



Office of the Commissioner
Civil Rights Complaint Policy

Policy #: DHHS-03-18

Issue Date: 05/01/18

Revised without Revisions: 12/18/18

I. SUBJECT

Civil Rights Complaint Policy

II. POLICY STATEMENT

It is the policy of the Maine Department of Health and Human Services (“Department”) that no one will be excluded from participation in, or be denied the benefits of the policies, programs, services, or activities of the Department, or be otherwise discriminated against on the basis of disability, race, color, sex, gender, sexual orientation, age, national origin, religious or political belief, ancestry, familial or marital status, genetic information, association, previous assertion of a claim or right, or whistleblower activity.

Any person who believes someone has been excluded from participation in, or denied the benefits of the services, programs, or activities of the Department, or otherwise discriminated against on the basis of disability, race, color, sex, gender, sexual orientation, age, national origin, religious or political belief, ancestry, familial or marital status, genetic information, association, previous assertion of a claim or right, or whistleblower activity has the right to file a complaint with the Department.

It is the policy of the Department that no one will be retaliated against for opposing discrimination, filing a complaint, or participating in the investigation of a complaint.

All Department agencies will follow this policy as set forth herein, and communicate its commitment to equal access and opportunity, and nondiscrimination.

III. RATIONALE

The Department is committed to providing equal opportunity and access to its programs, services, and activities in accordance with federal¹ and state nondiscrimination laws and regulations, including but not limited to:

- A. ***Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.***, and all implementing regulations, which prohibits discrimination on the basis of race, color or national origin;
- B. ***Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.***, and all implementing regulations, which prohibits discrimination on the basis of disability;

¹ These federal laws are available at <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html>.

- C. **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.**, and all implementing regulations, which prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance;
- D. **Title IX of the Educational Amendments of 1972, 20 U.S.C. ch. 38**, and all implementing regulations, which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.
- E. **Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq.**, and all implementing regulations, which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance;
- F. **Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116**, and all implementing regulations, which prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs and activities; and
- G. **Maine Human Rights Act, 5 M.R.S.A. §4551, et seq.**², and all implementing regulations, which prohibits discrimination in employment, housing or access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, in housing because of familial status, and in education on account of sex, sexual orientation or physical or mental disability.

IV. SCOPE OF POLICY

This Civil Rights Complaint Policy applies to complaints of discrimination by members of the public about the programs, services, and activities conducted or funded by the Maine Department of Health and Human Services.

General complaints about conduct or job performance of a Department employee are covered by a separate Department policy³ This Complaint Policy does not apply to the terms and conditions of employment of any Department employee⁴.

Members of the public are not required to file a complaint with the Department but may instead exercise their right to file a complaint with other state and federal agencies that investigate allegations of discrimination. See Section IX below for more information on state and federal agencies that investigate allegations of discrimination.

Nothing in this Complaint Policy limits, modifies, or supplants federal or state nondiscrimination laws or remedies.

² The Maine Human Rights Act is available at <http://legislature.maine.gov/statutes/5/title5ch337sec0.html>

³ Complaints concerning conduct or job performance of a Department employee not involving discrimination are handled by the Department's Human Resources Office. Please see Policy # DHHS-23-06, Personnel Complaints, found at <http://www.maine.gov/dhhs/policies/> or by calling the Department at 207-287-3707 (V) or Maine Relay 711 (TTY).

⁴ Complaints alleging employment discrimination by the Department are subject to separate policies and are handled by the Department's EEO Officer. Further information on employment discrimination may be found at <http://www.maine.gov/dhhs/policies/> or by calling the Department at 207-287-4289 (V) or 207-287-1871(V); or Maine Relay 711 (TTY).

V. DESIGNEE FOR CIVIL RIGHTS COMPLAINTS

The Department will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this Complaint Policy, including accepting and processing complaints. The designee's contact information, along with that of any other key personnel involved in the Complaint process, will be posted on the Department's website and included in the Department's "Nondiscrimination Notice" (see Appendix A).

