



# **RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES**

## **ADULTS GRIEVANCE PROCESS GUIDE**

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## GRIEVANCE PROCESS GUIDE

This is a guide to the Rights of Recipients of Mental Health Services Grievance Process. The purpose of this guide is to help you understand the process and to file a grievance if you believe that your rights have been violated.

In this guide you will learn:

- What a grievance is;
- What the grievance process is;
- How to file a grievance;
- How to appeal a grievance;
- How to prepare a grievance;
- Where to get help with your grievance.

The best way to protect your rights is to know what they are. At the end of this guide you will find a list of your basic rights and information about getting a copy of the Rights of Recipients of Mental Health Services (RRMHS). There is also a list of agencies you can contact for more information about your rights and the grievance process.

### **What is a Grievance?**

If you believe that someone has violated your rights while you are seeking or receiving mental health services, you can file a grievance.

A grievance is a formal written complaint about a possible rights violation. Filing a grievance is a way to make sure that you are heard when you believe that one of your rights has been violated. For example:

- Your community support worker might give information about you to someone without your written permission. You believe that this is a violation of your right to confidentiality. You can file a grievance.
- Your community support worker has promised to help you fill out forms to get housing but keeps rescheduling the appointments. You have spoken with his or her supervisor but nothing happened. You can file a grievance.
- You want to work but need support. You have asked your treatment team to make supported employment part of your plan. Your team tells you that you aren't able to work and refuses to help you get supported employment. You can file a grievance.

These are just a few examples of why someone might file a grievance. Your reason might be different from these examples, but the Grievance Process is the same no matter what your grievance is about.

### **What is the Grievance Process?**

The Grievance Process is a system of rules written to make sure that your grievance is heard and responded to. The person who files a grievance – you – is called the Grievant. The agency, hospital or person against whom the grievance is filed is called the Respondent. Both the Grievant and the Respondent have the right to be treated fairly in the Grievance Process.

## **What Can be Grieved?**

You can file a grievance if you think one or more of your rights under the Rights of Recipients of Mental Health Services, the Settlement Agreement in Bates vs. the Department of Health and Human Services or any other applicable law or regulation has been violated.

## **How to file a Grievance**

How a grievance is filed, depends on whether the possible rights violation happened in the community or an inpatient psychiatric facility.

### **Filing a Grievance in the Community**

Level 1: Each mental health service provider must have a grievance process and grievance forms available. If the agency doesn't have a form or if you don't want to use the agency's form, you can write out your grievance on a piece of paper. There is also a sample form at the end of this guide.

Give your written grievance to the person in charge of the agency or program where the rights violation happened. That person has five (5) working days to:

- Review your grievance;
- Review any relevant documentation;
- Interview you and any witnesses, if he or she believes it necessary;
- Provide you with a decision in writing.

If the person responding to your grievance needs more time, he or she may have five (5) additional working days. You will be notified of the extension in writing.

Level 2: If you don't agree with the Level 1 decision, you can appeal to Level 2.

A Level 2 appeal must:

- Be made within ten (10) working days from the day you received the Level 1 decision;
- Be in writing;
- Be given to the person who made the decision at Level 1. That person must forward your appeal and any related documentation to the Director of the DHHS Office of Substance Abuse and Mental Health Services

The Director of the DHHS Office of Substance Abuse and Mental Health Services:

- Will review your grievance;
- Will request more information, if needed;
- May speak or meet with you and other people who have information about your grievance;
- Will answer your appeal in writing within five (5) working days.

If more time is needed to respond to your appeal, the Director may ask you in writing for an additional five (5) working days. Alternatively, in some cases and at the discretion of the Director, the Director may refer the Level 2 appeal for a hearing before an impartial hearing officer before the Director renders a written decision. You will be notified of this process in writing and will have the opportunity to present your grievance to the hearing officer.

Level 3: 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

The Commissioner has five (5) working days to respond to your appeal. The reply may simply notify you that a hearing will be scheduled. This is only for cases where a hearing was not already held at Level 2.

### **Filing a Grievance in an Inpatient Facility**

Level 1: Each inpatient facility or psychiatric hospital unit must have grievance forms available. If the hospital or facility doesn't have a form or you don't want to use the hospital's or facility's form you can write out your grievance on a piece of paper. There is also a sample form at the end of this guide.

Give your written grievance to the person in charge of the inpatient unit where the rights violation happened. That person has five (5) working days to:

- Review your grievance;
- Review any relevant documentation;
- Interview you and any witnesses, if he or she believes that's necessary;
- Provide you with a decision in writing.

If the person responding to your grievance needs more time, he or she may have five (5) additional working days. You will be notified of the extension in writing.

Level 2: If you don't agree with the Level 1 decision, you can appeal to Level 2.

