of the report and recommendation from a hearing officer, the president of the HCBDD will send, by certified mail, a copy of the HCBDD's decision to the individual requesting the hearing. Such decision will 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 of the HCBDD.

(4) Step Four: File a complaint or appeal of adverse action with the Director.

a. 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 Director within 15 calendar days of notice of the decision of the HCBDD..

b. IF no decision is provided by the president of the HCBDD within 15 calendar days, the complaint or appeal must be filed with the Director within 55 days of filing the complaint with the president of the HCBDD.

c. The Director will send a copy of the complaint or appeal to the superintendent and president of the HCBDD. The president of the HCBDD will send the Director the written transcript of the HCBDD hearing, copies of any exhibits, and a copy of the HCBDD's decision within 20 calendar days of receiving a copy of the complaint or appeal from the Director.

d. Upon request by an affected party or at the Director's initiation, the Director may request or consider additional information with notice to all affected parties, may request a presentation in writing and/or in person from each party, or take other action necessary to make a determination.

e. Within 45 calendar days of receipt of the written transcript of the HCBDD's hearing, copies of any exhibits and a copy of the HCBDD's decision from the president of the HCBDD, the Director shall send by certified mail, a copy of his or her decision to all affected parties. The Director shall uphold the decision of the HCBDD if the Director determines that the decision is in accordance with applicable statute and administrative rule. The Director's decision shall include the rationale for the decision.

(G) OTHER REMEDIES

After exhausting the administrative remedies required by this policy, an individual may commence a civil action if the complaint or appeal of adverse action is not resolved to his or her satisfaction.

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Complaints
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