The Department's "Nondiscrimination Notice" will be made readily available to the public and Department employees through several methods including posting on the Department's website⁵, inclusion with significant communications and publications, posting in Department public locations, and providing a copy to anyone who inquires or complains informally or formally about discrimination.

As of the date of this Policy, the designee's contact information is:

ADA/Civil Rights Coordinator
11 State House Station
Augusta, ME 04333-0011
207.287.3707 (TTY: Maine Relay 711)
ADA-CivilRights.DHHS@maine.gov

VI. DEFINITIONS

- A. ***ADA/Civil Rights Coordinator*** ("***Coordinator***") means the employee(s) designated to by the Department to coordinate its efforts to comply with and carry out its responsibilities under this Civil Rights Complaint Policy, including accepting and investigating complaints of discrimination.
- B. ***Civil Rights Complaint*** ("***Complaint***") means a written or oral complaint, submitted in accordance with this Civil Rights Complaint Policy, alleging that the Department violated the civil rights of a person. A Complaint does not include complaints by employees of the Department pertaining to their employment.
- C. ***Complainant*** means the person submitting the Civil Rights Complaint in accordance with this Complaint Policy. The Complainant may be either the Individual or his/her Representative.
- D. ***Complaint Policy*** means this Civil Rights Complaint Policy.
- E. ***Department*** means the Maine Department of Health and Human Services.
- F. ***Individual*** means the person whose civil rights were allegedly violated by the Department.
- G. ***Representative*** means a person acting on behalf of the person whose civil rights were allegedly violated by the Department.

⁵ <http://www.maine.gov/dhhs/>

VII. UNIFORM PROCEDURES FOR CIVIL RIGHTS COMPLAINTS

A. *Filing a Complaint*

1. A Complaint should be submitted to the ADA/Civil Rights Coordinator (See Section V above for the Coordinator's contact information).
2. Complaints must be submitted within one hundred eighty (180) calendar days of the date the Complainant became aware of the alleged discriminatory action. If the Complaint is not filed on time, the Complainant must provide the reason for the delay and request a waiver of this filing requirement. The Coordinator will decide whether to grant the waiver.
3. The Complaint may be submitted by the Individual or his/her Representative.
4. The Complaint may be submitted orally or in writing.
5. Written Complaints may be submitted using the Department's Civil Rights Complaint Form (See Appendix B for the current Complaint template). This form is available online at <http://www.maine.gov/dhhs/>, or from any Department employee or the Coordinator. Complaints in other written formats will be accepted,
6. Oral Complaints may be submitted by speaking directly to the ADA/Civil Rights Coordinator. A supplemental written Complaint must be submitted to the Coordinator within ten (10) business days of the oral Complaint. At the time of the oral Complaint, the Coordinator will inform the Complainant of the need for a supplemental written Complaint.
7. Written and oral Complaints should contain, at a minimum, the following information:
 - a. The name, address, and telephone number of the person filing the Complaint;
 - b. The name, address, and telephone number of the person alleging discrimination, if other than the person filing the Complaint;
 - c. A description and location of the alleged violation and the remedy sought;
 - d. Information regarding whether a complaint has been filed with the Department of Justice or other Federal or state civil rights agency or court; and
 - e. If a complaint has been filed, the name of the agency or court where the complaint was filed, and the date the complaint was filed.
8. In the event a Department employee other than the Coordinator receives a written Complaint, that employee will forward the written Complaint to the Coordinator, as soon as possible.
9. In the event a Department employee other than the Coordinator receives an oral Complaint, that employee will inform the Complainant of the need to contact the Coordinator, will give the Complainant the Coordinator's contact information, and

will contact the Coordinator as soon as possible to notify him/her of the Complaint and the Complainant's contact information.