A Level 2 appeal must be:

- Made within ten (10) working days from the day you received the Level 1 decision;
- Made in writing to the Superintendent or Chief Operating Officer of the hospital;
- Given to the person who made the decision at Level 1. This person will forward your appeal and any related documentation to the Superintendent or Chief Operating Officer of the inpatient facility;

The Superintendent or Chief Operating Officer of the hospital:

- Will review your grievance;
- Will request more information if needed;
- May speak or meet with you and other people who have information about your grievance;
- Will answer your appeal in writing within five (5) working days.

If more time is needed to respond to your appeal, the Superintendent or Chief Operating Officer may ask you in writing for an additional five (5) working days. Alternatively, in some cases and at the discretion of the Superintendent or the Chief Operating Officer, the Level 2 appeal may be referred for a hearing before an impartial hearing officer before the Superintendent or Chief Operating Officer renders a written decision. You will be notified of this process in writing and will have the opportunity to present your grievance to the hearing officer.

Level 3: If you don't agree with the decision made at Level 2, you can appeal to the Commissioner of the Dept. 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  
Department of Health and Human Services  
11 State House Station - 221 State St.  
Augusta, ME 04333-0011

The Commissioner has five (5) working days to respond to your appeal. The reply may simply notify you that a hearing will be scheduled. This is only for cases where a hearing was not already held at Level 2.

### **Administrative Hearings**

An Administrative Hearing is a formal meeting conducted by an Administrative Hearings Officer. The RRMHS Grievance Process requires that an Administrative Hearing be held at Level 2 or at Level 3. If there was not a hearing at Level 2, there must be one at Level 3.

At the Administrative Hearing, you can:

- Explain your grievance;
- Present evidence to support your grievance;
- Present witnesses to support your grievance;
- Challenge the evidence presented by the other side;
- Question the other side's witnesses.

An Administrative Hearings Officer is a person who knows about the Grievance Process and the law. He or she will listen to both sides before making an impartial decision.

The Administrative Hearings Officer will:

- Listen carefully to both sides;
- Review the evidence;
- Determine what the "facts" of the case are;
- For Level 2 appeals, recommend a decision to the party responsible for deciding the appeal, either the Director for grievances in the community, or the Superintendent or Chief Operating Officer for grievances in inpatient facilities.
- For Level 3 appeals, recommend a decision to the Commissioner of the Department of Health and Human Services.

The party responsible for making the decision at either Level 2 or Level 3 will review the Administrative Hearing Officer's recommendations and issue a final written decision.

At Level 3, the Commissioner's decision is called "final agency action." That means there are no more Grievance Process appeals. If you don't agree with the Commissioner's decision, you can appeal to the Maine Superior Court.

## **Preparing a Grievance**

If you're thinking about filing a grievance, there are some things that you can do to prepare.

Write down what happened that made you want to file a grievance.

- Who was involved?
- What happened?
- When did it happen?
- Where did it happen?
- Were there any witnesses?

Know what right was violated.

- Read through the Rights of Recipients of Mental Health Services.
- If you can't find the section that applies to the right you think was violated, contact an advocate or someone else who knows about your rights. You will find a list of places to get help with filing a grievance at the end of this guide.

Think about what you want your grievance to accomplish. This is very important. Knowing what you would like the outcome of your grievance to be will help you to get the result that you want.

Start a file and keep it up-to-date. Your file should include:

- Copies of your formal grievance and appeals;
- Copies of letters related to your grievance;
- Copies of any documents you are using as evidence;
- Notes of any phone conversations you have about your grievance;
- A list of your witnesses;
- A calendar of appeal dates and deadlines.

### **Burden of Proof**

The agency or inpatient facility against which a grievance is filed has the burden of proof. That means that the agency or inpatient facility has to prove that you are wrong. You don't have to prove that you are right. When you are preparing or appealing a grievance, you have the right to copies of any information and documentation the agency or inpatient facility used to respond to your grievance. Review this information carefully to see whether it supports the response you received.

### **Where to Get Help Filing a Grievance**

The Grievance Process can be confusing, but there is help available. There are advocates who can either represent you or provide you with information. Advocates have experience helping people protect their rights. They understand the Rights of Recipients of Mental Health Services and the Grievance Process.

There are several agencies that provide advocacy services and/or information. These are some of the places you can contact for help.