10. Written Complaints are deemed received on the date the Coordinator receives the Civil Rights Complaint form, or other substantially similar written document.
11. Oral Complaints are deemed received on the date of the communication between the Complainant and the Coordinator, and not the date the Coordinator receives the supplemental written Complaint, provided the Coordinator receives the supplemental written Complaint within ten (10) business days of the oral Complaint. In the event the Coordinator does not receive the supplemental written Complaint within this ten (10) business day period, processing the Complaint may be suspended pending receipt of the supplemental written Complaint.
12. Complainants are encouraged to make copies of their written Complaint for their own records.
13. A Complaint does not have to include any special words, such as "discrimination," "Civil Rights Act" or "complaint". If the nature of the initial communication is unclear, the Coordinator will ask the Complainant whether he/she intended to submit a Civil Rights Complaint.
14. The Coordinator will acknowledge receipt of the Complaint by contacting the Complainant within five (5) business days of receiving the Complaint.

B. *Alternative Methods of Communication*

Appropriate arrangements to ensure that individuals with disabilities and individuals with limited English proficiency are provided auxiliary aids and services, or language assistance services to participate in the complaint process are available upon request to the Coordinator. Such arrangements may include, but are not limited to, providing qualified interpreters, including sign language interpreters, providing taped cassettes of material for individuals with low vision, or assuring a barrier-free location for any meetings. The Coordinator will assure that a Complaint taken by alternate means is reduced to written form for record keeping purposes.

C. *Processing the Complaint*

1. The Coordinator is responsible for processing Complaints. The Department will designate another employee to process Complaints if the Coordinator is unavailable for a significant length of time.
2. The Coordinator will review and decide Complaints objectively, solely on the basis of information and documents provided to, or obtained by the Coordinator.

3. Department personnel knowledgeable about the Individual, and/or the events, policies, program, services, or activities underlying the Complaint will assist the Coordinator in processing the Complaint. This assistance will include, but is not limited to, obtaining and providing all relevant information and documentation the Coordinator determines to be reasonably necessary to evaluate the Complaint. To ensure a timely response to a Complaint, Department employees will obtain and provide all such relevant information and documentation in a timely manner.
4. The Coordinator will act expeditiously to process Complaints and will issue written decisions on a Complaint in as short a period as reasonably possible. The time needed to process a Complaint will vary depending on a variety of factors related to the Complaint.
5. If the Department receives a Complaint and determines that the Complaint is substantially similar to a matter being appealed through either an administrative appeal or grievance process the Coordinator will work with the Department and the Complainant to minimize duplication of effort.

D. *Requests for Information and/or Documentation*

1. The Coordinator may determine that additional information and/or documentation, including confidential information and documentation, is necessary to evaluate a Complaint.
2. It is the responsibility of the Complainant to provide any additional information and/or documentation, including confidential information and documentation, necessary to evaluate the Complaint.
3. In the event the additional information and/or documentation, including confidential information and documentation, has already been submitted to the Department in connection with another situation, the Complainant may inform the Coordinator of this fact.
4. The Complainant will produce the additional information and/or documentation, including confidential information and documentation, to the Coordinator within a reasonable time frame. If the Complainant fails to provide information or documentation, including confidential information and documentation, sought by the Coordinator, in a reasonable time, the Coordinator may set a deadline for compliance. If the Complainant fails to comply with the deadline, such non-compliance may result in the dismissal of the Complaint.
5. The Complainant may need to sign a limited release permitting the Coordinator to request information and/or documentation, including confidential information and/or documentation, from persons outside the Department. The Complainant may choose to provide the requested information and/or documentation, including confidential information and/or documentation, independently to the Coordinator, making the limited release unnecessary. Failure to provide this limited release, or, in the alternative, independently provide the information and/or documentation, may result in the dismissal of the Complaint.

E. *Initial Evaluation of the Complaint*

1. The Coordinator will make an initial determination whether the Complaint contains enough information about the alleged discrimination to proceed to investigation.
2. The Coordinator will dismiss a Complaint at this stage when:
 - a. The Department does not have the legal authority to investigate the Complaint.
 - b. The Complaint is unclear or incomplete, and the Complainant did not provide the additional information requested within a reasonable time period;
 - c. The Complaint was not filed timely and a waiver was not requested, or was determined not appropriate;
 - d. The Complaint fails to allege a violation of civil rights laws;
 - e. The allegations raised in the Complaint have been resolved;
 - f. The Complaint is being, or has been, investigated by another Federal, state, or local agency, or through another process, and the Department anticipates its resolution would be comparable;
 - g. The same allegations have been filed by the Individual, or his/her Representative, against the Department in State or Federal court; or
 - h. The allegations are foreclosed by previous decisions of the State court, Federal courts, or federal regulatory agencies.
3. In the event the Coordinator dismisses a Complaint at this stage for one of the reasons listed above, the Coordinator will issue an Initial Letter of Findings to the Complainant.

F. *Investigating the Complaint*

1. The Coordinator's investigation will include an evaluation of each allegation in the Complaint. An investigation in no way implies that the Department has made a determination with regard to the merits of the Complaint. During the investigation, the Coordinator acts as a neutral fact-finder.
2. This investigation will be informal, but it will afford all interested persons an opportunity to submit evidence relevant to the Complaint. The Coordinator will use a variety of fact-finding techniques in its investigation of a Complaint such as reviewing documentary evidence submitted by either party, site visits, and/or conducting interviews with Department personnel, and other witnesses, particularly those with knowledge about the program, services, or activities, events, and people involved.

3. The Department will use an interactive process in its investigation. An interactive process requires the Individual, his/her Representative, if any, and the Coordinator to communicate with each other about the Complaint, the precise nature of the problem that is generating the Complaint, the Complainant's desired resolution of the Complaint, and other related matters. Communication is a priority throughout the process, but particularly where the specific discriminatory act or event is unclear; where an effective resolution is not obvious; or where the parties are considering different forms of resolution.
4. At the conclusion of the investigation, the Coordinator will determine with regard to each allegation either:
 - a. There is a preponderance of evidence to support a conclusion that the Department failed to comply with the applicable law; or
 - b. There is insufficient evidence to support a conclusion that the Department failed to comply with the applicable law.
5. In the event the Coordinator concludes there is insufficient evidence to support a conclusion of noncompliance, the Coordinator will issue a Letter of Findings to the Complainant, as more fully described in subsection VII (G) below.
6. In the event the Coordinator concludes there is a preponderance of evidence to support a conclusion of noncompliance by the Department, the Coordinator will provide a written summary of findings to the Director of the agency involved in the noncompliance, or the Commissioner if more than one agency is involved. The written summary will specify the Complainant's desired resolution of the Complaint.
7. Within ten (10) business days of receipt of the written summary of findings, the Director and/or Commissioner will notify the Coordinator if the desired resolution is acceptable to the Department.

G. *Decision After Investigation*

1. Following the investigation, the Coordinator will issue a Letter of Findings to the Complainant stating the Coordinator's findings with regard to each allegation of the Complaint.
2. The Letter of Findings will include, among other things: the date of the Complaint; the name(s) and address(es) of the Individual and/or Complainant; the nature of the Complaint; a summary of the information and documents reviewed by the Coordinator; the dates, locations, and substance of any meetings with the Complainant, the Individual, and/or Department representatives; and fact-specific investigative findings.
3. In the event the Coordinator concludes there is a preponderance of evidence to support a conclusion of noncompliance, the Letter of Findings will also notify the Complainant what remedial action, if any, the Department will implement to address the area(s) of noncompliance.

4. The Letter will also include a notice to the Complainant of his/her right to pursue further administrative or legal remedies.
5. The Coordinator will mail a copy of the Letters of Findings to the Complainant and provide the decision in an accessible format, if necessary, and will make a reasonable effort to communicate the decision directly to the Complainant.
6. Failure of the Coordinator to issue a Letter of Findings shall not be deemed agreement by the Department that the alleged discrimination occurred.

H. Confidentiality/Privacy Requirements

1. Any confidential information and/or documentation obtained in connection with a Complaint will be kept confidential as required by the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, its implementing regulations at 45 C.F.R. Parts 160 and 164, the Health Information Technology for Economic and Clinical Health, P.L. 111-5, the federal and state laws listed in Part III above, and other state and federal privacy laws, as applicable.
2. In the event the Coordinator shares confidential information and/or documentation with other Department staff or third parties, the disclosure will be limited to the minimum extent reasonably necessary, and the Coordinator will inform the recipient(s) of their obligation to comply with all privacy laws and regulations.
3. No law requires anyone to give personal information to the Department and no sanctions will be imposed on Complainants or other persons who do not cooperate in providing information during the Complaint investigation and resolution process. However, if the Department is unable to obtain the information necessary to investigate a Complaint, the matter may be closed.