Disability Rights Maine  
24 Stone Street  
Augusta, ME 04330-2007  
1-800-452-1948 (v/tty)  
1-207-626-2774 (v/tty)

(Disability Rights Maine has advocates at the Riverview Psychiatric Center and the Dorothea Dix Psychiatric Center)

National Alliance on Mental Illness (NAMI)  
52 Water Street  
Hallowell, ME 04347  
(207) 622-5767 or 1-800-464-5767

Maine Equal Justice Partners  
126 Sewall St.  
Augusta ME 04330  
(207) 626-7058  
1-866-626-7059

Dept. of Health and Human Services  
Substance Abuse and Mental Health Services  
Grievance Coordinator.  
11 State House Station- 41 Anthony Avenue  
Augusta, ME 04333-0011  
(207) 287-2595  
AMHS Main Line #: (207) 287-4243  
TTY Users: Dial 711 (Maine Relay)

Each of these agencies will either provide you with assistance or information or direct you to an agency that can. Don't be afraid to ask for help.

### **Basic Rights of Recipients of Mental Health Services**

Before filing a grievance, it's always a good idea to review your rights are under the Rights of Recipients of Mental Health Services. Grievances are about rights violations. The rights listed below are your basic rights under the Rights of Recipients of Mental Health Services.

Recipients have the same human, civil and legal rights accorded all citizens, including the right to live in a community of their choice without constraints upon their independence, except those constraints to which all citizens are subject. Recipients have the right to a humane psychological and physical environment within the facility or program. Recipients have the right to be treated with courtesy and dignity. Recipients are at all times entitled to respect for their individuality and to recognition that their personalities, abilities, needs, and aspirations are not determinable on the basis of a psychiatric diagnosis. Recipients have the right to have their privacy assured and protected to the greatest extent possible in light of their treatment needs. Recipients shall not be incapacitated nor denied any right, benefit, privilege, franchise, license, authority or capacity of whatever nature that they would otherwise have, simply due to their status as recipients of mental health services.

There shall be no limitation on the freedom of religious belief.

Discrimination in the provision of services due to race, creed, sex, age, national origin, political belief or handicapping condition shall be prohibited.

All basic rights shall remain intact unless specifically limited through legal proceedings, as in the case of guardianship or in an emergency or when necessary to protect the rights or safety of the recipient or others, only as outlined in specific sections of these rules.

Services delivered to recipients shall be based on their identified individual needs and shall be delivered according to flexible models that accommodate changes in recipients' needs and the variations in the intensity of their needs. To the extent possible, recipients will not be required to move from one setting to another in order to receive the services appropriate to their changed needs.

Recipients have the right to refuse all or some of the services offered, subject to the exceptions noted below. A person's refusal of a particular mode or course of treatment shall not per se be grounds for refusing a recipient's access to other services that the recipient accepts. Only the following services may be imposed against a recipient's wishes:

- Involuntary hospitalization pursuant to 34-B M.R.S.A. §§ 3863 et seq.;
- Forensic services pursuant to 15 M.R.S.A. § 101-D in a residential or hospital setting;
- Services permitted under applicable law in the case of a person under guardianship, upon the guardian's informed consent and within the limits of the guardian's authority;
- Emergency treatment in a residential or hospital setting during a psychiatric emergency, pursuant to procedures set out in these rules; or
- Treatment in a residential or hospital setting pursuant to the administrative hearing provisions of these rules for individuals who lack capacity to consent to services.

Recipients have the right to exercise their rights pursuant to these rules without reprisal, including reprisal in the form of denial of or termination of services.

Recipients with long term mental illnesses have the following additional rights, to the extent that state and community resources are available

- The right to a service system that employs culturally normative and valued methods and settings,
- The right to coordination of the disparate components of the community service system;
- The right to individualized developmental programming that recognizes that each recipient with long-term mental illness is capable of growth or slowing of deterioration;
- The right to a comprehensive array of services to meet the recipient's needs; and
- The right to the maintenance of natural support systems, such as family and friends of recipients with long-term mental illnesses, individual, formal and informal networks of mutual and self-help.

For a complete copy of the Rights of Recipients of Mental Health Services, please contact:

Dept. of Health and Human Services  
Substance Abuse and Mental Health Services  
11 State House Station-41 Anthony Avenue  
Augusta, ME 04333-0011  
(207) 287-2595  
TTY Users: Dial 711 (Maine Relay)

Or on the web at: <http://www.maine.gov/dhhs/samhs/mentalhealth/rights-legal/index.html>

DEPT. OF HEALTH AND HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

Level 1 Grievance Reporting Form

Today's Date: \_\_\_\_\_

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone/TTY: \_\_\_\_\_

Name of Agency/Service Provider Involved:  
\_\_\_\_\_  
\_\_\_\_\_

Location of Agency/Service Provider (city/town):  
\_\_\_\_\_

Date(s) that the incident happened: \_\_\_\_\_

Name(s) of People Involved: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Briefly Describe What Happened (use the back of this form if necessary):

What is the specific issue that needs to be addressed?

How can this matter be resolved?

## Your Notes and Contact Information