VIII. EXTENUATING CIRCUMSTANCES

If there are circumstances that could not reasonably have been anticipated or avoided in advance of the Complaint, or that are beyond the Department's ability to control, the time required to process a Complaint may be extended for as long as necessary to deal with the extenuating circumstance(s).

IX. ADDITIONAL RIGHTS

The availability and use of this Complaint procedure does not prevent a Complainant from pursuing other legal or administrative remedies. Complaints of discrimination may also be filed with the U.S. Department of Justice⁶, the U.S. Department of Health and Human Services⁷, and/or the Maine Human Rights Commission⁸.

⁶ As of the date of this policy, civil rights complaints may be filed with the U.S. DOJ electronically (<https://www.ada.gov/complaint/>), or by mail.

⁷ As of the date of this policy, civil rights complaints may be filed with the U.S. HHS electronically (<https://ocrportal.hhs.gov/>), or by mail, or by email (OCRComplaint@hhs.gov)

⁸ As of the date of this policy civil rights complaints may be filed with the Maine Human Rights Commission electronically (http://www.maine.gov/mhrc/file_a_complaint/index.htm), by phone (207-624-6290 (Maine Relay 711)), or by mail.

This Complaint Policy does not limit or supplant statutory or legal protections and the remedies they provide for the discrimination. Requirements governing the initiation of statutory or legal claims remain unchanged, including the time frames for filing such claims.

This Complaint Policy does not create new enforceable rights under the Civil Rights Act, ADA, Section 504 of the Rehabilitation Act, or any other law.

This Complaint Policy does not create new enforceable rights or benefits, substantive or procedural, enforceable at law or equity by a party against the Department.

X. DISCLAIMER

Information provided in this Complaint Policy about legal rights and remedies does not constitute legal advice, and should not be relied upon as a representation by the Department as to any person's legal rights.

XI. INQUIRIES AND DISTRIBUTION

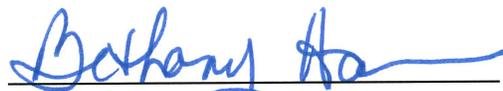
For further information about this Complaint Policy, please contact the ADA/Civil Rights Coordinator (See Section V above)

This Complaint Policy will be posted on the Department's website and is available in hard copy from the ADA/Civil Rights Coordinator. This Complaint Policy will be provided in alternative formats upon requested.

This Complaint Policy will be distributed to all Department personnel by email and will be posted on the Department's website.

December 18, 2018

Date


Bethany Hamm
Acting Commissioner

APPENDIX A

NONDISCRIMINATION NOTICE

The Department of Health and Human Services (“DHHS”) does not discriminate on the basis of disability, race, color, sex, gender, sexual orientation, age, national origin, religious or political belief, ancestry, familial or marital status, genetic information, association, previous assertion of a claim or right, or whistleblower activity, in admission or access to, or the operation of its policies, programs, services, or activities, or in hiring or employment practices. This notice is provided as required by and in accordance with Title II of the Americans with Disabilities Act of 1990 (“ADA”); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; Section 1557 of the Affordable Care Act; the Maine Human Rights Act; Executive Order Regarding State of Maine Contracts for Services; and all other laws and regulations prohibiting such discrimination. Questions, concerns, complaints or Complaints for additional information regarding the ADA and *hiring or employment practices* may be forwarded to the DHHS ADA/EEO Coordinators at 11 State House Station, Augusta, Maine 04333-0011; 207-287-4289 (V); 207-287-1871(V); or Maine Relay 711 (TTY). Questions, concerns, complaints or Complaints for additional information regarding the ADA and *programs, services, or activities* may be forwarded to the DHHS ADA/Civil Rights Coordinator, at 11 State House Station, Augusta, Maine 04333-0011; 207-287-3707 (V); Maine Relay 711 (TTY); or ADA-CivilRights.DHHS@maine.gov. Civil rights complaints may also be filed with the U.S. Department of Health and Human Services, Office of Civil Rights, by phone at 800-368-1019 or 800-537-7697 (TDD); by mail to 200 Independence Avenue, SW, Room 509, HHS Building, Washington, D.C. 20201; or electronically at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>. Individuals who need auxiliary aids for effective communication in program and services of DHHS are invited to make their needs and preferences known to the ADA/Civil Rights Coordinator. This notice is available in alternate formats, upon Complaint.

APPENDIX B

CIVIL RIGHTS COMPLAINT FORM

You may use this form to file a complaint regarding a civil rights violation? Be specific and provide as much detail as possible. This will allow the Department to effectively process and evaluate your Complaint. **If you need assistance filing out this form**, contact the Department's ADA/Civil Rights Coordinator whose contact information appears near the end of this form.

With Respect to the Individual who alleges a civil rights violation.				
Name:	_____			Phone: _____
Address:	_____			
	Street / PO	City	State	Zip Code
Email Address:	_____			

With Respect to Person filing the Complaint if different than above*				
Name:	_____			Phone: _____
Address:	_____			
	Street / PO	City	State	Zip Code
Email Address:	_____			

The preferred method of contact regarding this Complaint is (check one):

- mail phone email

Q #1. Please describe the alleged actions (e.g. date, time, place, activity, people involved) and why you believe the incident was discriminatory. Please include the name(s) of witnesses, if any, and attach supporting data, if available (attach additional pages, if necessary).

Q #2. What is the basis of the discrimination against you? (check all that apply)

- | | | |
|---------------------------------|---|---|
| <input type="checkbox"/> race | <input type="checkbox"/> sexual orientation | <input type="checkbox"/> familial status |
| <input type="checkbox"/> color | <input type="checkbox"/> disability | <input type="checkbox"/> marital status |
| <input type="checkbox"/> age | <input type="checkbox"/> religion | <input type="checkbox"/> political beliefs |
| <input type="checkbox"/> sex | <input type="checkbox"/> ancestry | <input type="checkbox"/> previous assertion of claim or right |
| <input type="checkbox"/> gender | <input type="checkbox"/> national origin | <input type="checkbox"/> _____ (specify) |

Q. 3 Did you share your concerns with the Department staff involved or his/her supervisor? If so, what happened? (attach additional pages if necessary)

Q 4. How would you like the Department to resolve your complaint so that you may participate in the program, service, or activity without discrimination? Please list any alternatives, and let us know which you prefer. Potential solutions could include changes to policies, practices, or procedures; removing architectural, communication, or transportation barriers; and providing auxiliary aids and services. (attach additional pages if necessary)

Q 5. Have you filed a claim regarding this complaint with a federal agency? If so, with whom and when?

Q 6. Have you instituted a legal suit or court action regarding this complaint? If so, when and in what court?

Please be advised that, in order to evaluate this Complaint , the Department may need to review your private/confidential information. If private/confidential' information is provided to the Department, it will be maintained in a confidential manner.

Please sign and date this form:

Print Name: _____

Date: _____

Please submit this form by mail or by email to:

DHHS ADA/Civil Rights Coordinator
11 State House Station
Augusta, ME 04333-0011
ADA-CivilRights.DHHS@maine.gov

*** If you are submitting this complaint on behalf of someone else and the matter involves private/confidential information, you MUST submit proof of your legal relationship or legal authority to access that person's private/confidential information.**

Examples of legal relationship or legal authority include, but are not limited to:

1. Parent of a minor child;
2. Guardian;
3. Attorney-in-fact granted the power to act on the Individual's behalf with respect to the Complaint;
4. Attorney of record;
5. Individual authorized to act on behalf of the individual in a writing approved by the Department; or
6. Person with verifiable legal authority to act on behalf of the Individual with respect to the Complaint.